

## SENATE COMMITTEE SUBSTITUTE

FOR

SENATE BILL NO. 1065

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.

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Section A. Sections 67.2707, 71.340, 226.220, 227.558, 227.559, and 229.360, RSMo, are repealed and eight new sections enacted in lieu thereof, to be known as sections 67.1849, 67.2707, 71.340, 226.220, 226.224, 227.558, 227.559, and 229.360, to read as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

67.1849. 1. Notwithstanding any rule, order, decision, permit, agreement, or other authorization to the contrary, a county shall not perform any road project unless it reimburses any non-rate-regulated utility provider, as defined in section 71.340, that incurs labor costs for facility relocation due to such maintenance or project. A county shall be authorized to pay such facility relocation labor costs as part of the cost of the road project.

2. A county shall notify non-rate-regulated utility providers that have permitted infrastructure within a planned or existing public right-of-way within ninety days after a road project is added to the county project schedule that may require the provider to relocate its infrastructure for the road project. The notification provided under this subsection shall include an estimated project schedule and timeline, including the anticipated year of construction. Within ninety days after receipt of the notification, the non-rate-regulated utility provider shall respond to the

county with an estimated time frame and projected labor cost for the relocation of the provider's infrastructure. The response shall include a draft relocation schedule within or adjacent to the existing or planned public right-of-way.

3. Nothing in this section shall require a county to reimburse a non-rate-regulated utility provider for the removal or relocation of facilities placed in the public right-of-way in violation of state or local permitting requirements.

4. As used in this section, the term "road project" means any road maintenance or road construction project.

67.2707. 1. A video service provider shall be subject to the provisions of sections 67.1830 to ~~67.1846~~ 67.1849 and chapter 229 and shall also be subject to the provisions of section 227.240 applying to cable television companies, and to all reasonable police power-based regulations of a political subdivision regarding the placement, screening, and relocation of facilities, including, but not limited to:

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

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

(3) Requiring alternate placement of facilities, or prescribing the time, method, and manner of such placement, when it is necessary to protect the public right-of-way or the safety of the public, notwithstanding the provisions of sections 67.1830 to ~~67.1846~~ 67.1849;

(4) Requirements that cabinets be removed or relocated ~~[at the expense of the video service provider]~~ under the provisions of section 67.1849 or 71.340, as applicable, when

necessary to accommodate construction, improvement, or maintenance of streets [or], other public works, [excluding minor] or beautification projects.

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

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

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

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

71.340. 1. The mayor and city council of any city or the chairman and board of trustees of any incorporated town or village shall have the power to annually appropriate and pay out of the treasury of such city or incorporated town or village a sum of money, not to exceed ten percent of the annual general revenue thereof, for the purpose of constructing, building, repairing, working, grading or macadamizing any public road, street and highway and any bridge thereon leading to and from such city or incorporated town or village; and such appropriation shall be made by ordinance and the money so appropriated shall be applied under the supervision and direction of the engineers of such city or incorporated town or village, and of the county highway engineer of the county in which such city, town or village is located, or of some competent person selected by

such city, town or village and approved by the county highway engineer, who shall make a report thereof, in writing, to the mayor and city council of such city, or to the chairman and board of trustees of such incorporated town or village; but this privilege shall not extend to a greater distance than five miles from the corporate limits of such city, town or village, and shall not be construed so as to allow any obstruction to or interference with the free use of any such public road, street or highway by the public, except so far as may be necessary while such work is being done, and further shall not be construed to affect the liability of such city, town or village, which liability shall be the same as if such roads, streets and highways were inside the city limits.

2. Notwithstanding any rule, order, decision, permit, agreement, or other authorization to the contrary, a city, incorporated town, or village shall not perform any road project unless it reimburses any non-rate-regulated utility provider that incurs labor costs for facility relocation due to such maintenance or project. A city, incorporated town, or village shall be authorized to pay such facility relocation labor costs as part of the cost of the road project.

3. For the purposes of this section and sections 226.220 and 226.224, the following terms shall mean:

(1) "Non-rate-regulated utility provider" shall mean:

(a) A telecommunications company as defined in subdivision (52) of section 386.020 whose telecommunications services are not subject to rate of return regulation by the public service commission pursuant to subsection 1 of section 392.240;

(b) A provider of broadband and other internet protocol-enabled services as defined in subsection 2 of section 392.611;

(c) A video service provider as defined in subdivision (17) of subsection 1 of section 67.2677; or

(d) A cable operator as defined in subdivision (1) of subsection 1 of section 67.2677;

(2) "Road project", any road maintenance or road construction projects.

4. A city, incorporated town, or village shall notify non-rate-regulated utility providers that have permitted infrastructure within a planned or existing public right-of-way within ninety days after a road project is added to the city, incorporated town, or village project schedule that may require the provider to relocate its infrastructure for the road project. The notification provided under this subsection shall include an estimated project schedule and timeline, including the anticipated year of construction. Within ninety days after receipt of the notification, the non-rate-regulated utility provider shall respond to the city, incorporated town, or village with an estimated time frame and projected labor cost for the relocation of the provider's infrastructure. The response shall include a draft relocation schedule within or adjacent to the existing or planned public right-of-way.

5. Nothing in this section shall require a city, incorporated town, or village to reimburse a non-rate-regulated utility provider for the removal or relocation of facilities placed in the public right-of-way in violation of state law or local permitting requirements.

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

- (1) The sale of state road bonds;
- (2) The United States government and intended for highway purposes;
- (3) The state road bond and interest sinking fund as provided in section 226.210; and
- (4) Any other source if they are held for expenditure by or under the department of transportation or the state highways and transportation commission and if they are not required by section 226.200 to be transferred to the state highway department fund.

2. The costs and expenses withdrawn from the state treasury:

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

(2) For reimbursing non-rate-regulated utility providers, as defined in subsection 3 of section 71.340, for any labor costs incurred in facility relocation that is required due to road maintenance or construction;

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

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

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

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

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

226.224. 1. Notwithstanding any rule, order, decision, permit, agreement, or other authorization to the contrary, the department shall reimburse non-rate-regulated utility providers, as defined in subsection 3 of section 71.340, for any labor costs incurred in facility relocation that is required due to road maintenance, construction, or other right-of-way work activity.

2. The department shall notify non-rate-regulated utility providers that have permitted infrastructure within a planned or existing public right-of-way within ninety days after a road project is added to the department project schedule that may require the provider to relocate its infrastructure for the road project. The notification provided under this subsection shall include an estimated project schedule and timeline, including the anticipated year of construction. Within ninety days after receipt of the notification, the non-rate-regulated utility provider shall respond to the department with an estimated time frame and projected labor cost for the relocation of the provider's infrastructure. The response shall include a draft relocation schedule within or adjacent to the existing or planned public right-of-way.

3. Nothing in this section shall require the department to reimburse a non-rate-regulated utility provider for the removal or relocation of facilities placed in the public right-of-way in violation of state law or local permitting requirements.

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

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

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

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

- (1) Customer delays;
- (2) Labor strikes or shortages;
- (3) Terrorist attacks, riots, civil unrest, or criminal sabotage;
- (4) Acts of God, or extreme weather events;
- (5) Delays caused by staffing shortages in the geographic area near the commission's construction project due to the owner's need to reassign an unusual number of workers to any other area to respond to an act of God or extreme weather event;

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

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

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

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

(10) Unusual material shortages; and

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

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

5. Except as provided in section 226.224, the removal and relocation of utility facilities as a result of construction projects required by the commission shall be made at the expense of the owners unless otherwise provided by the commission. If the owner fails to relocate the utility facilities in accordance with the relocation plan as required by section 227.555, the utility facilities may be removed and relocated by the state highways and transportation commission, or under its direction, and the cost of relocating the utility facilities shall be [collected from such owner] the responsibility of the commission, as required by section 226.224, or the owner. If the state highways and transportation commission or its designee removes and relocates the utility facilities, the utility owner shall not be liable to any party for any

damages caused by the commission's or the commission's designee's removal and relocation of such facilities.

227.559. Any home rule city having a population of sixty thousand inhabitants or greater or any charter county of the first classification may adopt ordinances, policies, resolutions, or regulations consistent with sections 67.1849, 71.340, and 227.551 to 227.559 regarding the relocation of utility facilities located within the right-of-way of streets, highways, or roads under their respective jurisdiction, which are not state highways. Any ordinance, policy, resolution, or regulation adopted under the authority of this section shall not infringe upon, negate or otherwise abrogate an owner's right to construct, own, operate, and maintain utility facilities within the right-of-ways of such political subdivision that the owner otherwise enjoyed prior to the adoption of such ordinance, policy, resolution, or regulation.

229.360. Unless otherwise required by law, including section 67.1849, it shall be the duty of any person, firm or corporation owning, leasing, or operating any such conduits, poles, pole lines, wires, mains, pipes, conductors, sewers, drains, tramways or other objects, after service of the notice required in section 229.350 to furnish such competent workmen and crews as may be necessary to effect such removal, change or alteration, and to pay all actual expenses which are incurred by any person, firm, corporation or political subdivision in so doing. In making such necessary removal, change or alteration, no other person, firm, corporation or political subdivision shall interfere with or make any such change, removal or alteration until the owner, lessee or operators of such object shall have been notified as provided in section 229.350, and shall have failed or refused to do so within a reasonable time, and in

the event of such failure or refusal such work shall be done only by competent and experienced workmen at the cost and expense, however, of the owner, lessee or operators of such object.