

SECOND REGULAR SESSION

SENATE COMMITTEE SUBSTITUTE FOR

SENATE BILL NO. 1065

103RD GENERAL ASSEMBLY

4816S.02C

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2 227.559, and 229.360, RSMo, are repealed and eight new sections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. 1. Notwithstanding any rule, order,
2 decision, permit, agreement, or other authorization to the
3 contrary, a county shall not perform any road project unless
4 it reimburses any non-rate-regulated utility provider, as
5 defined in section 71.340, that incurs labor costs for
6 facility relocation due to such maintenance or project. A
7 county shall be authorized to pay such facility relocation
8 labor costs as part of the cost of the road project.**

**9 2. A county shall notify non-rate-regulated utility
10 providers that have permitted infrastructure within a
11 planned or existing public right-of-way within ninety days
12 after a road project is added to the county project schedule
13 that may require the provider to relocate its infrastructure
14 for the road project. The notification provided under this
15 subsection shall include an estimated project schedule and**

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

16 timeline, including the anticipated year of construction.
17 Within ninety days after receipt of the notification, the
18 non-rate-regulated utility provider shall respond to the
19 county with an estimated time frame and projected labor cost
20 for the relocation of the provider's infrastructure. The
21 response shall include a draft relocation schedule within or
22 adjacent to the existing or planned public right-of-way.

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

28 4. As used in this section, the term "road project"
29 means any road maintenance or road construction 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
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] **under the**
22 **provisions of section 67.1849 or 71.340, as applicable**, when
23 necessary to accommodate construction, improvement, or
24 maintenance of streets [or], other public works, [excluding
25 minor] **or** 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 rule, order, decision, permit,**
31 **agreement, or other authorization to the contrary, a city,**
32 **incorporated town, or village shall not perform any road**
33 **project unless it reimburses any non-rate-regulated utility**
34 **provider that incurs labor costs for facility relocation due**
35 **to such maintenance or project. A city, incorporated town,**
36 **or village shall be authorized to pay such facility**
37 **relocation labor costs as part of the cost of the road**
38 **project.**

39 **3. For the purposes of this section and sections**
40 **226.220 and 226.224, the following terms shall mean:**

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

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

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

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

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

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

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

72 5. Nothing in this section shall require a city,
73 incorporated town, or village to reimburse a non-rate-

74 **regulated utility provider for the removal or relocation of**
75 **facilities placed in the public right-of-way in violation of**
76 **state law or local permitting requirements.**

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 non-rate-regulated utility**
21 **providers, as defined in subsection 3 of section 71.340, for**
22 **any labor costs incurred in facility relocation that is**
23 **required due to road maintenance or construction;**

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

26 [(3)] (4) For other purposes and contingencies
27 relating and appertaining to the construction and
28 maintenance of said highways shall be paid from the state
29 road fund upon warrants drawn by the state auditor, based

30 upon bills of particulars and vouchers preapproved and
31 certified for payment by the commissioner of administration
32 and by the state highways and transportation commission
33 acting through such of their employees as may be designated
34 by them.

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

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

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

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

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

21 **draft relocation schedule within or adjacent to the existing**
22 **or planned public right-of-way.**

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

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.

7 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.

13 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 in section 226.224**, the removal
52 and relocation of utility facilities **as a result of**
53 **construction projects required by the commission** shall be
54 made at the expense of the owners unless otherwise provided
55 by the commission. If the owner fails to relocate the
56 utility facilities in accordance with the relocation plan as

57 required by section 227.555, the utility facilities may be
58 removed and relocated by the state highways and
59 transportation commission, or under its direction, and the
60 cost of relocating the utility facilities shall be
61 **[collected from such owner] the responsibility of the**
62 **commission, as required by section 226.224, or the owner.**
63 If the state highways and transportation commission or its
64 designee removes and relocates the utility facilities, the
65 utility owner shall not be liable to any party for any
66 damages caused by the commission's or the commission's
67 designee's 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, 71.340, 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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