

SENATE BILL NO. 489

103RD GENERAL ASSEMBLY

INTRODUCED BY SENATOR BROWN (26).

1596S.01I

KRISTINA MARTIN, Secretary

AN ACT

To repeal sections 67.2707, 71.340, 226.220, 227.558, 227.559, and 229.360, RSMo, and to enact in lieu thereof eight new sections relating to utility facility relocation.

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

Section A. Sections 67.2707, 71.340, 226.220, 227.558,
2 227.559, and 229.360, RSMo, are repealed and eight new sections
3 enacted in lieu thereof, to be known as sections 67.1849,
4 67.2707, 71.340, 226.220, 226.224, 227.558, 227.559, and
5 229.360, to read as follows:

**67.1849. Notwithstanding any law, rule, order,
2 decision, permit, agreement, or other relevant authority to
3 the contrary, a county shall not perform any project in the
4 public right-of-way that requires a nonrate regulated
5 utility provider, as defined in section 71.340 to relocate,
6 adjust, or remove its facilities, unless the county
7 reimburses the nonrate regulated utility provider for such
8 relocation, adjustment, or removal. A county shall be
9 authorized to pay such facility relocation, adjustment or
10 removal costs as part of the cost of the public right-of-way
11 project.**

67.2707. 1. A video service provider shall be subject
2 to the provisions of sections 67.1830 to **[67.1846]** **67.1849**
3 and chapter 229 and shall also be subject to the provisions
4 of section 227.240 applying to cable television companies,
5 and to all reasonable police power-based regulations of a

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

6 political subdivision regarding the placement, screening,
7 and relocation of facilities, including, but not limited to:

8 (1) Requirements that the video service provider
9 provide landscaping to screen the placement of cabinets or
10 structures from public view consistent with the location
11 chosen;

12 (2) Requirements that the video service provider
13 contact the nearby property owners to communicate what work
14 will be done and when;

15 (3) Requiring alternate placement of facilities, or
16 prescribing the time, method, and manner of such placement,
17 when it is necessary to protect the public right-of-way or
18 the safety of the public, notwithstanding the provisions of
19 sections 67.1830 to [67.1846] **67.1849**;

20 (4) Requirements that cabinets be removed or relocated
21 [at the expense of the video service provider] **subject to**
22 **sections 67.1849 or 71.340, as applicable**, when necessary to
23 accommodate construction, improvement, or maintenance of
24 streets or other public works, excluding minor
25 beautification projects.

26 2. A political subdivision may not impose the
27 following regulations on video service providers:

28 (1) Requirements that particular business offices or
29 portions of a video service network be located in the
30 political subdivision;

31 (2) Requirements for political subdivision approval of
32 transfers of ownership or control of the business or assets
33 of a video service provider's business, except that a
34 political subdivision may require that such entity maintain
35 current point-of-contact information and provide notice of a
36 transfer within a reasonable time; and

37 (3) Requirements concerning the provisioning of or
38 quality of customer services, facilities, equipment or goods
39 in-kind for use by the political subdivision or any other
40 video service provider or public utility.

 71.340. **(1)** The mayor and city council of any city or
2 the chairman and board of trustees of any incorporated town
3 or village shall have the power to annually appropriate and
4 pay out of the treasury of such city or incorporated town or
5 village a sum of money, not to exceed ten percent of the
6 annual general revenue thereof, for the purpose of
7 constructing, building, repairing, working, grading or
8 macadamizing any public road, street and highway and any
9 bridge thereon leading to and from such city or incorporated
10 town or village; and such appropriation shall be made by
11 ordinance and the money so appropriated shall be applied
12 under the supervision and direction of the engineers of such
13 city or incorporated town or village, and of the county
14 highway engineer of the county in which such city, town or
15 village is located, or of some competent person selected by
16 such city, town or village and approved by the county
17 highway engineer, who shall make a report thereof, in
18 writing, to the mayor and city council of such city, or to
19 the chairman and board of trustees of such incorporated town
20 or village; but this privilege shall not extend to a greater
21 distance than five miles from the corporate limits of such
22 city, town or village, and shall not be construed so as to
23 allow any obstruction to or interference with the free use
24 of any such public road, street or highway by the public,
25 except so far as may be necessary while such work is being
26 done, and further shall not be construed to affect the
27 liability of such city, town or village, which liability

28 shall be the same as if such roads, streets and highways
29 were inside the city limits.

30 (2) Notwithstanding any law, rule, order, decision,
31 permit, agreement, or other relevant authority to the
32 contrary, a city or an incorporated town or village shall
33 not perform any road maintenance or construction project (a
34 "road project") unless the city or an incorporated town or
35 village reimburses any nonrate regulated utility provider
36 that incurs costs for facility relocation due to such road
37 project. A city or an incorporated town or village shall be
38 authorized to pay such facility relocation costs as part of
39 the cost of the road project.

40 (3) For the purposes of this section and sections
41 226.220 and 226.224, "nonrate regulated utility provider"
42 shall mean:

43 (a) A telecommunications company as defined in section
44 386.020 whose telecommunications services are not subject to
45 regulation by the public service commission;

46 (b) A provider of broadband and other internet-
47 protocol-enabled services as defined in section 392.611;

48 (c) A video service provider as defined in section
49 67.2677; or

50 (d) A cable operator as defined in section 67.2677.

226.220. 1. There is hereby created and set up the
2 "State Road Fund" which shall receive all moneys and credits
3 from

4 (1) The sale of state road bonds;

5 (2) The United States government and intended for
6 highway purposes;

7 (3) The state road bond and interest sinking fund as
8 provided in section 226.210; and

9 (4) Any other source if they are held for expenditure
10 by or under the department of transportation or the state
11 highways and transportation commission and if they are not
12 required by section 226.200 to be transferred to the state
13 highway department fund.

14 2. The costs and expenses withdrawn from the state
15 treasury

16 (1) For locating, relocating, establishing, acquiring,
17 reimbursing for, constructing, improving and maintaining
18 state highways in the systems specified in Article IV,
19 Section 30(b), of the Constitution;

20 (2) **For reimbursing nonrate regulated utility**
21 **providers, as defined in subsection 3 of section 71.340, for**
22 **any costs incurred in facility relocation that is required**
23 **due to road maintenance, construction, or other right-of-way**
24 **work activity;**

25 (3) For acquiring materials, equipment and buildings;
26 and

27 [(3)] (4) For other purposes and contingencies
28 relating and appertaining to the construction and
29 maintenance of said highways shall be paid from the state
30 road fund upon warrants drawn by the state auditor, based
31 upon bills of particulars and vouchers preapproved and
32 certified for payment by the commissioner of administration
33 and by the state highways and transportation commission
34 acting through such of their employees as may be designated
35 by them.

36 3. No payments or transfers shall ever be made from
37 the state road fund except for an expenditure made

38 (1) Under the supervision and direction of the state
39 highways and transportation commission; and

40 (2) For a purpose set out in Subparagraph (1), (2),
41 (3), (4), or (5) of Section 30(b), Article IV, of the
42 Constitution.

**226.224. Notwithstanding any law, rule, order,
2 decision, permit, agreement, or other relevant authority to
3 the contrary, the department shall reimburse nonrate
4 regulated utility providers, as defined in subsection 3 of
5 section 71.340, for any costs incurred in facility
6 relocation that is required due to road maintenance,
7 construction, or other right-of-way work activity.**

 227.558. 1. If the owner of a utility facility fails
2 to provide the responses or corrections to project plans
3 required by sections 227.553 to 227.556, the commission may
4 recover from the owner damages in the amount of up to one
5 hundred dollars per day for each day the required act is not
6 completed.

 2. If the owner fails to provide a relocation plan or
8 fails to timely relocate utility facilities in accordance
9 with the relocation plan as required by section 227.555, the
10 commission may recover from the owner damages in the amount
11 of up to one thousand dollars per day for each day the
12 required act is not completed.

 3. The damages authorized by subsections 1 and 2 of
14 this section may be recovered through actions brought by the
15 chief counsel to the commission, or may be referred to the
16 attorney general for appropriate action. An action to
17 collect the damages authorized by this section shall be
18 brought in a court of appropriate jurisdiction. All damages
19 collected under this section shall be deposited in the state
20 road fund.

21 4. No damages or fines of any kind shall be assessed
22 for delays that result, in whole or in part, directly or
23 indirectly, from any of the following:

24 (1) Customer delays;

25 (2) Labor strikes or shortages;

26 (3) Terrorist attacks, riots, civil unrest, or
27 criminal sabotage;

28 (4) Acts of God, or extreme weather events;

29 (5) Delays caused by staffing shortages in the
30 geographic area near the commission's construction project
31 due to the owner's need to reassign an unusual number of
32 workers to any other area to respond to an act of God or
33 extreme weather event;

34 (6) The failure of another owner to sufficiently
35 complete its required relocation of utility facilities that
36 interfere with an owner's relocation plan;

37 (7) The failure of another owner or delay by another
38 owner in submitting relocation plans that interfere with an
39 owner's relocation plan;

40 (8) Delays by the commission in acquiring necessary
41 right-of-way or necessary easements;

42 (9) Delays caused by facility damages or cable cuts
43 caused by the commission's contractor, other owners, or
44 third parties;

45 (10) Unusual material shortages; and

46 (11) Any other event or action beyond the reasonable
47 control of the owner.

48 The occurrence of any of the unusual events listed in this
49 section shall constitute an affirmative defense to the
50 assessment of damages under the provisions of this section.

51 5. **Except as provided for nonrate regulated utilities**
52 **in section 226.224,** the removal and relocation of utility
53 facilities **as a result of construction projects directed by**
54 **the commission** shall be made at the expense of the owners
55 unless otherwise provided by the commission. If the owner
56 fails to relocate the utility facilities in accordance with
57 the relocation plan as required by section 227.555, the
58 utility facilities may be removed and relocated by the state
59 highways and transportation commission, or under its
60 direction, and the cost of relocating the utility facilities
61 shall be [collected from such] **borne by the commission**
62 **pursuant to section 226.224 or by the** owner. If the state
63 highways and transportation commission or its designee
64 removes and relocates the utility facilities, the utility
65 owner shall not be liable to any party for any damages
66 caused by the commission's or the commission's designee's
67 removal and relocation of such facilities.

 227.559. Any home rule city having a population of
2 sixty thousand inhabitants or greater or any charter county
3 of the first classification may adopt ordinances, policies,
4 resolutions, or regulations consistent with sections
5 **67.1849, 71.349, and** 227.551 to 227.559 regarding the
6 relocation of utility facilities located within the right-of-
7 way of streets, highways, or roads under their respective
8 jurisdiction, which are not state highways. Any ordinance,
9 policy, resolution, or regulation adopted under the
10 authority of this section shall not infringe upon, negate or
11 otherwise abrogate an owner's right to construct, own,
12 operate, and maintain utility facilities within the right-of-
13 ways of such political subdivision that the owner otherwise
14 enjoyed prior to the adoption of such ordinance, policy,
15 resolution, or regulation.

229.360. **Unless otherwise required by law, including**
2 **section 67.1849**, it shall be the duty of any person, firm or
3 corporation owning, leasing, or operating any such conduits,
4 poles, pole lines, wires, mains, pipes, conductors, sewers,
5 drains, tramways or other objects, after service of the
6 notice required in section 229.350 to furnish such competent
7 workmen and crews as may be necessary to effect such
8 removal, change or alteration, and to pay all actual
9 expenses which are incurred by any person, firm, corporation
10 or political subdivision in so doing. In making such
11 necessary removal, change or alteration, no other person,
12 firm, corporation or political subdivision shall interfere
13 with or make any such change, removal or alteration until
14 the owner, lessee or operators of such object shall have
15 been notified as provided in section 229.350, and shall have
16 failed or refused to do so within a reasonable time, and in
17 the event of such failure or refusal such work shall be done
18 only by competent and experienced workmen at the cost and
19 expense, however, of the owner, lessee or operators of such
20 object.

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