

SESSION OF 2024

SUPPLEMENTAL NOTE ON HOUSE BILL NO. 2806

As Amended by House Committee on Energy,
Utilities and Telecommunications

Brief*

HB 2806, as amended, would establish certain rights and limitations on the use of county public right-of-way by telecommunication, broadband, and video service providers. The bill would resemble existing non-discrimination and neutrality provisions for the use of city public right-of-way.

Findings and Definitions

The bill would make findings on the importance of telecommunications facilities and would use the definition of “public right-of-way” as found in KSA 17-1902, with the additional exemption of any real property, structures, or facilities under the ownership, control, or jurisdiction of the Secretary of Transportation. The bill would define “provider” similarly to KSA 17-1902.

Provider Rights

Under the bill, local exchange carriers, telecommunications carriers, and video service providers would have the right to construct, maintain, and operate poles, conduit, cable, switches, and related appurtenances and facilities along, across, upon, and under any public right-of-way in a Kansas county, as long as any rights issued by the State to a video service provider are not invalidated by such an action. Such equipment and facilities would be

*Supplemental notes are prepared by the Legislative Research Department and do not express legislative intent. The supplemental note and fiscal note for this bill may be accessed on the Internet at <http://www.kslegislature.org>

required to not obstruct or hinder the usual travel or public safety on public ways or the legal use by other utilities or providers.

Counties

The bill would require counties to treat similarly situated providers in a non-discriminatory and competitively neutral manner regarding:

- Permit fees;
- Forms and filings required for a permit application;
- Time in approving or denying a permit; and
- Options for waivers of such permit fees, forms, and filing.

Counties would be prohibited from enacting or erecting any discriminatory, unreasonable condition, requirement, or barrier for entry into or use of the public right-of-way by a provider.

Fees

Counties would be authorized to impose only the following fees, provided the fees are non-discriminatory, competitively neutral, and related to the county's reasonable, actual, and verifiable costs of managing the public right-of-way:

- A construction permit fee to compensate the county for reasonable administrative expenses for issuing, processing, and verifying the permit application;
- An excavation permit fee for each pavement cut to recover the direct and reasonable costs associated

with the provider's construction and repair activity;
and

- An inspection fee to recover all reasonable costs associated with the county's inspection of the provider's work.

Counties would be expressly prohibited from assessing additional fees for occupying the public right of way.

Counties would authorize video service providers to offset any fees and charges against payment of any video service provider fee imposed pursuant to KSA 12-2024.

Damages

If a provider causes damages while working in the public right-of-way, the bill would authorize a county to assess against any provider costs associated with repairing and restoring the public right-of-way due to the damages. Additionally, the bill would authorize a county to require a provider to furnish a performance bond to ensure the appropriate and timely performance of construction and maintenance activities.

Upon request by a provider, a county would be required to provide an accounting of the costs that are the basis for any such fee charged.

Other Provisions

The bill would also prohibit a provider from entering into a contract with a county to provide a product or service that the provider's business does not actually sell or provide.

Any ordinance pertaining to the use of the county public right of way in effect prior to the the effective date of the bill would be deemed to not conflict with the provision of the act.

Background

The bill was introduced by the House Committee on Federal and State Affairs at the request of a representative of IdeaTek.

House Committee on Energy, Utilities and Telecommunications

In the House Committee hearing on February 29, 2024, representatives of Cox Communications and IdeaTek provided **proponent** testimony, stating the bill would ensure counties' fees are non-discriminatory and competitively neutral, similar to the requirements for cities in KSA 17-1902.

Written-only proponent testimony was provided by a representative of AT&T Kansas.

Written-only neutral testimony was provided by a representative of the Kansas Association of Counties.

No other testimony was provided.

The House Committee amended the bill to:

- Clarify that the provider rights expressed in the bill do not abrogate their rights pursuant to a State-issued video service authorization;
- Clarify the bill applies to permit fees charged by the county;
- Clarify the construction and repair costs used to determine the fee for recovery are “direct and reasonable” and that the fee be limited to the proportion of the cost attributable to the activity of the provider; and
- Make technical edits.

Fiscal Information

According to the fiscal note prepared by the Division of the Budget on the bill, as introduced, the Department of Transportation indicates enactment of the bill would not have a fiscal effect. The Department notes the bill states that “public right-of-way” would not include any real property, structures, or facilities under the ownership, control, or jurisdiction of the Secretary of Transportation.

The Kansas Association of Counties indicates enactment of the bill could have a fiscal effect on counties depending on whether there are other costs associated with the public right-of-way that are not listed in the bill; however, a fiscal effect cannot be estimated.

Telecommunications; county; public right-of-way; video service providers; permits