

REFERENCE TITLE: **railroads; telecommunications corporations; wire-crossing agreements**

State of Arizona
House of Representatives
Fifty-sixth Legislature
First Regular Session
2023

HB 2602

Introduced by
Representative Dunn

AN ACT

AMENDING TITLE 40, CHAPTER 4, ARTICLE 2, ARIZONA REVISED STATUTES, BY
ADDING SECTION 40-833; RELATING TO RAILROADS.

(TEXT OF BILL BEGINS ON NEXT PAGE)

1 Be it enacted by the Legislature of the State of Arizona:

2 Section 1. Title 40, chapter 4, article 2, Arizona Revised
3 Statutes, is amended by adding section 40-833, to read:

4 40-833. Telecommunications corporations; completed crossing
5 application; wire-crossing agreement; standard
6 crossing fee

7 A. A TELECOMMUNICATIONS CORPORATION THAT INTENDS TO PLACE A LINE,
8 WIRE OR CABLE ACROSS A RAILROAD RIGHT-OF-WAY SHALL REQUEST THE RAILROAD'S
9 PERMISSION FOR THE PLACEMENT. THE REQUEST SHALL BE IN THE FORM OF A
10 COMPLETED CROSSING APPLICATION AND SHALL INCLUDE ENGINEERING
11 SPECIFICATIONS. ON RECEIPT OF THE APPLICATION, THE RAILROAD AND THE
12 TELECOMMUNICATIONS CORPORATION MAY ENTER INTO A BINDING WIRE-CROSSING
13 AGREEMENT.

14 B. UNLESS THE RAILROAD PROVIDES WRITTEN OR ELECTRONIC NOTICE TO THE
15 TELECOMMUNICATIONS CORPORATION THAT THE PROPOSED CROSSING IS A SERIOUS
16 THREAT TO THE SAFE OPERATIONS OF THE RAILROAD OR TO THE CURRENT OR FUTURE
17 USE OF THE RAILROAD RIGHT-OF-WAY OR WOULD VIOLATE ANY APPLICABLE FEDERAL
18 LAW, THE RAILROAD SHALL:

19 1. APPROVE THE APPLICATION WITHIN THIRTY-FIVE CALENDAR DAYS AFTER
20 RECEIVING THE COMPLETED APPLICATION FOR A BINDING WIRE-CROSSING AGREEMENT.

21 2. ISSUE THE PERMIT OR CROSSING AGREEMENT AND SCHEDULE FLAGGING TO
22 OCCUR WITHIN FORTY-FIVE CALENDAR DAYS AFTER THE APPROVED APPLICATION.

23 C. IF THE RAILROAD DOES NOT RESPOND TO A COMPLETED CROSSING
24 APPLICATION IN WRITING WITHIN THIRTY CALENDAR DAYS AFTER RECEIVING THE
25 APPLICATION, THE TELECOMMUNICATIONS CORPORATION MAY PETITION THE
26 COMMISSION TO ENTER AN ORDER FOR AN EXPEDITED WIRE-CROSSING PERMIT. THE
27 COMMISSION SHALL ENTER THE ORDER WITHIN FIFTEEN CALENDAR DAYS AFTER THE
28 PETITION IS FILED, WITH NOTICE OF THE ORDER ISSUED TO THE RAILROAD AND
29 TELECOMMUNICATIONS CORPORATION. THE EXPEDITED WIRE-CROSSING PERMIT ALLOWS
30 A TELECOMMUNICATIONS CORPORATION TO PLACE A LINE, WIRE OR CABLE ACROSS THE
31 RAILROAD RIGHT-OF-WAY WITHIN A PUBLIC ROAD CROSSING IN A MANNER THAT IS
32 NOT UNREASONABLE OR AGAINST THE PUBLIC INTEREST, TAKING INTO ACCOUNT
33 SAFETY, ENGINEERING AND ACCESS REQUIREMENTS OF THE RAILROAD AS THOSE
34 REQUIREMENTS ARE PRESCRIBED BY THE FEDERAL RAILROAD ADMINISTRATION AND
35 ESTABLISHED BY RAIL INDUSTRY STANDARDS.

36 D. EXCEPT AS PROVIDED IN SUBSECTIONS E AND F OF THIS SECTION OR AS
37 OTHERWISE AGREED TO BY ALL PARTIES, IF A TELECOMMUNICATIONS CORPORATION
38 PLACES A LINE, WIRE OR CABLE ACROSS A RAILROAD RIGHT-OF-WAY PURSUANT TO
39 THIS SECTION, THE TELECOMMUNICATIONS CORPORATION SHALL PAY THE RAILROAD
40 OWNER, MANAGER OR AGENT OR REPRESENTATIVE OF THE RAILROAD A ONETIME
41 STANDARD CROSSING FEE OF \$1,250 FOR EACH APPLICABLE CROSSING. IN ADDITION
42 TO THE STANDARD CROSSING FEE, THE TELECOMMUNICATIONS CORPORATION SHALL
43 REIMBURSE THE RAILROAD FOR ANY ACTUAL FLAGGING EXPENSES ASSOCIATED WITH
44 PLACING THE LINE, WIRE OR CABLE. THE STANDARD CROSSING FEE IS IN LIEU OF
45 ANY LICENSE FEE OR ANY OTHER FEES OR CHARGES TO REIMBURSE THE RAILROAD FOR

1 ANY DIRECT EXPENSE INCURRED AS A RESULT OF PLACING THE LINE, WIRE OR
2 CABLE.

3 E. IF A RAILROAD OBJECTS TO THE PROPOSED CROSSING BECAUSE THE
4 PROPOSAL IS A SERIOUS THREAT TO THE SAFE OPERATIONS OF THE RAILROAD OR TO
5 THE CURRENT OR FUTURE USE OF THE RAILROAD RIGHT-OF-WAY OR WOULD BE A
6 VIOLATION OF ANY APPLICABLE FEDERAL LAW, THE RAILROAD SHALL PROVIDE
7 WRITTEN OR ELECTRONIC NOTICE TO THE TELECOMMUNICATIONS CORPORATION OF THE
8 OBJECTION AND THE SPECIFIC BASIS FOR THE OBJECTION. IF THE PARTIES MAKE
9 GOOD FAITH EFFORTS TO RESOLVE THE OBJECTION AND ARE UNABLE TO RESOLVE THE
10 OBJECTION, EITHER PARTY MAY PETITION THE COMMISSION FOR ASSISTANCE THROUGH
11 MEDIATION OR ARBITRATION OF THE DISPUTED CROSSING APPLICATION. THE
12 PETITION SHALL BE FILED WITHIN SIXTY DAYS AFTER THE OBJECTION IS RECEIVED.
13 THE COMMISSION SHALL ISSUE AN ORDER WITHIN ONE HUNDRED TWENTY DAYS AFTER
14 THE PETITION IS FILED. THE COMMISSION SHALL ASSESS THE COSTS ASSOCIATED
15 WITH A PETITION EQUITABLY AMONG THE PARTIES. AN ORDER ISSUED UNDER THIS
16 SUBSECTION IS SUBJECT TO JUDICIAL REVIEW IN THE SUPERIOR COURT IN MARICOPA
17 COUNTY PURSUANT TO TITLE 12, CHAPTER 7, ARTICLE 6.

18 F. IF A RAILROAD IMPOSES ADDITIONAL REQUIREMENTS ON A
19 TELECOMMUNICATIONS CORPORATION FOR CROSSING THE RAILROAD'S RIGHT-OF-WAY,
20 OTHER THAN THE PROPOSED CROSSING BEING A SERIOUS THREAT TO THE SAFE
21 OPERATIONS OF THE RAILROAD OR TO THE CURRENT OR FUTURE USE OF THE RAILROAD
22 RIGHT-OF-WAY OR TO PREVENT A VIOLATION OF ANY APPLICABLE FEDERAL LAW, THE
23 TELECOMMUNICATIONS CORPORATION MAY OBJECT TO ONE OR MORE OF THE
24 REQUIREMENTS. THE TELECOMMUNICATIONS CORPORATION SHALL PROVIDE WRITTEN OR
25 ELECTRONIC NOTICE TO THE RAILROAD OF THE OBJECTION AND THE SPECIFIC BASIS
26 FOR THE OBJECTION. IF THE PARTIES MAKE GOOD FAITH EFFORTS TO RESOLVE THE
27 OBJECTION AND ARE UNABLE TO RESOLVE THE OBJECTION, EITHER PARTY MAY
28 PETITION THE COMMISSION FOR RESOLUTION OR MODIFICATION OF THE ADDITIONAL
29 REQUIREMENTS. THE PETITION SHALL BE FILED WITHIN SIXTY CALENDAR DAYS
30 AFTER THE OBJECTION IS RECEIVED. IF A PETITION IS FILED UNDER THIS
31 SUBSECTION, THE COMMISSION SHALL DETERMINE, AFTER NOTICE AND OPPORTUNITY
32 FOR HEARING AS PRESCRIBED BY THE COMMISSION BY RULE, WHETHER SPECIAL
33 CIRCUMSTANCES EXIST THAT NECESSITATE ADDITIONAL REQUIREMENTS FOR PLACING
34 THE LINE, WIRE OR CABLE. THE COMMISSION SHALL ISSUE AN ORDER WITHIN ONE
35 HUNDRED TWENTY CALENDAR DAYS AFTER THE PETITION IS FILED. THE COMMISSION
36 SHALL ASSESS THE COSTS ASSOCIATED WITH A PETITION EQUITABLY AMONG THE
37 PARTIES. AN ORDER ISSUED UNDER THIS SUBSECTION IS SUBJECT TO REVIEW IN
38 THE SUPERIOR COURT IN MARICOPA COUNTY PURSUANT TO TITLE 12, CHAPTER 7,
39 ARTICLE 6.

40 G. A WIRE-CROSSING AGREEMENT BETWEEN A RAILROAD AND A
41 TELECOMMUNICATIONS CORPORATION THAT INCLUDES A PROVISION, CLAUSE, COVENANT
42 OR AGREEMENT CONTAINED IN, COLLATERAL TO OR AFFECTING THE WIRE-CROSSING
43 AGREEMENT THAT PURPORTS TO INDEMNIFY, DEFEND OR HOLD HARMLESS THE RAILROAD
44 FROM ANY LIABILITY FOR LOSS OR DAMAGE RESULTING FROM THE NEGLIGENCE OR
45 WILFULL AND WANTON MISCONDUCT OF THE RAILROAD OR ITS AGENTS, EMPLOYEES OR

1 INDEPENDENT CONTRACTORS WHO ARE DIRECTLY RESPONSIBLE TO THE RAILROAD OR
2 HAS THE EFFECT OF INDEMNIFYING, DEFENDING OR HOLDING HARMLESS THE RAILROAD
3 FROM THE NEGLIGENCE OR WILFULL AND WANTON MISCONDUCT OF THE RAILROAD OR
4 ITS AGENTS, EMPLOYEES OR INDEPENDENT CONTRACTORS WHO ARE DIRECTLY
5 RESPONSIBLE TO THE RAILROAD IS AGAINST THE PUBLIC POLICY OF THIS STATE AND
6 IS UNENFORCEABLE.

7 H. THIS SECTION DOES NOT AFFECT A PROVISION, CLAUSE, COVENANT OR
8 AGREEMENT IN WHICH THE TELECOMMUNICATIONS CORPORATION INDEMNIFIES, DEFENDS
9 OR HOLDS HARMLESS A RAILROAD AGAINST LIABILITY FOR LOSS OR DAMAGE TO THE
10 EXTENT THAT THE LOSS OR DAMAGE RESULTS FROM THE NEGLIGENCE OR WILFULL AND
11 WANTON MISCONDUCT OF THE TELECOMMUNICATIONS CORPORATION OR ITS AGENTS,
12 EMPLOYEES OR INDEPENDENT CONTRACTORS WHO ARE DIRECTLY RESPONSIBLE TO THE
13 TELECOMMUNICATIONS CORPORATION.