

**HOUSE BILL No. 2237**

By Committee on Local Government

1-31

Proposed Amendment on HB 2237  
House Committee on Energy, Utilities and  
Telecommunications  
February 17, 2023  
Prepared by the Office of Revisor of Statutes

1 AN ACT concerning counties; relating to public right-of-way; authorizing  
2 certain telecommunications and video service providers to operate in  
3 the county right-of-way; amending K.S.A. 2022 Supp. 17-1902 and  
4 repealing the existing section.  
5

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

7 Section 1. K.S.A. 2022 Supp. 17-1902 is hereby amended to read as  
8 follows: 17-1902. (a) (1) "Public right-of-way" means only the area of real  
9 property ~~in which that the city municipality~~ has a dedicated or acquired  
10 right-of-way interest in the real property. ~~It shall include "Public right-of-~~  
11 *way" includes* the area on, below or above the present and future streets,  
12 alleys, avenues, roads, highways, parkways or boulevards dedicated or  
13 acquired as right-of-way. ~~The term "Public right-of-way" does not include~~  
14 the airwaves above a right-of-way with regard to wireless  
15 telecommunications ~~or~~ other nonwire telecommunications or broadcast  
16 service, easements obtained by utilities or private easements in platted  
17 subdivisions or tracts.

18 (2) "Provider" means a local exchange carrier as defined in K.S.A.  
19 66-1,187(h), and amendments thereto, or a telecommunications carrier as  
20 defined in K.S.A. 66-1,187(m), and amendments thereto, or a video  
21 service provider as defined in K.S.A. 2022 Supp. 12-2022, and  
22 amendments thereto, but does not include an applicant as defined in  
23 K.S.A. 66-2019, and amendments thereto.

24 (3) "Telecommunications services" means providing the means of  
25 transmission, between or among points specified by the user, of  
26 information of the user's choosing, without change in the form or content  
27 of the information as sent and received.

28 (4) "Competitive infrastructure provider" means an entity which  
29 leases, sells or otherwise conveys facilities located in the right-of-way, or  
30 the capacity or bandwidth of such facilities for use in the provision of  
31 telecommunications services, internet services or other intrastate and  
32 interstate traffic, but does not itself provide services directly to end users  
33 within the corporate limits of the ~~city~~ *municipality*.

34 (5) *"Municipality" means any city or county.*

35 (b) Any provider shall have the right pursuant to this act to construct,  
36 maintain and operate poles, conduit, cable, switches and related

1 appurtenances and facilities along, across, upon and under any public  
2 right-of-way in this state. Such appurtenances and facilities shall be so  
3 constructed and maintained as not to obstruct or hinder the usual travel or  
4 public safety on such public ways or obstruct the legal use by other  
5 utilities.

6 (c) Nothing in this act shall be interpreted as granting a provider the  
7 authority to construct, maintain or operate any facility or related  
8 appurtenance on property owned by a ~~city~~ *municipality* outside of the  
9 public right-of-way.

10 (d) The authority of a provider to use and occupy the public right-of-  
11 way shall always be subject and subordinate to the reasonable public  
12 health, safety and welfare requirements and regulations of the ~~city~~  
13 *municipality*. A ~~city~~ *municipality* may exercise its home rule powers, *to the*  
14 *extent provided by law*, in its administration and regulation related to the  
15 management of the public right-of-way provided that any such exercise  
16 must be competitively neutral and may not be unreasonable or  
17 discriminatory. Nothing herein shall be construed to limit the authority of  
18 ~~cities~~ *a municipality* to require a competitive infrastructure provider to  
19 enter into a contract franchise ordinance.

20 (e) The ~~city~~ *municipality* shall have the authority to prohibit the use  
21 or occupation of a specific portion of public right-of-way by a provider  
22 due to a reasonable public interest necessitated by public health, safety and  
23 welfare so long as the authority is exercised in a competitively neutral  
24 manner and is not unreasonable or discriminatory. A reasonable public  
25 interest shall include the following:

26 (1) The prohibition is based upon a recommendation of the ~~city~~  
27 *municipality* engineer, is related to public health, safety and welfare and is  
28 nondiscriminatory among providers, including incumbent providers;

29 (2) the provider has rejected a reasonable, competitively neutral and  
30 nondiscriminatory justification offered by the ~~city~~ *municipality* for  
31 requiring an alternate method or alternate route that will result in neither  
32 unreasonable additional installation expense nor a diminution of service  
33 quality;

34 (3) the ~~city~~ *municipality* reasonably determines, after affording the  
35 provider reasonable notice and an opportunity to be heard, that a denial is  
36 necessary to protect the public health and safety and is imposed on a  
37 competitively neutral and nondiscriminatory basis; or

38 (4) the specific portion of the public right-of-way for which the  
39 provider seeks use and occupancy is environmentally sensitive as defined  
40 by state or federal law or lies within a previously designated historic  
41 district as defined by local, state or federal law.

42 (f) A provider's request to use or occupy a specific portion of the  
43 public right-of-way shall not be denied without reasonable notice and an

1 opportunity for a public hearing before the ~~city~~ governing body of the  
2 *municipality*. A ~~city~~ governing body's denial of a provider's request to use  
3 or occupy a specific portion of the public right-of-way may be appealed to  
4 a district court.

5 (g) A provider shall comply with all laws and rules and regulations  
6 governing the use of public right-of-way.

7 (h) A ~~city~~ *municipality* may not impose the following regulations on  
8 providers:

9 (1) Requirements that particular business offices or other  
10 telecommunications facilities be located in the ~~city~~ *municipality*;

11 (2) requirements for filing applications, reports and documents that  
12 are not reasonably related to the use of a public right-of-way or this act;

13 (3) requirements for ~~city~~ *municipality* approval of transfers of  
14 ownership or control of the business or assets of a provider's business,  
15 except that a ~~city~~ *municipality* may require that such entity maintain  
16 current point of contact information and provide notice of a transfer within  
17 a reasonable time; and

18 (4) requirements concerning the provisioning of or quality of  
19 customer services, facilities, equipment or goods in-kind for use by the  
20 ~~city~~ *municipality*, political subdivision or any other provider or public  
21 utility.

22 (i) Unless otherwise required by state law, in the exercise of its lawful  
23 regulatory authority, a ~~city~~ *municipality* shall promptly, and in no event  
24 more than 30 days, with respect to facilities in the public right-of-way,  
25 process each valid and administratively complete application of a provider  
26 for any permit, license or consent to excavate, set poles, locate lines,  
27 construct facilities, make repairs, effect traffic flow, obtain zoning or  
28 subdivision regulation approvals, or for other similar approvals, and shall  
29 make reasonable effort not to unreasonably delay or burden that provider  
30 in the timely conduct of its business. The ~~city~~ *municipality* shall use its  
31 best reasonable efforts to assist the provider in obtaining all such permits,  
32 licenses and other consents in an expeditious and timely manner.

33 (j) If there is an emergency necessitating response work or repair, a  
34 provider may begin that repair or emergency response work or take any  
35 action required under the circumstances, provided that the provider  
36 notifies the affected ~~city~~ *municipality* promptly after beginning the work  
37 and timely thereafter meets any permit or other requirement had there not  
38 been such an emergency.

39 (k) A ~~city~~ *municipality* may require a provider to repair all damage to  
40 a public right-of-way caused by the activities of that provider, or of any  
41 agent affiliate, employee, or subcontractor of that provider, while  
42 occupying, installing, repairing or maintaining facilities in a public right-  
43 of-way and to return the right-of-way to its functional equivalence before

1 the damage pursuant to the reasonable requirements and specifications of  
 2 the ~~city municipality~~. If the provider fails to make the repairs required by  
 3 the ~~city municipality~~, the ~~city municipality~~ may effect those repairs and  
 4 charge the provider the cost of those repairs. If a ~~city municipality~~ incurs  
 5 damages as a result of a violation of this subsection, then the ~~city~~  
 6 ~~municipality~~ shall have a cause of action against a provider for violation of  
 7 this subsection; and may recover its damages, including reasonable  
 8 attorney fees, if the provider is found liable by a court of competent  
 9 jurisdiction.

10 (l) If requested by a ~~city municipality~~, in order to accomplish  
 11 construction and maintenance activities directly related to improvements  
 12 for the health, safety and welfare of the public, a provider shall promptly  
 13 remove its facilities from the public right-of-way or shall relocate or adjust  
 14 its facilities within the public right-of-way at no cost to the ~~political~~  
 15 ~~subdivision municipality~~. Such relocation or adjustment shall be completed  
 16 as soon as reasonably possible within the time set forth in any request by  
 17 the ~~city municipality~~ for such relocation or adjustment. Any damages  
 18 suffered by the ~~city municipality~~ or its contractors as a result of such  
 19 provider's failure to timely relocate or adjust its facilities shall be borne by  
 20 such provider.

21 (m) No ~~city municipality~~ shall create, enact or erect any unreasonable  
 22 condition, requirement or barrier for entry into or use of the public rights-  
 23 of-way by a provider.

24 (n) A ~~city municipality~~ may assess any of the following fees against a  
 25 provider, for use and occupancy of the public right-of-way, provided that  
 26 such fees reimburse the ~~city municipality~~ for its reasonable, actual and  
 27 verifiable costs of managing the ~~city public~~ right-of-way; and are imposed  
 28 on all such providers in a nondiscriminatory and competitively neutral  
 29 manner:

30 (1) A permit fee in connection with issuing each construction permit  
 31 to set fixtures in the public right-of-way within that ~~city municipality~~ as  
 32 provided in K.S.A. 17-1901, and amendments thereto, to compensate the  
 33 ~~city municipality~~ for issuing, processing and verifying the permit  
 34 application;

35 (2) an excavation fee for each street or pavement cut to recover the  
 36 costs associated with construction and repair activity of the provider, their  
 37 assigns, contractors or subcontractors, or both, with the exception of  
 38 construction and repair activity required pursuant to subsection (l) of this  
 39 ~~act~~ related to construction and maintenance activities directly related to  
 40 improvements for the health, safety and welfare of the public; ~~provided,~~  
 41 ~~however,~~ Imposition of such excavation fee ~~must~~ shall be based upon a  
 42 regional specific or other appropriate study establishing the basis for such  
 43 costs which takes into account the life of the ~~city~~ street prior to the

A municipality shall impose in a nondiscriminatory and competitively neutral manner all locally required permitting and right-of-way access requirements. Any municipality that executes an agreement, franchise or any other arrangement with any provider seeking to access the right of way for any purpose shall make the provisions of such agreement, franchise or other arrangement available to any other provider seeking to access the right-of-way in a nondiscriminatory and competitively neutral manner.

1 construction or repair activity and the remaining life of the ~~city~~ street.  
2 Such excavation fee is expressly limited to activity that results in an actual  
3 street or pavement cut;

4 (3) inspection fees to recover all reasonable costs associated with ~~city~~  
5 *a municipality's* inspection of the work of the provider in the right-of-way;

6 (4) repair and restoration costs associated with repairing and restoring  
7 the public right-of-way because of damage caused by the provider, its  
8 assigns, contractors or subcontractors, or both, in the right-of-way; and

9 (5) a performance bond, in a form acceptable to the ~~city~~ *municipality*,  
10 from a surety licensed to conduct surety business in the state of Kansas,  
11 insuring appropriate and timely performance in the construction and  
12 maintenance of facilities located in the public right-of-way.

13 (o) A ~~city~~ *may municipality shall* not assess any additional fees  
14 against providers for use or occupancy of the public right-of-way other  
15 than those specified in subsection (n).

16 (p) This act ~~may~~ *shall* not be construed to affect any valid taxation of  
17 a provider's facilities or services.

18 (q) ~~Providers~~ shall indemnify and hold the ~~city~~ *municipality* and its  
19 officers and employees harmless against any and all claims, lawsuits,  
20 judgments, costs, liens, losses, expenses, fees to include reasonable  
21 attorney fees and costs of defense, proceedings, actions, demands, causes  
22 of action, liability and suits of any kind and nature, including personal or  
23 bodily injury or death, property damage or other harm for which recovery  
24 of damages is sought, to the extent that it is found by a court of competent  
25 jurisdiction to be caused by the negligence of the provider, any agent,  
26 officer, director, representative, employee, affiliate or subcontractor of the  
27 provider, or their respective officers, agents, employees, directors or  
28 representatives, while installing, repairing or maintaining facilities in a  
29 public right-of-way. The indemnity provided by this subsection does not  
30 apply to any liability resulting from the negligence of the ~~city~~ *municipality*,  
31 its officers, employees, contractors or subcontractors. If a provider and the  
32 ~~city~~ *municipality* are found jointly liable by a court of competent  
33 jurisdiction, liability shall be apportioned comparatively in accordance  
34 with the laws of this state without, ~~however~~, waiving any governmental  
35 immunity available to the ~~city~~ *municipality* under state law and without  
36 waiving any defenses of the parties under state or federal law. This section  
37 is solely for the benefit of the ~~city~~ *municipality* and provider and does not  
38 create or grant any rights, contractual or otherwise, to any other person or  
39 entity.

40 (r) A provider or ~~city~~ *municipality* shall promptly advise the other in  
41 writing of any known claim or demand against the provider or the ~~city~~  
42 *municipality* related to or arising out of the provider's activities in a public  
43 right-of-way.

A municipality shall assess any taxation or fees imposed on any provider, exclusive of franchise fees, in a cost-based, nondiscriminatory and competitively neutral manner.  
(r)

Redesignate subsections

A municipality or provider may bring an enforcement action in any court of competent jurisdiction.

- 1 (s) Nothing contained in ~~K.S.A. 17-1902, and amendments thereto,~~  
2 *this section* is intended to affect the validity of any franchise fees collected  
3 pursuant to state law or ~~a city's~~ *the* home rule authority *of the municipality*.
- 4 (t) Any ordinance enacted prior to the effective date of this act  
5 governing the use and occupancy of the public right-of-way by a provider  
6 shall not conflict with the provisions of this act.
- 7 Sec. 2. K.S.A. 2022 Supp. 17-1902 is hereby repealed.
- 8 Sec. 3. This act shall take effect and be in force from and after its  
9 publication in the statute book.