

# SENATE BILL NO. 1065

103RD GENERAL ASSEMBLY

INTRODUCED BY SENATOR BROWN (26).

4816S.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2 227.559, and 229.360, RSMo, are repealed and eight new sections  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. 1. 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.

12 2. Nothing in this section shall require a county to  
13 reimburse a nonrate regulated utility provider for the  
14 removal or relocation of facilities placed in the public  
15 right-of-way in violation of state or local permitting  
16 requirements.

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

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]~~ **subject to**  
**sections 67.1849 or 71.340, as applicable**, when necessary to  
accommodate construction, improvement, or maintenance of  
streets or other public works, excluding minor  
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

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

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

49       (3) A video service provider as defined in section  
50 67.2677; or

51       (4) A cable operator as defined in section 67.2677.

52       4. Nothing in this section shall require a city,  
53 incorporated town, or village to reimburse a nonrate  
54 regulated utility provider for the removal or relocation of  
55 facilities placed in the public right-of-way in violation of  
56 state 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 nonrate regulated utility**  
21 **providers, as defined in section 71.340, for any costs**  
22 **incurred in facility relocation that is required due to road**  
23 **maintenance, construction, or other right-of-way work**  
24 **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. 1. 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 section 71.340,  
5 for any costs incurred in facility relocation that is  
6 required due to road maintenance, construction, or other  
7 right-of-way work activity.**

**8 2. Nothing in this section shall require the  
9 department to reimburse a nonrate regulated utility provider  
10 for the removal or relocation of facilities placed in the  
11 public right-of-way in violation of state or local  
12 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] borne by the commission pursuant to**  
62 **section 226.224 or by the** owner. If the state highways and  
63 transportation commission or its designee removes and  
64 relocates the utility facilities, the utility owner shall  
65 not be liable to any party for any damages caused by the  
66 commission's or the commission's designee's removal and  
67 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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