

1 SB159
2 195616-2
3 By Senator Chesteen
4 RFD: Finance and Taxation Education
5 First Read: 20-MAR-19

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8 SYNOPSIS: This bill would provide a procedure for the
9 deployment and investment of broadband
10 infrastructure and other telecommunications
11 services near the right-of-way of railroads,
12 including railroad crossings.

13
14 A BILL
15 TO BE ENTITLED
16 AN ACT

17
18 Relating to broadband services; to provide a
19 procedure for the deployment and investment of broadband
20 infrastructure and other telecommunications services near a
21 railroad right-of-way.

22 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

23 Section 1. In this act the following words shall
24 have the following meanings:

25 (1) ANTENNA. Telecommunications equipment that
26 transmits or receives, or both, over-the-air electromagnetic
27 signals used in the provision of wireless services.

1 (2) APPLICATION. A written request submitted by an
2 applicant to an authority for a permit to do either of the
3 following:

4 a. Locate or collocate, or modify, a
5 telecommunications facility underground or on any existing
6 support structure, pole, or tower.

7 b. Construct, modify, or replace a new support
8 structure, pole, tower, or any other structure on which a
9 telecommunications network facility will be collocated.

10 (3) AUTHORITY. A state, county, municipality,
11 district, local authority, or other subdivision thereof,
12 authorized by applicable law to make legislative,
13 quasi-judicial, or administrative decisions, including
14 concerning an application, but shall not include state courts
15 having jurisdiction over an authority or any entities that do
16 not have zoning or permitting authority jurisdiction.

17 (4) BROADBAND SERVICES. Any high-speed
18 telecommunications capability that enables users to originate
19 and receive high-quality voice, data, graphics, and video
20 telecommunications using any transmission media or technology.
21 At a minimum, the term shall do either of the following:

22 a. Meet the definition of advanced
23 telecommunications capability, as determined by the FCC from
24 time to time.

25 b. In unserved, underserved, or rural areas, all of
26 the following:

1 1. Meet the definition of advanced
2 telecommunications capability, as determined by the FCC from
3 time to time, regardless of technology.

4 2. Ensure that latency does not exceed 100
5 milliseconds round trip.

6 3. Provide a minimum usage allowance of 150
7 gigabytes per month.

8 (5) COLLOCATE or COLLOCATION. To install, mount,
9 maintain, modify, operate, or replace a telecommunications
10 facility on an existing support structure, pole, tower, or any
11 other structure capable of supporting the telecommunications
12 network facility. The term does not include the installation
13 of a new pole, tower, or telecommunications network support
14 structure in the public right-of-way.

15 (6) CONDUIT. A structure containing one or more
16 ducts, usually placed in the ground, in which cables or wires
17 may be installed.

18 (7) CROSSING. A facility constructed over, under, or
19 across a railroad right-of-way. The term does not include
20 longitudinal occupancy of a railroad right-of-way.

21 (8) DARK FIBER. Fiber within an existing fiber optic
22 cable that has not yet been activated through optronics to
23 render it capable of carrying communications services.

24 (9) DUCT. A single enclosed raceway for conductors,
25 cable, or wire.

26 (10) FACILITY. Any network support infrastructure or
27 item of private property placed over, across, or underground

1 for use in connection with the storage or conveyance of any of
2 the following:

3 a. Water.

4 b. Sewage.

5 c. Electronic, telephonic, or telegraphic
6 communications.

7 d. Fiber.

8 e. Cable television.

9 f. Electric energy.

10 g. Oil.

11 h. Natural gas.

12 i. Hazardous liquids.

13 (11) FCC. The Federal Communications Commission of
14 the United States.

15 (12) FIBER. A technology that converts electrical
16 signals carrying data to light and sends the light through
17 transparent glass fibers to provide broadband services.

18 (13) LOCAL GOVERNING BODY. The city council for the
19 municipality in which the crossing at issue is located or, if
20 outside a municipal jurisdiction, the county commission of the
21 county in which the crossing at issue is located.

22 (14) NETWORK. A network support infrastructure used
23 or authorized to be used by a telecommunications provider or
24 network support infrastructure owner to provider network
25 services.

26 (15) NETWORK ACCESS POINT. A physical connection
27 point located inside or outside any building or infrastructure

1 that enables telecommunications providers to access the
2 necessary network support infrastructure so as to be able to
3 provide network services to subscribers, but does not include
4 access to inside wiring.

5 (16) NETWORK SERVICES. Services that
6 telecommunications providers or network support infrastructure
7 owners provide or are authorized to provide to subscribers.

8 (17) NETWORK SUPPORT INFRASTRUCTURE. Any of the
9 following:

10 a. Any aspect of the physical infrastructure used or
11 authorized to be used by a network support infrastructure
12 owner to provide network services; provided, however, that the
13 physical infrastructure carries, contains, houses, or supports
14 the active component of the network service being provided
15 without itself becoming an active component of the network,
16 including, but not limited to, antenna installations,
17 cabinets, communications exchanges, conduits, ducts,
18 inspection chambers, manholes, masts, network access points,
19 network components within cabinets, pipes, poles, roads,
20 railways, towers, transportation networks, utility networks,
21 poles, waterways networks, equipment for transmitting wireless
22 or satellite signals, or any other physical part of a network
23 or any legal rights to use, share, or access the network.

24 b. The active components of a telecommunications
25 network, including, but not limited to, cables conveying
26 electricity, dark fiber conveying optical signals, fiber optic
27 cables, and antennas conveying wireless or radio frequencies.

1 Components used or intended to be used for carrying drinking
2 water for human consumption shall be excluded from this
3 definition of network support infrastructure.

4 (18) NETWORK SUPPORT INFRASTRUCTURE OWNER. An
5 authority providing or authorized to provide networks,
6 including any of the following:

7 a. Utility networks, including any physical
8 infrastructure used or authorized to be used to provide the
9 service, transport, or distribution of telecommunications,
10 drainage, gas, electricity, public lighting, hazardous
11 liquids, heating, water, or sewage.

12 b. Transportation networks, including any physical
13 infrastructure used or authorized to be used to provide
14 transportation services. The term includes bridges, railways,
15 roads, ports, and airports.

16 c. Waterways networks. The term includes canals,
17 rivers, viaducts, navigation channels, and other waterways.

18 (19) OWNER. A person owning or operating a pole or
19 similar structure in the public right-of-way on which
20 facilities for the distribution of electricity or
21 telecommunications are or may be located.

22 (20) PARALLELING. A network infrastructure that runs
23 adjacent to and alongside the lines of a railroad for no more
24 than one mile, or another distance agreed to by the parties,
25 after which the network support infrastructure crosses the
26 railroad lines, terminates, or exits the railroad
27 right-of-way.

1 (21) PERMIT. A written authorization, in electronic
2 or hard copy format, required by an authority to initiate,
3 continue, or complete installation of a telecommunications
4 facility or an associated support structure, pole, or tower.

5 (22) PERSON. An individual, corporation, limited
6 liability company, partnership, association, trust, or other
7 entity or organization, including an authority.

8 (23) POLE. A pole, such as a utility, lighting,
9 traffic, or similar pole, made of wood, concrete, metal, or
10 other material, located or to be located within the public
11 right-of-way or utility easement. The term includes the
12 vertical support structure for traffic lights, but does not
13 include a horizontal structure to which signal lights or other
14 traffic control devices are attached. The term does not
15 include electric transmission poles, structures, towers, or
16 support structure.

17 (24) PUBLIC RIGHT-OF-WAY. The area on, below, or
18 above property that has been designated for use as or is used
19 for a public roadway, highway, street, sidewalk, alley, or
20 similar purpose. The term does not include a federal
21 interstate highway or other area not within legal jurisdiction
22 or legal ownership or control of the authority.

23 (25) RAILROAD. Any association, corporation, or
24 other entity engaged in operating a common carrier by rail, or
25 its agents or assigns, including any entity responsible for
26 the management of crossing or collection of crossing fees.

1 (26) RURAL. A county with an average population
2 density of less than 300 persons per square mile, excluding
3 the incorporated communities with a population of 20,000 or
4 greater within the county.

5 (27) SERIOUS THREAT. The installation of
6 telecommunications infrastructure in such a manner that it
7 would impede or interfere with the operation of the railroad
8 or obstruct or otherwise disturb the use or integrity of the
9 railway track or ballast bed on which the railway track is
10 laid.

11 (28) SUBSCRIBER. A person who uses or is authorized
12 to use a network service, whether of value or otherwise.

13 (29) TELECOMMUNICATIONS NETWORK. A network used or
14 authorized to be used to transmit electronic, optical, or
15 radio signals, including, but not limited to, sounds, images,
16 and data, which may be transmitted through a wired, wireless,
17 or radio network.

18 (30) TELECOMMUNICATIONS PROVIDER. Any of the
19 following:

20 a. A cable operator, as defined in 47 U.S.C. §
21 522(5).

22 b. A provider of information service, as defined in
23 47 U.S.C. § 153(24).

24 c. A provider of telecommunications service, as
25 defined in 47 U.S.C. § 153(53).

26 d. A provider of fixed wireless or other wireless
27 services, as defined in 47 U.S.C. § 332(c)(7)(C)(i).

1 (31) TELECOMMUNICATIONS SERVICES. Any of the
2 following:

- 3 a. Cable service, as defined in 47 U.S.C. § 522(6).
- 4 b. Broadband services, as defined in this section.
- 5 c. Telecommunications service, as defined in 47
6 U.S.C. § 153(53).
- 7 d. Wireless services, as defined in this section.
- 8 e. Satellite communications services.

9 (32) UNDERSERVED. An area in which less than 10
10 percent of the persons in the area have access to broadband
11 services.

12 (33) UNSERVED. An area that is not served by
13 broadband services.

14 (34) UTILITY. A company, electric cooperative, or
15 other entity that owns or operates facilities used for
16 generation and transmission or distribution of electricity,
17 gas, water, sewage, or telecommunications services to the
18 general public. The term does not include wireless services
19 providers or telecommunications infrastructure providers.

20 (35) WIRELESS SERVICES. Any wireless services,
21 including, but not limited to, personal wireless services, as
22 that term is defined in 47 U.S.C. § 332(c)(7)(C)(i); fixed
23 wireless services; and other wireless services.

24 Section 2. Title of public right-of-way for railroad
25 crossings.

26 (a) Notwithstanding any other provision of law to
27 the contrary, when a railroad operation crosses a public

1 right-of-way owned by the state or a local governing body, the
2 local governing body retains its title or interest in the
3 public right-of-way for future transportation purposes and any
4 other purpose not inconsistent with future transportation
5 purposes.

6 (b) (1) Except as provided in subdivision (2), the
7 local governing body with title to or an interest in a public
8 right-of-way crossed by a railroad operation may deny or
9 restrict access to the public right-of-way by members of the
10 general public.

11 (2) The local governing body shall allow abutting
12 farm operations to use the land over which the public
13 right-of-way passes for agricultural purposes.

14 (c) Unless the use and occupancy of a railroad
15 right-of-way adversely affects railroad safety, broadband
16 facilities and wireless and other telecommunications
17 facilities that are installed along or within the railroad
18 right-of-way in compliance with applicable operations and
19 safety standards at the time of installation are deemed to be
20 consistent with existing and future transportation purposes
21 and requirements.

22 Section 3. Application.

23 This act applies to both of the following:

24 (1) Any crossing in existence before the effective
25 date of this act if an agreement concerning the crossing has
26 expired or has been terminated. In such instance, if an amount
27 that equals or exceeds the standard crossing fee under Section

1 6 has been paid to the railroad during the existence of the
2 crossing, no additional fee is required.

3 (2) Any crossing in existence on or after the
4 effective date of this act.

5 Section 4. Railroad right-of-way crossing;
6 application for permission.

7 (a) A telecommunications provider or network support
8 infrastructure owner may not place a facility across or upon a
9 railroad right-of-way unless the provider or owner submits a
10 request and receives permission from the railroad.

11 (b) The request must be in the form of a completed
12 crossing application. The application must be submitted
13 electronically on a form provided or approved by the railroad
14 and shall include an engineering design showing the location
15 of the proposed crossing and the railroad's property, tracks,
16 and wires that the telecommunications provider or network
17 support infrastructure owner will cross. The engineering
18 design must conform with guidelines published in the most
19 recent edition of either the National Electric Safety Code or
20 Manual for Railway Engineering of the American Railway
21 Engineering and Maintenance-of-Way Association.

22 (c) The application must be accompanied by the
23 standard crossing fee specified in Section 6 and evidence of
24 insurance as required in Section 7.

25 (d) Within 15 calendar days of receipt of an
26 application that is not complete, the railroad shall inform

1 the applicant regarding any additional necessary information
2 and required submissions.

3 Section 5. Railroad right-of-way crossing;
4 construction.

5 Beginning 35 calendar days after the receipt by the
6 railroad of a completed crossing application, standard
7 crossing fee, and certificate of insurance, the
8 telecommunications provider or network support infrastructure
9 owner may commence construction of the crossing, facility, or
10 other structure. Notwithstanding any provision of law to the
11 contrary, in no event shall designs for construction of a
12 crossing, facility, or other structure subject to this act of
13 the telecommunications provider or network support
14 infrastructure owner be required to be dated, stamped, or
15 signed by a licensed engineer or licensed architect.

16 Section 6. Standard crossing fee.

17 (a) Unless otherwise agreed by the parties, a
18 telecommunications provider or network support infrastructure
19 owner that crosses a railroad right-of-way, other than a
20 crossing within a public right-of-way, shall pay the railroad
21 a one-time standard crossing fee of five hundred dollars
22 (\$500) for each crossing. The crossing fee shall be adjusted
23 as provided in subsection (e). Except as otherwise provided in
24 this section, the standard crossing fee is paid in lieu of any
25 license, permit, application, processing fee, or any other fee
26 or charge to reimburse the railroad for direct expenses
27 incurred by the railroad as a result of the crossing. No other

1 fee or charge may be assessed to the telecommunications
2 provider or network support infrastructure owner by the
3 railroad.

4 (b) In addition to the standard crossing fee, the
5 telecommunications provider or network support infrastructure
6 owner shall also reimburse the railroad for any reasonable and
7 necessary flagging expense associated with a crossing, based
8 on the railroad traffic at the crossing.

9 (c) No crossing fee is required if the crossing is
10 located within a public right-of-way.

11 (d) The placement of a single conduit and its
12 content is a single facility. No additional fees are payable
13 based on the individual fibers, wires, lines, or other items
14 contained within the conduit.

15 (e) Annually, the standard crossing fee levied under
16 subsection (a) shall be adjusted based on the percentage
17 change in the annual average producer price index for the
18 preceding year compared to the year prior to the preceding
19 year. Each adjustment is effective for applications submitted
20 on or after July 1. The producer price index is final demand,
21 finished consumer energy goods, as prepared by the Bureau of
22 Labor Statistics of the United States Department of Labor.

23 Section 7. Certificate of insurance; coverage.

24 (a) The certificate of insurance or coverage
25 submitted by a utility providing natural gas service shall
26 include commercial general liability insurance with a combined
27 single limit of at least five million dollars (\$5,000,000) for

1 each occurrence and an aggregate limit of at least ten million
2 dollars (\$10,000,000). The certificate of insurance or
3 coverage may not contain an exclusion or limitation related to
4 railroads or to activities within 50 feet of railroad
5 property.

6 (b) The certificate of insurance or coverage
7 submitted by a telecommunications provider or network support
8 infrastructure owner not specified in subsection (a) shall
9 include commercial general liability insurance with a combined
10 single limit of at least two million dollars (\$2,000,000) for
11 each occurrence and an aggregate limit of at least six million
12 dollars (\$6,000,000).

13 (c) The certificate of insurance or coverage
14 submitted by the railroad may require protective liability
15 insurance with a combined single limit of two million dollars
16 (\$2,000,000) for each occurrence and an aggregate of six
17 million dollars (\$6,000,000). The coverage may be provided by
18 a blanket railroad protective liability insurance policy if
19 the coverage, including the coverage limits, applies
20 separately to each individual crossing. The coverage is
21 required only during the period of construction, repair, or
22 replacement of the facility.

23 Section 8. Objection to crossing.

24 (a) A railroad may object to a proposed crossing or
25 paralleling due to the proposal being a serious threat to the
26 safe operations of the railroad or to the current use of the
27 railroad right-of-way by notifying the telecommunications

1 provider or network support infrastructure owner of the
2 objection and the specific basis for the objection. The
3 telecommunications provider or network support infrastructure
4 owner may not commence construction until and unless the
5 railroad retracts its objection or until the circuit court
6 authorizes the construction pursuant to subsection (c). The
7 notice of objection must be sent to the telecommunications
8 provider or network support infrastructure owner by certified
9 mail, return receipt requested, no later than 30 days after
10 the railroad's receipt of the proposal.

11 (b) If the parties are unable to resolve the
12 objection, either party may petition the circuit court for the
13 county in which the crossing is located for resolution or
14 modification of the proposed crossing or paralleling. The
15 petition must be filed within 60 days of receipt of the
16 objection. Before filing a petition, the parties shall make a
17 good faith effort to resolve the objection.

18 (c) If a petition is filed, the circuit court for
19 the county in which the crossing is located, after notice and
20 opportunity for hearing, shall determine whether the proposal
21 poses a serious threat to the safe operations of the railroad
22 or the current use of the railroad right-of-way. The circuit
23 court shall issue an order within 21 days of the filing of the
24 petition.

25 Section 9. Additional requirements; objection and
26 petition to the circuit court.

1 (a) If a railroad imposes additional requirements on
2 a telecommunications provider or network support
3 infrastructure owner for crossing its lines, other than the
4 proposed crossing being a serious threat to the safe
5 operations of the railroad or to the current use of the
6 railroad right-of-way, the telecommunications provider or
7 network support infrastructure owner may object to one or more
8 of the requirements. If it objects, the telecommunications
9 provider or network support infrastructure owner shall provide
10 notice of the objection and the specific basis for the
11 objection to the railroad by certified mail, return receipt
12 requested.

13 (b) If the parties are unable to resolve the
14 objection, either party may petition the circuit court for
15 resolution or modification of the additional requirements. The
16 petition must be filed within 60 days of receipt of the
17 objection. Before filing a petition, the parties shall make a
18 good faith effort to resolve the objection.

19 (c) If a petition is filed, the circuit court, after
20 notice and opportunity for hearing, shall determine whether
21 special circumstances exist that necessitate the additional
22 requirements for the placement of the crossing. The court
23 shall issue an order within 21 days of the filing of the
24 petition.

25 Section 10. Operational relocation.

26 (a) A railroad may require a telecommunications
27 provider or network support infrastructure owner to relocate a

1 facility when the railroad determines that relocation is
2 essential to accommodate railroad operations and the
3 relocation is not arbitrary or unreasonable. Before agreeing
4 to the relocation, a telecommunications provider or network
5 support infrastructure owner may require a railroad to provide
6 a statement and supporting documentation identifying the
7 operational necessity for requesting the relocation. The
8 telecommunications provider or network support infrastructure
9 owner shall perform the relocation within a reasonable period
10 of time following the agreement.

11 (b) Unless the railroad failed to provide notice of
12 the relocation after the receipt by the railroad of a
13 completed crossing application, as provided in Section 8, the
14 relocation is at the expense of the telecommunications
15 provider or network support infrastructure owner. A standard
16 fee under Section 6 may not be imposed for relocation. The
17 relocation is at the expense of the railroad if construction
18 of the crossing has properly started.

19 Section 11. Existing agreements.

20 (a) Nothing in this act shall prohibit a railroad
21 and telecommunications provider or network support
22 infrastructure owner from continuing under an existing
23 agreement or from otherwise negotiating the terms and
24 conditions applicable to a crossing or the resolution of any
25 disputes relating to the crossing.

26 (b) A telecommunications provider or network support
27 infrastructure owner under an existing agreement with a

1 railroad may elect to undertake a crossing or paralleling
2 under this act.

3 (c) Nothing in this act shall impair the authority
4 of a telecommunications provider or network support
5 infrastructure owner from securing crossing rights by easement
6 through exercise of the power of eminent domain.

7 Section 12. This act shall become effective on the
8 first day of the third month following its passage and
9 approval by the Governor, or its otherwise becoming law.