

SENATE SUBSTITUTE

FOR

SENATE COMMITTEE SUBSTITUTE

FOR

SENATE BILL NO. 653

AN ACT

To repeal sections 67.1830 and 67.5104, RSMo, and to enact in lieu thereof two new sections relating to municipal utility poles.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF MISSOURI, AS FOLLOWS:

1 Section A. Sections 67.1830 and 67.5104, RSMo, are repealed
2 and two new sections enacted in lieu thereof, to be known as
3 sections 67.1830 and 67.5104, to read as follows:

4 67.1830. As used in sections 67.1830 to 67.1846, the
5 following terms shall mean:

6 (1) "Abandoned equipment or facilities", any equipment
7 materials, apparatuses, devices or facilities that are:

8 (a) Declared abandoned by the owner of such equipment or
9 facilities;

10 (b) No longer in active use, physically disconnected from a
11 portion of the operating facility or any other facility that is
12 in use or in service, and no longer capable of being used for the
13 same or similar purpose for which the equipment, apparatuses or
14 facilities were installed; or

15 (c) No longer in active use and the owner of such equipment
16 or facilities fails to respond within thirty days to a written
17 notice sent by a political subdivision;

1 (2) "Degradation", the actual or deemed reduction in the
2 useful life of the public right-of-way resulting from the
3 cutting, excavation or restoration of the public right-of-way;

4 (3) "Emergency", includes but is not limited to the
5 following:

6 (a) An unexpected or unplanned outage, cut, rupture, leak
7 or any other failure of a public utility facility that prevents
8 or significantly jeopardizes the ability of a public utility to
9 provide service to customers;

10 (b) An unexpected or unplanned outage, cut, rupture, leak
11 or any other failure of a public utility facility that results or
12 could result in danger to the public or a material delay or
13 hindrance to the provision of service to the public if the
14 outage, cut, rupture, leak or any other such failure of public
15 utility facilities is not immediately repaired, controlled,
16 stabilized or rectified; or

17 (c) Any occurrence involving a public utility facility that
18 a reasonable person could conclude under the circumstances that
19 immediate and undelayed action by the public utility is necessary
20 and warranted;

21 (4) "Excavation", any act by which earth, asphalt,
22 concrete, sand, gravel, rock or any other material in or on the
23 ground is cut into, dug, uncovered, removed, or otherwise
24 displaced, by means of any tools, equipment or explosives, except
25 that the following shall not be deemed excavation:

26 (a) Any de minimis displacement or movement of ground
27 caused by pedestrian or vehicular traffic;

28 (b) The replacement of utility poles and related equipment

1 at the existing general location that does not involve either a
2 street or sidewalk cut; or

3 (c) Any other activity which does not disturb or displace
4 surface conditions of the earth, asphalt, concrete, sand, gravel,
5 rock or any other material in or on the ground;

6 (5) "Management costs" or "rights-of-way management costs",
7 the actual costs a political subdivision reasonably incurs in
8 managing its public rights-of-way, including such costs, if
9 incurred, as those associated with the following:

10 (a) Issuing, processing and verifying right-of-way permit
11 applications;

12 (b) Inspecting job sites and restoration projects;

13 (c) Protecting or moving public utility right-of-way user
14 construction equipment after reasonable notification to the
15 public utility right-of-way user during public right-of-way work;

16 (d) Determining the adequacy of public right-of-way
17 restoration;

18 (e) Restoring work inadequately performed after providing
19 notice and the opportunity to correct the work; and

20 (f) Revoking right-of-way permits.

21
22 Right-of-way management costs shall be the same for all entities
23 doing similar work. Management costs or rights-of-way management
24 costs shall not include payment by a public utility right-of-way
25 user for the use or rent of the public right-of-way, degradation
26 of the public right-of-way or any costs as outlined in paragraphs
27 (a) to [(h)] (f) of this subdivision which are incurred by the
28 political subdivision as a result of use by users other than

1 public utilities, the attorneys' fees and cost of litigation
2 relating to the interpretation of this section or section
3 67.1832, or litigation, interpretation or development of any
4 ordinance enacted pursuant to this section or section 67.1832, or
5 attorneys' fees and costs in connection with issuing, processing,
6 or verifying right-of-way [permit] permits or other applications
7 or agreements, or the political subdivision's fees and costs
8 related to appeals taken pursuant to section 67.1838. In
9 granting or renewing a franchise for a cable television system, a
10 political subdivision may impose a franchise fee and other terms
11 and conditions permitted by federal law;

12 (6) "Managing the public right-of-way", the actions a
13 political subdivision takes, through reasonable exercise of its
14 police powers, to impose rights, duties and obligations on all
15 users of the right-of-way, including the political subdivision,
16 in a reasonable, competitively neutral and nondiscriminatory and
17 uniform manner, reflecting the distinct engineering,
18 construction, operation, maintenance and public work and safety
19 requirements applicable to the various users of the public
20 right-of-way, provided that such rights, duties and obligations
21 shall not conflict with any federal law or regulation. In
22 managing the public right-of-way, a political subdivision may:

23 (a) Require construction performance bonds or insurance
24 coverage or demonstration of self-insurance at the option of the
25 political subdivision or if the public utility right-of-way user
26 has twenty-five million dollars in net assets and does not have a
27 history of permitting noncompliance within the political
28 subdivision as defined by the political subdivision, then the

1 public utility right-of-way user shall not be required to provide
2 such bonds or insurance;

3 (b) Establish coordination and timing requirements that do
4 not impose a barrier to entry;

5 (c) Require public utility right-of-way users to submit,
6 for right-of-way projects commenced after August 28, 2001,
7 requiring excavation within the public right-of-way, whether
8 initiated by a political subdivision or any public utility
9 right-of-way user, project data in the form maintained by the
10 user and in a reasonable time after receipt of the request based
11 on the amount of data requested;

12 (d) Establish right-of-way permitting requirements for
13 street excavation;

14 (e) Establish removal requirements for abandoned equipment
15 or facilities, if the existence of such facilities prevents or
16 significantly impairs right-of-way use, repair, excavation or
17 construction;

18 (f) Establish permitting requirements for towers and other
19 structures or equipment for wireless communications facilities in
20 the public right-of-way, notwithstanding the provisions of
21 section 67.1832;

22 (g) Establish standards for street restoration in order to
23 lessen the impact of degradation to the public right-of-way; and

24 (h) Impose permit conditions to protect public safety;

25 (7) "Political subdivision", a city, town, village, county
26 of the first classification or county of the second
27 classification;

28 (8) "Public right-of-way", the area on, below or above a

1 public roadway, highway, street or alleyway in which the
2 political subdivision has an ownership interest, but not
3 including:

4 (a) The airwaves above a public right-of-way with regard to
5 cellular or other nonwire telecommunications or broadcast
6 service;

7 (b) Easements obtained by utilities or private easements in
8 platted subdivisions or tracts;

9 (c) Railroad rights-of-way and ground utilized or acquired
10 for railroad facilities; or

11 (d) Poles, pipes, cables, conduits, wires, optical cables,
12 or other means of transmission, collection or exchange of
13 communications, information, substances, data, or electronic or
14 electrical current or impulses utilized by a municipally owned or
15 operated utility pursuant to chapter 91 or pursuant to a charter
16 form of government;

17 (9) "Public utility", every cable television service
18 provider, every pipeline corporation, gas corporation, electrical
19 corporation, rural electric cooperative, telecommunications
20 company, water corporation, heating or refrigerating corporation
21 or sewer corporation under the jurisdiction of the public service
22 commission; every municipally owned or operated utility pursuant
23 to chapter 91 or pursuant to a charter form of government or
24 cooperatively owned or operated utility pursuant to chapter 394;
25 every street light maintenance district; every privately owned
26 utility; and every other entity, regardless of its form of
27 organization or governance, whether for profit or not, which in
28 providing a public utility type of service for members of the

1 general public, utilizes pipes, cables, conduits, wires, optical
2 cables, or other means of transmission, collection or exchange of
3 communications, information, substances, data, or electronic or
4 electrical current or impulses, in the collection, exchange or
5 dissemination of its product or services through the public
6 rights-of-way;

7 (10) "Public utility right-of-way user", a public utility
8 owning or controlling a facility in the public right-of-way; and

9 (11) "Right-of-way permit", a permit issued by a political
10 subdivision authorizing the performance of excavation work in a
11 public right-of-way.

12 67.5104. 1. As used in this section, "pole attachment"
13 means an attachment by an attaching entity, including a video
14 service provider, a telecommunications provider or other
15 communications-related service provider to a pole owned or
16 controlled by a municipal utility[, but not a wireless antenna
17 attachment or an attachment by a wireless communications provider
18 to a pole] or municipality. A municipal utility or municipality
19 may only deny an attaching entity access to the utility's poles
20 on a nondiscriminatory basis only if there is insufficient
21 capacity or for reasons of safety and reliability and if the
22 attaching entity will not resolve the issue. Nothing in this
23 section shall be construed to prohibit a municipal utility or
24 municipality from requiring an attaching entity to enter into a
25 pole attachment agreement consistent with this section.

26 2. Notwithstanding sections 67.1830 to 67.1846, any pole
27 attachment fees, terms, and conditions, including those related
28 to the granting or denial of access, demanded by a municipal

1 utility pole owner or controlling authority of a municipality
2 shall be nondiscriminatory, just, and reasonable and shall not be
3 subject to any required franchise authority or government entity
4 permitting, except as provided in this section. A pole
5 attachment rental fee shall be calculated on an annual, per-pole
6 basis. Such rental fee shall be considered nondiscriminatory,
7 just, and reasonable if it is agreed upon by the parties or, in
8 the absence of such an agreement, based on cost but in no such
9 case shall such fee so calculated be greater than the fee which
10 would apply if it were calculated in accordance with the cable
11 service rate formula referenced in 47 U.S.C. Sec. 224(d) as
12 applied by the Federal Communications Commission[, except as
13 permitted by subsection 3 of this section.

14 3. Either party may seek review of any fee, term, or
15 condition by means of binding arbitration conducted by a single
16 arbitrator mutually agreeable to the parties or, in the absence
17 of such an agreement, by means of binding arbitration conducted
18 by the American Arbitration Association. An arbitrator's award
19 regarding fees shall be confined to ensuring that the municipal
20 utility pole owner recovers its direct costs and a reasonable
21 share of the fully allocated costs attributable to the pole
22 attachment, and that the fee may exceed the fee resulting from
23 the application of the cable service rate formula referenced in
24 this section only if based on an express written finding stated
25 in the award that such award is based on competent and
26 substantial evidence that the revenues produced under the cable
27 service rate formula and other payments made by the service
28 provider do not sufficiently recover the direct costs and a

1 reasonable share of the fully allocated costs attributable to the
2 pole attachment]. In addition, a municipal pole owner may be
3 authorized to exceed the rate of return cost components of the
4 Federal Communications Commission formula referenced in this
5 section if necessary to comply with Article X of the Missouri
6 Constitution. [Pending the arbitrator's rendering of such an
7 award, the last existent rental fee applicable to the pole
8 attachment shall remain in place and binding upon both parties]
9 In the event of a dispute between the parties, either party may
10 bring an action for review in any court of competent
11 jurisdiction. The court shall rule on any such petition for
12 review in an expedited manner by moving the petition to the head
13 of the docket consistent with subsection 2 of this section.
14 Nothing shall deny any party the right to a hearing before the
15 court.

16 [4.] 3. Where no [prior] contract exists between an
17 attaching entity and the municipal utility pole owner or
18 controlling authority of a municipality, and a dispute between a
19 municipal utility pole owner or controlling authority of a
20 municipality and an attaching entity [exclusively] concerns the
21 per-pole fee, then the attaching entity may proceed with its
22 attachments during the pendency of the [arbitration under the
23 agreed-upon terms and conditions] dispute at a rental rate of no
24 more than as set forth in subsection 2 of this section. The
25 attaching entity shall comply with applicable and reasonable
26 engineering and safety standards and shall hold the municipal
27 pole owner or controlling authority of the municipality harmless
28 for any liabilities or damages incurred that are caused by the

1 attaching entity.

2 [5.] 4. The provisions of this section shall not supersede
3 existing pole attachment agreements established prior to [August
4 28, 2013] the effective date of this act.

5 [6.] 5. Nothing in this section shall be construed as
6 conferring any jurisdiction or authority to the public service
7 commission, or any state agency, to regulate either the fees,
8 terms, or conditions for pole attachments, or for any state
9 agency to assert any jurisdiction over [pole attachments]
10 attachments to poles regulated by 47 U.S.C. Sec. 224.