

# HOUSE BILL NO. 4422

March 02, 2021, Introduced by Rep. Hoitenga and referred to the Committee on Communications and Technology.

A bill to amend 1993 PA 354, entitled  
"Railroad code of 1993,"  
by amending sections 265 and 441 (MCL 462.265 and 462.441) and by  
adding sections 111, 265a, 265b, and 265c.

## THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

- 1       Sec. 111. As used in section 265, 265a, 265b, and 265c:
- 2       (a) "Commission" means the Michigan public service commission.
- 3       (b) "Crossing" means either the physical intersection between
- 4 a railroad's facilities and a provider's facilities within a public

1 right-of-way or where the railroad's facilities and a provider's  
2 facilities are adjacent to each other within a public right-of-way.  
3 Crossing includes all of a provider's facilities regardless of the  
4 number or size of the facilities at the location.

5 (c) "Direct expenses" does not include a contribution to  
6 profit but may include any of the following:

7 (i) The cost of inspecting the crossing site before, during, or  
8 after construction.

9 (ii) Administrative costs, such as the costs of entering a new  
10 crossing on the railroad's books, maps, and property records.

11 (iii) The cost of flagging during construction.

12 (iv) The cost of reviewing engineering plans.

13 (v) The costs associated with having an employee observe the  
14 construction of facilities.

15 (vi) Any other costs incurred due to actual construction.

16 (d) "Extraordinary direct expenses" means expenses not  
17 included in direct expenses that are directly incurred as a result  
18 of construction of facilities within the railroad right-of-way.

19 (e) "Facilities" means the equipment or personal property,  
20 such as copper and fiber cables, lines, wires, switches, conduits,  
21 pipes, and sheaths, that are used to or can generate, receive,  
22 transmit, carry, amplify, or provide communication services or  
23 signals, cable or video services or signals, or electric service.

24 (f) "Provider" means any of the following:

25 (i) A telecommunication provider as that term is defined in  
26 section 102 of the Michigan telecommunications act, 1991 PA 179,  
27 MCL 484.2102.

28 (ii) A video service provider as that term is defined in  
29 section 1 of the uniform video services local franchise act, 2006

1 PA 480, MCL 484.3301.

2 (iii) An electric utility.

3 (iv) A cooperative electric utility.

4 (v) A municipally owned electric utility.

5 (vi) A provider of broadband internet access transport services  
6 as that term is defined in section 2 of the metropolitan extension  
7 telecommunications rights-of-way oversight act, 2002 PA 48, MCL  
8 484.3102.

9 (g) "Within" means across, intersecting, on, over,  
10 perpendicular to, or under.

11 Sec. 265. (1) ~~A corporation or person shall not string any~~  
12 ~~wire, electrical or other, provider may construct or install~~  
13 **facilities under, over, and adjacent to, or** across a railroad or  
14 street railway ~~right-of-way unless 1 of the following procedures is~~  
15 ~~followed:~~

16 ~~(a) For crossings within the right-of-way of a public street,~~  
17 ~~highway, road, or alley, notification shall first be given within~~  
18 **the public right-of-way if the provider gives notice** to the  
19 railroad company and ~~railroad authority of the place and the manner~~  
20 ~~in which the corporation or person desires to string any wire 30~~  
21 ~~calendar days prior to performance of the work before beginning~~  
22 **construction of facilities** unless the parties otherwise agree to a  
23 shorter time period. The notice must include the planned location  
24 of the facilities that are to be installed within the public right-  
25 of-way.

26 ~~(b) For crossings at any other location not within the right-~~  
27 ~~of way of a public street, highway, road, or alley, notification~~  
28 ~~shall first be given to the railroad company and railroad authority~~  
29 ~~in writing of the place and the manner in which the corporation or~~

~~person desires to string the wire and written or telegraphic permission shall be received from the railroad company and railroad authority prior to performance of the work. The railroad company shall respond positively or negatively to the request within 90 calendar days after the receipt of the request.~~

(2) Any ~~aerial crossings shall be~~ **facilities** constructed under **subsection (1) must be constructed** in accordance with specifications of the ~~Michigan public service commission and all applicable codes and laws.~~ **those parts of the national electric safety code as adopted by the commission.**

~~(3) In case of a dispute emanating from subsections (1) and (2) which the parties cannot resolve within a reasonable time, either party may petition the department for a hearing. The department shall have jurisdiction to settle the dispute between the parties.~~

~~(4) Upon proof of violation of or failure to comply with subsections (1) and (2), a court of competent jurisdiction may issue an order immediately enjoining the violation.~~

**Sec. 265a. (1) Subject to subsection (2), a provider that locates its facilities under, over, adjacent to, or across a railroad or street railway within the public right-of-way shall compensate the railroad \$500.00 for each crossing. The payment is a 1-time payment, in lieu of any license fees or other fees, costs, or charges, to reimburse the railroad for all direct expenses incurred by the railroad as a result of the construction of the facilities, except for extraordinary direct expenses. A railroad shall not collect a payment or fee under this subsection for crossings located within the public right-of-way on the effective date of the amendatory act that added this section.**

1           (2) A railroad may petition the commission for compensation  
2 greater than the amount under subsection (1) if the railroad and  
3 the provider cannot agree on compensation and the railroad incurs  
4 extraordinary direct expenses as a result of the construction of  
5 the facilities or the railroad demonstrates that special  
6 circumstances exist. If a petition is filed under this subsection,  
7 the commission shall determine whether extraordinary direct  
8 expenses have been incurred or whether special circumstances exist  
9 and the amount of compensation to be paid to the railroad.

10           Sec. 265b. (1) Unless otherwise agreed to by the parties, if  
11 grade crossing markings or signs are damaged during construction,  
12 the party responsible for the damage shall pay the replacement  
13 costs.

14           (2) Unless otherwise agreed to by the parties, a railroad and  
15 a provider shall each determine for itself the amount and scope of  
16 the general liability and railroad protective liability insurance  
17 the railroad or provider must carry to cover their respective risks  
18 associated with the property owned by the railroad or the  
19 facilities owned by the provider constructed or installed under,  
20 over, adjacent to, or across a railroad or street railway within  
21 the public right-of-way. Except as otherwise provided in this  
22 subsection, a railroad and a provider shall indemnify the other for  
23 damages resulting from the railroad or provider's own negligence  
24 related to the presence of facilities owned by the provider within  
25 the public right-of-way. A railroad or a provider is not liable to  
26 the other party or the other party's customers for any special  
27 damages, including consequential or punitive damages.

28           (3) Unless otherwise agreed to by the parties, and except as  
29 provided in section 265, a railroad or provider shall, at its own

1 expense, notify the other of planned repair or maintenance of  
2 existing facilities within the public right-of-way not less than 30  
3 days before the planned repair or maintenance.

4 (4) Unless otherwise agreed to by the parties, a railroad or  
5 provider shall establish, at its own expense, a mechanism for  
6 receiving notice of emergencies 24 hours per day, 7 days per week.  
7 For facilities owned by a provider that are located under, over,  
8 adjacent to, or across a railroad or street railway within the  
9 public right-of-way, each railroad or provider shall inform the  
10 other of an emergency telephone number and any other information  
11 necessary for dealing with an emergency situation.

12 (5) Unless otherwise agreed to by the parties, a railroad or  
13 provider shall each repair and maintain its own property or  
14 facilities located within a railroad right-of-way or located within  
15 a public right-of-way. The railroad or provider shall not perform  
16 regular or emergency maintenance or repair of the other's property  
17 or facilities.

18 (6) Unless otherwise agreed to by the parties, a railroad or  
19 provider shall reimburse the other for expenses reasonably incurred  
20 that result from emergencies caused by the property or facilities  
21 of each that are located within the public right-of-way. A railroad  
22 or a provider shall reimburse the other for reasonable expenses  
23 actually incurred by 1 party at the other's request.

24 (7) Except for routine maintenance, a railroad or a provider  
25 shall provide the other with a physical description of any  
26 alterations or additions to its property or facilities located  
27 under, over, adjacent to, and across a railroad or street railway  
28 within the public right-of-way in the area of the facilities owned  
29 by the provider.

1       Sec. 265c. If a railroad or a provider are unable to agree on  
2       disputes under this act, the commission shall appoint a mediator  
3       within 7 days after the date the commission receives an application  
4       providing notice of the dispute. The mediator appointed by the  
5       commission under this section shall make recommendations for a  
6       resolution of the dispute to the commission within 30 days after  
7       the date of the application. If a party to the dispute disagrees  
8       with the mediator's recommendation, that party may, within 30 days  
9       after receipt of the recommendation, request the commission for a  
10      review and determination of a resolution of the dispute. Except as  
11      otherwise provided in this section, the commission shall issue a  
12      final determination under this section within 60 days after the  
13      date of the request to the commission. The commission shall issue a  
14      determination within 15 days after the date of the request if a  
15      railroad demonstrates that the public health, safety, and welfare  
16      require a determination before 60 days. The parties to the dispute  
17      may agree to an extension for up to 30 days of the 60-day  
18      requirement under this section.

19      Sec. 441. (1) ~~The~~ **Except for sections 265, 265a, 265b, and**  
20      **265c, the** department shall administer this act and investigate  
21      complaints alleging a violation of this act.

22      (2) Unless a specific penalty is otherwise provided in this  
23      act, a railroad, road authority, or person that violates or fails  
24      to comply with ~~any provision of this act~~, or fails to obey or  
25      comply with any lawful order issued or rule promulgated by the  
26      department, is subject to a civil fine of not more than \$1,000.00  
27      for each day of noncompliance following exhaustion of  
28      administrative and legal remedies.

29      (3) The department may make inspections at any time to

determine if this act or the rules promulgated under this act are being violated and upon discovering a violation of this act or the rules may issue a citation to the alleged violator with a specified date for compliance. If the violations in the citation are not corrected by the specified date, a hearing ~~will~~**must** be conducted pursuant to chapter 4 of the administrative procedures act of 1969, ~~Act No. 306 of the Public Acts of 1969, being sections 24.271 to 24.287 of the Michigan Compiled Laws.~~**1969 PA 306, MCL 24.271 to 24.288.**

(4) Unless other procedures are specified, an action to recover penalties for a violation of this act, an order issued, or a rule promulgated by the department pursuant to this act ~~shall~~**must** be instituted by the department on its own motion or by complaint. If, after notice and hearing, the violation still exists, an action may be brought in the circuit court of any county in which the alleged violator may be sued or in the **Ingham County** circuit court. ~~of the county of Ingham.~~ Enforcement of orders, collection of civil fines, and actions to prosecute violations of this act or department orders to a final judgment ~~shall be~~**are** the responsibility of the department and the attorney general.

(5) In addition to the other remedies provided by this act for the violation of this act, an order issued, or a rule promulgated by the department pursuant to this act, the department or an affected party may compel compliance with this act and with an order issued or a rule promulgated by the department by proceedings in mandamus, injunction, or other appropriate civil remedies.