

As Amended by House Committee

Session of 2024

HOUSE BILL No. 2806

By Committee on Federal and State Affairs

Requested by Jessica Lucas on behalf of IdeaTek

2-19

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) **Without abrogating any rights held by a video service**
4 **provider pursuant to a state-issued video service authorization**, any
5 provider shall have the right pursuant to this section to construct, maintain
6 and operate poles, conduit, cable, switches and related appurtenances and
7 facilities along, across, upon and under any public right-of-way in this
8 state. Such poles, conduit, cable, switches and related appurtenances and
9 facilities shall be so constructed and maintained as not to obstruct or
10 hinder the usual travel or public safety on such public ways or the legal
11 use by other utilities or providers.

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

15 (1) The **permit** fees charged by the county;

16 (2) the forms and filings required by the county for a permit
17 application;

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

19 (4) options for waivers regarding such **permit** fees, forms and filings.

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

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

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

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

43 (3) inspection fees to recover all reasonable costs associated with a

1 county's inspection of the work of the provider in the right-of-way.

2 (g) A county shall authorize any video service provider as defined in
3 K.S.A. 12-2022, and amendments thereto, to offset any fees and charges
4 imposed pursuant to this section against payment of any video service
5 provider fee imposed pursuant to K.S.A. 12-2024, and amendments
6 thereto.

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

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

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

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

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

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

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

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