

SECOND REGULAR SESSION

[P E R F E C T E D]

SENATE BILL NO. 649

97TH GENERAL ASSEMBLY

INTRODUCED BY SENATOR LAGER.

Pre-filed December 23, 2013, and ordered printed.

Read 2nd time January 23, 2014, and referred to the Committee on Commerce, Consumer Protection, Energy and the Environment.

Reported from the Committee January 30, 2014, with recommendation that the bill do pass.

Taken up for Perfection February 4, 2014. Bill declared Perfected and Ordered Printed.

TERRY L. SPIELER, Secretary.

5009S.02P

AN ACT

To repeal sections 67.1830, 67.1836, 67.1838, and 67.1842, RSMo, and to enact in lieu thereof four new sections relating to right-of-way of political subdivisions.

Be it enacted by the General Assembly of the State of Missouri, as follows:

Section A. Sections 67.1830, 67.1836, 67.1838, and 67.1842, RSMo, are
2 repealed and four new sections enacted in lieu thereof, to be known as sections
3 67.1830, 67.1836, 67.1838, and 67.1842, to read as follows:

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

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

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

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

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

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

EXPLANATION—Matter enclosed in bold-faced brackets [thus] in this bill is not enacted and is intended to be omitted in the law.

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

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

20 (b) An unexpected or unplanned outage, cut, rupture, leak or any other
21 failure of a public utility facility that results or could result in danger to the
22 public or a material delay or hindrance to the provision of service to the public
23 if the outage, cut, rupture, leak or any other such failure of public utility facilities
24 is not immediately repaired, controlled, stabilized or rectified; or

25 (c) Any occurrence involving a public utility facility that a reasonable
26 person could conclude under the circumstances that immediate and undelayed
27 action by the public utility is necessary and warranted;

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

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

34 (b) The replacement of utility poles and related equipment at the existing
35 general location that does not involve either a street or sidewalk cut; or

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

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

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

44 (b) Inspecting job sites and restoration projects;

45 (c) Protecting or moving public utility right-of-way user construction
46 equipment after reasonable notification to the public utility right-of-way user
47 during public right-of-way work;

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

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

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

52 Right-of-way management costs shall be the same for all entities doing similar
53 work. Management costs or rights-of-way management costs shall not include
54 payment by a public utility right-of-way user for the use or rent of the public
55 right-of-way, degradation of the public right-of-way or any costs as outlined in
56 paragraphs (a) to [(h)] **(f)** of this subdivision which are incurred by the political
57 subdivision as a result of use by users other than public utilities, the attorneys'
58 fees and cost of litigation relating to the interpretation of this section or section
59 67.1832, or litigation, interpretation or development of any ordinance enacted
60 pursuant to this section or section 67.1832, or attorneys' fees and costs in
61 connection with issuing, processing, or verifying right-of-way [permit] **permits**
62 or other applications or agreements, or the political subdivision's fees and costs
63 related to appeals taken pursuant to section 67.1838. In granting or renewing a
64 franchise for a cable television system, a political subdivision may impose a
65 franchise fee and other terms and conditions permitted by federal law;

66 (6) "Managing the public right-of-way", the actions a political subdivision
67 takes, through reasonable exercise of its police powers, to impose rights, duties
68 and obligations on all users of the right-of-way, including the political
69 subdivision, in a reasonable, competitively neutral and nondiscriminatory and
70 uniform manner, reflecting the distinct engineering, construction, operation,
71 maintenance and public work and safety requirements applicable to the various
72 users of the public right-of-way, provided that such rights, duties and obligations
73 shall not conflict with any federal law or regulation. In managing the public
74 right-of-way, a political subdivision may:

75 (a) Require construction performance bonds or insurance coverage or
76 demonstration of self-insurance at the option of the political subdivision or if the
77 public utility right-of-way user has twenty-five million dollars in net assets and
78 does not have a history of permitting noncompliance within the political
79 subdivision as defined by the political subdivision, then the public utility
80 right-of-way user shall not be required to provide such bonds or insurance;

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

83 (c) Require public utility right-of-way users to submit, for right-of-way
84 projects commenced after August 28, 2001, requiring excavation within the public
85 right-of-way, whether initiated by a political subdivision or any public utility
86 right-of-way user, project data in the form maintained by the user and in a
87 reasonable time after receipt of the request based on the amount of data

88 requested;

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

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

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

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

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

99 (7) "Political subdivision", a city, town, village, county of the first
100 classification or county of the second classification;

101 (8) "Public right-of-way", the area on, below or above a public roadway,
102 highway, street or alleyway in which the political subdivision has an ownership
103 interest, but not including:

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

106 (b) Easements obtained by utilities or private easements in platted
107 subdivisions or tracts;

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

110 (d) Pipes, cables, conduits, wires, optical cables, or other means of
111 transmission, collection or exchange of communications, information, substances,
112 data, or electronic or electrical current or impulses utilized by a municipally
113 owned or operated utility pursuant to chapter 91 or pursuant to a charter form
114 of government;

115 (9) "Public utility", every cable television service provider, every pipeline
116 corporation, gas corporation, electrical corporation, rural electric cooperative,
117 telecommunications company, water corporation, heating or refrigerating
118 corporation or sewer corporation under the jurisdiction of the public service
119 commission; every municipally owned or operated utility pursuant to chapter 91
120 or pursuant to a charter form of government or cooperatively owned or operated
121 utility pursuant to chapter 394; every street light maintenance district; every
122 privately owned utility; and every other entity, regardless of its form of
123 organization or governance, whether for profit or not, which in providing a public

124 utility type of service for members of the general public, utilizes pipes, cables,
125 conduits, wires, optical cables, or other means of transmission, collection or
126 exchange of communications, information, substances, data, or electronic or
127 electrical current or impulses, in the collection, exchange or dissemination of its
128 product or services through the public rights-of-way;

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

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

67.1836. 1. A political subdivision may deny an application for a
2 right-of-way permit if:

3 (1) The public utility right-of-way user fails to provide all the necessary
4 information requested by the political subdivision for managing the public
5 right-of-way;

6 (2) The public utility right-of-way user has failed to return the public
7 right-of-way to its previous condition under a previous permit;

8 (3) The political subdivision has provided the public utility right-of-way
9 user with a reasonable, competitively neutral, and nondiscriminatory justification
10 for requiring an alternative method for performing the work identified in the
11 permit application or a reasonable alternative route that will result in neither
12 additional installation expense up to ten percent to the public utility right-of-way
13 user nor a declination of service quality;

14 (4) The political subdivision determines that [the] denial is necessary to
15 protect the public health and safety, provided that the authority of the political
16 subdivision does not extend to those items under the jurisdiction of the public
17 service commission, such denial shall not interfere with a public utility's right of
18 eminent domain of private property, and such denials shall only be imposed on
19 a competitively neutral and nondiscriminatory basis; or

20 (5) The area is environmentally sensitive as defined by state statute or
21 federal law or is a historic district as defined by local ordinance.

22 2. A political subdivision may, after reasonable notice and an opportunity
23 to cure, revoke a right-of-way permit granted to a public utility right-of-way user,
24 with or without fee refund, and/or impose a penalty as established by the political
25 subdivision until the breach is cured, but only in the event of a substantial breach
26 of the terms and material conditions of the permit. A substantial breach by a
27 permittee includes but is not limited to:

- 28 (1) A material violation of a provision of the right-of-way permit;
- 29 (2) An evasion or attempt to evade any material provision of the
- 30 right-of-way permit, or the perpetration or attempt to perpetrate any fraud or
- 31 deceit upon the political subdivision or its citizens;
- 32 (3) A material misrepresentation of fact in the right-of-way permit
- 33 application;
- 34 (4) A failure to complete work by the date specified in the right-of-way
- 35 permit, unless a permit extension is obtained or unless the failure to complete the
- 36 work is due to reasons beyond the permittee's control; and
- 37 (5) A failure to correct, within the time specified by the political
- 38 subdivision, work that does not conform to applicable national safety codes,
- 39 industry construction standards, or local safety codes that are no more stringent
- 40 than national safety codes, upon inspection and notification by the political
- 41 subdivision of the faulty condition.

42 3. Any political subdivision that requires public utility right-of-way users

43 to obtain a right-of-way permit, except in an emergency, prior to performing

44 excavation work within a public right-of-way shall promptly, but not longer than

45 thirty-one days, process all completed permit applications. If a political

46 subdivision fails to act on an application for a right-of-way permit within

47 thirty-one days, the application shall be deemed approved. In order to avoid

48 excessive processing and accounting costs to either the political subdivision or the

49 public utility right-of-way user, the political subdivision may establish procedures

50 for bulk processing of permits and periodic payment of permit fees.

67.1838. A public utility right-of-way user that has been denied a

2 right-of-way permit, has had its right-of-way permit revoked, believes that the

3 fees imposed on the public right-of-way user by the political subdivision do not

4 conform to the requirements of section 67.1840, believes the political subdivision

5 has violated any provision of sections 67.1830 to 67.1848, or asserts any other

6 issues related to the use of the public right-of-way, may bring an action for review

7 in any court of competent jurisdiction **in this state**. The court shall rule on any

8 such petition for review in an expedited manner by moving the petition to the

9 head of the docket. Nothing shall deny the authority of its right to a hearing

10 before the court.

67.1842. 1. In managing the public right-of-way and in imposing fees

2 pursuant to sections 67.1830 to 67.1846, no political subdivision shall:

- 3 (1) Unlawfully discriminate among public utility right-of-way users;

4 (2) Grant a preference to any public utility right-of-way user;

5 (3) Create or erect any unreasonable requirement for entry to the public
6 right-of-way by public utility right-of-way users;

7 (4) Require a telecommunications company to obtain a franchise or require
8 a public utility right-of-way user to pay for the use of the public right-of-way,
9 except as provided in sections 67.1830 to 67.1846;

10 (5) Enter into a contract or any other agreement for providing for an
11 exclusive use, occupancy or access to any public right-of-way; or

12 (6) Require any public utility that has legally been granted access to the
13 political subdivision's right-of-way [prior to August 28, 2001], to enter into an
14 agreement or obtain a permit for general access to or the right to remain in the
15 right-of-way of the political subdivision.

16 2. A public utility right-of-way user shall not be required to apply for or
17 obtain right-of-way permits for projects commenced prior to August 28, 2001,
18 requiring excavation within the public right-of-way, for which the user has
19 obtained the required consent of the political subdivision, or that are otherwise
20 lawfully occupying or performing work within the public right-of-way. The public
21 utility right-of-way user may be required to obtain right-of-way permits prior to
22 any excavation work performed within the public right-of-way after August 28,
23 2001.

24 3. A political subdivision shall not collect a fee imposed pursuant to
25 section 67.1840 through the provision of in-kind services by a public utility
26 right-of-way user, nor require the provision of in-kind services as a condition of
27 consent to use the political subdivision's public right-of-way; however, nothing in
28 this subsection shall preclude requiring services of a cable television operator,
29 open video system provider or other video programming provider as permitted by
30 federal law.

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