

HOUSE BILL NO. 4452

March 09, 2021, Introduced by Rep. Bellino and referred to the Committee on Communications and Technology.

A bill to amend 1993 PA 354, entitled
"Railroad code of 1993,"
by amending sections 107 and 265 (MCL 462.107 and 462.265) and by
adding section 273a.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 107. (1) "High speed rail corridor" means any railroad
2 line ~~having~~**that has** been formally designated by the United States
3 ~~department of transportation~~**Department of Transportation** as a high
4 speed rail corridor.

1 (2) "Nonmotorized trail" means a public or privately owned or
2 operated traveled way, the use of which is restricted to
3 pedestrians or nonmotorized conveyances including, but not limited
4 to, bicycles and horses.

5 (3) "Notice" means the written expression of the department's
6 findings that certain conditions observed at a crossing are not in
7 compliance with state law, and that these conditions must be
8 corrected.

9 (4) "Order" means an administrative document, signed by the
10 department director or his or her designee, that details certain
11 findings of fact and, based on those findings, specifies certain
12 work to be performed by railroads or other parties in compliance
13 with law and specifies a time period within which the work is to be
14 completed. An order is based upon the department's statutory
15 authority to require the performance of that work.

16 (5) "Passive traffic control devices" means those types of
17 traffic control devices, including signs, markings, and other
18 devices, located at or in advance of grade crossings to indicate
19 the presence of a crossing but which do not change aspect upon the
20 approach or presence of a train.

21 (6) **"Person" means an individual, partnership, association,**
22 **corporation, limited liability company, trust, and any other legal**
23 **entity.**

24 (7) ~~+(6)~~—"Private crossing" means any at-grade intersection of
25 a railroad with any traveled way not under the jurisdiction of a
26 road authority.

27 (8) ~~+(7)~~—"Public street or highway" means any improved
28 thoroughfare maintained by a road authority that has been dedicated
29 and constructed in accordance with law.

1 Sec. 265. (1) A ~~corporation or person~~ shall not string, any
2 ~~wire, electrical or other, lay, or otherwise construct any~~
3 **structure or equipment used to transmit utility service, including**
4 **pipeline conduits and cable, within, upon, over, and across, or**
5 **under** a railroad or street railway right-of-way ~~unless 1 of the~~
6 ~~following procedures is followed:~~

7 ~~(a) For crossings within the right-of-way of a public street,~~
8 ~~highway, road, or alley, notification shall first be given to the~~
9 ~~railroad company and railroad authority of the place and the manner~~
10 ~~in which the corporation or person desires to string any wire 30~~
11 ~~calendar days prior to performance of the work unless the parties~~
12 ~~otherwise agree.~~

13 ~~(b) For crossings at any other location not within the right-~~
14 ~~of-way of a public street, highway, road, or alley, notification~~
15 ~~shall first be given to the railroad company and railroad authority~~
16 ~~in writing of the place and the manner in which the corporation or~~
17 ~~person desires to string the wire and written or telegraphic~~
18 ~~permission shall be received from the railroad company and railroad~~
19 ~~authority prior to performance of the work. The railroad company~~
20 ~~shall respond positively or negatively to the request within 90~~
21 ~~calendar days after the receipt of the request.~~ **that is within a**
22 **right-of-way of a public street, highway, road, or alley unless the**
23 **person first gives notification to the railroad that complies with**
24 **subsection (2). A person shall not perform any work in a railroad**
25 **right-of-way unless either of the following conditions is met:**

26 (a) The railroad gives written permission.

27 (b) The department directs the person to perform work pursuant
28 to a dispute resolution process under subsection (7), and safety or
29 supervisory personnel, as designated by the railroad, are present

1 and on duty at the site of the project.

2 (2) The notification provided under subsection (1) must
3 include, at a minimum, both of the following:

4 (a) The engineering designs and specifications for the
5 proposed project.

6 (b) A narrative description of the proposed project that
7 identifies all of the following:

8 (i) The date the project will commence.

9 (ii) The anticipated length of time to the completion of the
10 project.

11 (iii) The areas where the project personnel will work.

12 (iv) The areas where the project equipment will be stored.

13 (v) The name, phone number, and electronic mailing address of
14 the person responsible for the project that the railroad may
15 contact to discuss the project details.

16 (vi) The name, phone number, and electronic mailing address of
17 the individual who will be responsible for the on-site supervision
18 of the work.

19 (vii) Proof of insurance that, at a minimum, meets all of the
20 following requirements:

21 (A) Does not exclude work within 50 feet of a railroad right-
22 of-way.

23 (B) Includes the railroad as an additional insured.

24 (C) Remains in full effect as long as the project personnel
25 and equipment remain on the railroad right-of-way.

26 (3) If the railroad requires additional information to
27 evaluate a request under subsection (1), the additional information
28 must be provided to the railroad within 30 calendar days. Except as
29 otherwise provided in subsection (1)(b), a requestor shall not

1 proceed with any project under subsection (1) without obtaining
2 prior written permission from the railroad.

3 (4) If the project is approved by the railroad under this
4 section, the requestor shall pay to the railroad all direct
5 expenses incurred by the railroad as a result of the project as
6 well as any costs associated with modifications to the existing
7 insurance contracts of the railroad. The requestor shall pay the
8 minimum crossing fee prior to construction. Following invoicing by
9 the railroad of any expenses allowed under this subsection in
10 excess of that amount, the requestor shall pay any remaining
11 deficiency unless contested under subsection (5). As used in this
12 subsection, "direct expenses" includes any of the following:

13 (a) The costs of inspecting and monitoring the crossing site
14 before, during, or after construction.

15 (b) The cost of flagging during construction.

16 (c) Any administrative and engineering costs incurred for
17 review of specifications and for entering a crossing on the
18 railroad's books, maps, and property records, and other reasonable
19 administrative and engineering costs incurred as a result of the
20 crossing.

21 (d) Document preparation fees associated with a crossing and
22 engineering specifications related to the crossing.

23 (e) Any damages incurred due to actual construction.

24 (5) If the requestor and the railroad cannot agree on the
25 accuracy of the amount of costs identified by the railroad under
26 subsection (4), the requestor shall pay all the undisputed amounts
27 and may appeal the disputed costs under subsection (7). In no event
28 shall the requestor pay less than the minimum crossing fee for each
29 project.

1 (6) ~~(2) Any aerial~~ **All** crossings ~~shall~~ **must, at a minimum,** be
 2 constructed in accordance with specifications of the Michigan
 3 public service commission and all applicable codes and laws.

4 (7) ~~(3) In case of a dispute emanating from subsections (1)~~
 5 ~~and (2) which~~ **arising under this section that** the parties cannot
 6 resolve within a reasonable time, either party may petition the
 7 department for a hearing. The department ~~shall have~~ **has**
 8 jurisdiction to settle the dispute between the parties.

9 (8) ~~(4) Upon proof of violation of or failure to comply with~~
 10 ~~subsections (1) and (2),~~ **this section,** a court of competent
 11 jurisdiction may issue an order immediately enjoining the violation
 12 **and may assess against any violator all expenses incurred by a**
 13 **railroad related to the violation, including, but not limited to,**
 14 **those expenses identified under subsection (4) and all actual**
 15 **attorney fees incurred in an action to enjoin a violation.**

16 (9) As used in this section, "minimum crossing fee" means,
 17 beginning on the effective date of the amendatory act that added
 18 this section, a fee of \$2,500.00. After January 1, 2023, the term
 19 means a fee in an amount set by the department that must be
 20 increased from the base amount of \$2,500.00 in increments of
 21 \$250.00 to reflect the impact of inflation on the types of expenses
 22 that are reimbursed to a railroad under subsection (4).

23 Sec. 273a. (1) A person that enters, walks, or is otherwise
 24 upon or along the right-of-way or the yard of a railroad operating
 25 its lines within this state for the purpose of engaging in any
 26 activity described under section 265(1) and, except as otherwise
 27 provided in section 265(1)(b), does so without the prior written
 28 approval of the railroad is subject to an administrative fine in
 29 the amount of \$5,000.00 for each day of violation. Upon the request

1 of a person to whom an administrative fine is issued under this
2 subsection, the department shall conduct a hearing under the
3 administrative procedures act of 1969, 1969 PA 306, MCL 24.201 to
4 24.328.

5 (2) Any administrative fine assessed under subsection (1) must
6 be first used to cover the unreimbursed direct expenses of a
7 railroad allowed under section 265(4) or the minimum crossing fee
8 assessed under section 265(4). However, the amount of an
9 administrative fine assessed under subsection (1) that exceeds such
10 direct expenses or crossing fee must be paid into the railroad
11 grade crossing account of the state trunk line fund.

12 (3) A person that engages in any activity without the prior
13 written approval of the railroad shall be strictly liable to the
14 railroad and to any other injured person for any damage resulting
15 from the activity. Any damages under this subsection are in
16 addition to the administrative fine assessed under subsection (1).

17 (4) The remedies provided to a railroad for a violation of
18 this act, including the remedies under section 265(8),
19 administrative fines assessed under subsection (1), and any damages
20 available under subsection (3), are in addition to any other
21 remedies available under statute or common law.

22 (5) For the purposes of this section and in addition to other
23 activities that fall within the phrases, a person is considered to
24 "enter" or be "upon or along the right-of-way or yard" to the
25 extent that the person performs any work underneath the right-of-
26 way or yard of a railroad.