

HOUSE BILL No. 2806

By Committee on Federal and State Affairs

Requested by Jessica Lucas on behalf of IdeaTek

2-19

Proposed Amendments to House Bill No. 2806
House Committee on Energy, Utilities and
Telecommunications
Prepared by: Nick Myers
Office of Revisor of Statutes

1 AN ACT concerning counties; relating to the public right-of-way;
2 authorizing certain telecommunications and video service providers to
3 operate in county public right-of-way; limiting the fees and costs that a
4 county may impose upon such providers for such activities.
5

6 *Be it enacted by the Legislature of the State of Kansas:*

7 Section 1. (a) The Kansas legislature finds and declares that:

8 (1) The permitting, construction, modification, maintenance and
9 operation of telecommunications facilities are critical to ensuring that all
10 citizens in the state have true access to broadband and other advanced
11 technology and information;

12 (2) telecommunications facilities are critical to ensuring that
13 businesses and schools throughout the state remain competitive in the
14 global economy;

15 (3) telecommunications facilities that enable broadband services have
16 a significant economic benefit; and

17 (4) the permitting, construction, modification, maintenance and
18 operation of telecommunications facilities, to the extent specified in this
19 section, are declared to be matters of statewide concern and interest.

20 (b) As used in this section:

21 (1) "Public right-of-way" means only the area of real property in
22 which a county has a dedicated or acquired right-of-way interest in the real
23 property. "Public right-of-way" includes the area on, below or above the
24 present and future streets, roads, highways, parkways or boulevards
25 dedicated or acquired as right-of-way by a county. "Public right-of-way"
26 does not include:

27 (A) The airwaves above a "public right-of-way" with respect to
28 wireless telecommunications or other non-wire telecommunications or
29 broadcast services;

30 (B) easements obtained by utilities or private easements; or

31 (C) any real property, structures or facilities under the ownership,
32 control or jurisdiction of the secretary of transportation.

33 (2) "Provider" means a local exchange carrier or telecommunications
34 carrier as such terms are defined in K.S.A. 66-1,187 and amendments
35 thereto, or a video service provider as defined in K.S.A. 12-2022, and

1 amendments thereto. "Provider" does not include an applicant as defined
2 in K.S.A. 66-2019, and amendments thereto.

3 (c) Any provider shall have the right pursuant to this section to
4 construct, maintain and operate poles, conduit, cable, switches and related
5 appurtenances and facilities along, across, upon and under any public
6 right-of-way in this state. Such poles, conduit, cable, switches and related
7 appurtenances and facilities shall be so constructed and maintained as not
8 to obstruct or hinder the usual travel or public safety on such public ways
9 or the legal use by other utilities or providers.

10 (d) A county shall impose any and all public right-of-way access and
11 permit processes in a nondiscriminatory and competitively neutral manner
12 to all similarly situated providers, including, but not limited to:

13 (1) The fees charged by the county;

14 (2) the forms and filings required by the county for a permit
15 application;

16 (3) the time with which a county may approve or deny a permit; and

17 (4) options for waivers regarding such fees, forms and filings.

18 (e) No county shall create, enact or erect any discriminatory,
19 unreasonable condition, requirement or barrier for entry into or use of the
20 public right-of-way by a provider.

21 (f) A county may only assess the following non-discriminatory and
22 competitively neutral fees against a provider, for the administration and
23 orderly use of the public right-of-way, provided that such fees reimburse
24 the county for the county's reasonable, actual and verifiable costs of
25 managing the public right-of-way:

26 (1) A construction permit fee charged in connection with issuing a
27 construction permit to set fixtures in the public right-of-way that
28 compensates the county for the reasonable expenses incurred by the
29 county for issuing, processing and verifying the permit application;

30 (2) an excavation fee for each pavement cut to recover the costs
31 associated with construction and repair activity of the provider or the
32 provider's assigns, contractors or subcontractors, or both. Any excavation
33 fee imposed by the county shall be based upon a regional specific or other
34 appropriate study establishing the basis for such costs that takes into
35 account the life of the county road or highway prior to the construction or
36 repair activity and the remaining life of the road or highway. Such
37 excavation fee shall be expressly limited to activity that results in an actual
38 pavement cut; and

39 (3) inspection fees to recover all reasonable costs associated with a
40 county's inspection of the work of the provider in the right-of-way.

41 (g) A county shall authorize any video service provider as defined in
42 K.S.A. 12-2022, and amendments thereto, to offset any fees and charges
43 imposed pursuant to this section against payment of any video service

1 provider fee imposed pursuant to K.S.A. 12-2024, and amendments
2 thereto.

3 (h) A county may assess against a provider costs associated with
4 repairing and restoring the public right-of-way because of damage caused
5 by the provider, its assigns, contractors or subcontractors, or both, in the
6 public right-of-way. A county may require a provider to furnish a
7 performance bond, in a form acceptable to the county, from a surety
8 licensed to conduct surety business in the state of Kansas, ~~insuring~~
9 appropriate and timely performance in the construction and maintenance
10 of facilities located in the public right-of-way.

to ensure

11 (i) A county may not assess any additional fees or costs against
12 providers for use or occupancy of the public right-of-way other than those
13 specified in this section. Any fees or costs imposed pursuant to this section
14 shall be imposed upon all such providers in a nondiscriminatory and
15 competitively neutral manner.

16 (j) Upon request by a provider, a county shall, in a timely manner,
17 provide an accounting for the reasonable, actual and verifiable costs that
18 are the basis for any fee permitted in subsection (f).

19 (k) This section may not be construed to affect any valid taxation of a
20 provider's facilities or services.

21 (l) Any ordinance enacted prior to the effective date of this act
22 governing the use and occupancy of the public right-of-way by a provider
23 shall not conflict with the provisions of this section.

24 (m) No provider shall enter into a contract or any other agreement
25 with a county to sell or provide a product or service that the provider's
26 business does not actually sell or provide.

27 (n) Any county or provider may bring an action in a court of
28 competent jurisdiction to enforce the provisions of this act.

29 Sec. 2. This act shall take effect and be in force from and after its
30 publication in the statute book.