

SENATE BILL No. 57

By Committee on Utilities

1-22

1 AN ACT concerning roads and highways; relating to orders to modify or
2 relocate communications or video service facilities for certain road and
3 highway projects; requiring certain state agencies, counties, cities and
4 political subdivisions to reimburse the owner or operator of any such
5 facilities for the costs associated with modifying or relocating such
6 facilities pursuant to any such order; amending K.S.A. 68-402b, 68-415
7 and 68-2005 and repealing the existing sections.
8

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

10 Section 1. K.S.A. 68-402b is hereby amended to read as follows: 68-
11 402b. (a) ~~Authority is hereby granted to~~ (1) Counties, cities and political
12 subdivisions in this state ~~to may~~ enter into contracts through or with the
13 secretary of transportation, to enable the state and such counties, cities and
14 political subdivisions to participate in the benefits to be secured from
15 federal-aid funds; or funds made available from the federal government for
16 highway, road or street purposes or for purposes relating to the various
17 other modes and systems of transportation. Contracts so entered into by
18 the boards of county commissioners or the governing bodies of cities or
19 other political subdivisions shall be binding ~~on them or their successors~~
20 *such boards or governing bodies or any such successors*. The secretary of
21 transportation may negotiate and enter into contracts with the federal
22 government, federal departments or federal agencies and take all steps and
23 proceedings necessary to secure such benefits for such counties, cities or
24 other political subdivisions.

25 (2) The secretary of transportation may determine amounts to be paid
26 from the state highway fund on account of any federal-aid project on the
27 highway system in any county, city or other political subdivision
28 constructed under the provisions of the federal-aid highway act of 1956, or
29 prior federal-aid acts, and all acts amendatory thereof or supplemental
30 thereto, or *federal acts* relating to the various other modes and systems of
31 transportation, and approve vouchers therefor. The counties' share of the
32 cost of all such contracts so entered into ~~by them~~ *such counties* under the
33 federal-aid highway act of 1956, or prior federal aid acts, and all acts
34 amendatory thereof or supplemental thereto, and federal acts relating to
35 other modes and systems of transportation shall be paid by the proper
36 county from the road and bridge fund of such county; or from any special

1 fund available for such purpose.

2 (3) Federal aid for county major collector roads or other federal aid
3 classified routes shall be allocated by the secretary of transportation to
4 each of the several counties in the proportion that the total gross amount of
5 moneys received by each county from the special city and county highway
6 fund and the county equalization and adjustment fund in the preceding
7 calendar year prior to distribution of any such moneys bears to the total
8 amount of moneys received by all counties from such fund in such year. If
9 any county does not provide matching funds for federal aid allocated to
10 such county, then the secretary of transportation may allocate such federal-
11 aid funds to other counties or to the state highway system; and the
12 secretary may accumulate any federal-aid moneys allocated to any or all
13 counties over such period of time as the secretary deems necessary. ~~Also~~
14 The secretary may allow an advanced allocation of federal-aid funds to
15 any county ~~which~~ *that* establishes a need for additional federal-aid funds.
16 Any such advanced allocation shall be made from accumulated federal-aid
17 funds. Such federal-aid advanced allocations shall be credited back to such
18 accumulated federal-aid funds if, or when, federal-aid funds are
19 subsequently allocated to the counties that have received such advance
20 allocations.

21 ~~(b) In addition to the powers granted by subsection (a),~~ The secretary
22 may negotiate and enter into contracts with the federal government, federal
23 departments, federal agencies or any other entity and may pledge any
24 federal—aid funds or other funds made available from the federal
25 government for that or any other highway, road or street purposes within
26 the state to repay funds which were advanced by counties, cities or
27 political subdivisions of this state for highway, road or street purposes
28 pursuant to the approval of the secretary of transportation.

29 *(c) To the extent any county, city or political subdivision of this state*
30 *enters into or is the beneficiary of a contract authorized by subsection (a)*
31 *or (b), the funds made available pursuant to such contract shall include*
32 *sufficient funds to pay for the cost of any modification or relocation of*
33 *communications facilities. After modifying or relocating any such*
34 *facilities, the owner or operator of the communications facilities shall*
35 *submit to the relevant county, city or political subdivision, or to the*
36 *secretary of transportation, a description of the costs incurred by such*
37 *entity and a request for reimbursement of such costs. Within 90 days*
38 *following receipt of a request for reimbursement pursuant to this*
39 *subsection, the relevant county, city or political subdivision, or the*
40 *secretary of transportation, shall authorize and make such reimbursement*
41 *payment to the requesting entity. Notwithstanding any provision of law, or*
42 *any rule, permit, agreement, franchise or other authorization, to the*
43 *contrary, the provisions of this section shall apply to all projects funded*

1 pursuant to any contract authorized pursuant to subsection (a) or (b).

2 (d) As used in this section, "communications facilities" means
3 facilities owned or operated by any telecommunications provider, video
4 service provider, as defined in K.S.A. 12-2022, and amendments thereto,
5 or provider of broadband internet access service, as defined in 47 C.F.R. §
6 8.1.

7 Sec. 2. K.S.A. 68-415 is hereby amended to read as follows: 68-415.

8 (a) (1) Whenever any ~~person, firm or any corporation~~ entity created for the
9 purpose of constructing and maintaining ~~magnetic telegraph or telephone~~
10 ~~lines or other telecommunication facilities or for the purpose of~~
11 ~~constructing and maintaining~~ communications facilities as defined in
12 K.S.A. 68-402b(d), and amendments thereto, lines for the transmission of
13 electric current or ~~for the purpose of transporting~~ pipelines that transport
14 oil or gas or water by pipelines, or municipal corporations, shall construct
15 or maintain any facilities along, upon or across any state highway,
16 including any poles, wires, piers, abutments, pipelines or other fixtures
17 ~~along, upon or across any state highway, such poles, wires, piers,~~
18 ~~abutments, pipelines and other fixtures~~ facilities shall be located upon that
19 part of the right-of-way of the state highway designated by the secretary of
20 transportation. The secretary of transportation may ~~require order the~~
21 ~~removal modification or relocation of such poles, piers, abutments, wires~~
22 ~~and pipelines and other fixtures~~ facilities upon state highways from any
23 location on the state highways to such part of the right-of-way of the state
24 highways as the secretary of transportation shall designate, ~~and~~.

25 (2) If such ~~person, firm or corporation~~ entity, upon receiving notice of
26 the requirement of an order from the secretary of transportation that such
27 poles, piers, abutments, wires, pipelines or other fixtures facilities shall be
28 moved modified or relocated, fails to comply with any such requirement
29 order, the secretary of transportation may ~~remove modify or relocate~~ such
30 poles, piers, abutments, wires, pipelines and other fixtures facilities to such
31 place on the right-of-way of the state highways as may be designated by
32 the secretary of transportation, ~~and~~. The cost of any such ~~removal~~
33 ~~modification or relocation~~ shall be paid to the secretary of transportation
34 by such ~~person, firm or corporation~~ entity upon a statement of such cost
35 being furnished to such ~~person, firm or corporation~~ entity. If any such
36 ~~person, firm or corporation~~ entity refuses to pay the charges such cost, the
37 secretary of transportation shall notify the attorney general; who shall
38 bring suit against such ~~person, firm or corporation~~ entity in the name of the
39 state to recover the amount. Any amounts received from any such ~~persons,~~
40 ~~firms or corporations~~ entity shall be deposited in the state treasury and
41 credited to the fund from which the cost of such removal was paid.

42 (b) ~~In addition to the powers provided in subsection (a),~~ The secretary
43 may advance moneys to a public utility or any entity described in

1 ~~subsection (a) when the utilities, structures or facilities of such public~~
2 ~~utility or entity are being moved, modified or relocated and in the~~
3 ~~secretary's opinion secretary determines that the expeditious movement,~~
4 ~~modification or relocation of any such utilities, structures or facilities,~~
5 ~~from current or proposed highway right-of-way, is necessitated by a~~
6 ~~current or proposed highway project. The secretary shall not advance~~
7 ~~moneys to a public utility or any such entity, unless such public utility or~~
8 ~~entity can demonstrate a financial need for the advancement of such~~
9 ~~moneys.~~

10 ~~The secretary shall not advance moneys in excess of \$20,000, per~~
11 ~~project, to any one public utility or entity. Such public utility or entity~~
12 ~~advanced money by the secretary shall pay interest upon such money at~~
13 ~~the rate of interest equal to the average yield before taxes received on 91-~~
14 ~~day United States treasury bills as determined by the federal reserve banks~~
15 ~~as fiscal agents of the United States at its most recent public offering of~~
16 ~~such bills prior to the date of the advancement of such money. The term~~
17 ~~for the repayment of such money by such public utility or entity shall not~~
18 ~~exceed 60 months.~~

19 ~~Nothing in this subsection shall give any public utility or entity any~~
20 ~~standing on rights of compensation not currently available under law, and~~
21 ~~all such payments are deemed a matter of legislative policy to rest solely~~
22 ~~within the discretion of the secretary of transportation for the purpose of~~
23 ~~expediting the construction, reconstruction or maintenance of the state~~
24 ~~highway system.~~

25 *(c) Any entity that modifies or relocates any facilities pursuant to an*
26 *order from the secretary pursuant to subsection (a) shall be entitled to*
27 *reimbursement from the secretary for the costs incurred by such entity to*
28 *complete such modification or relocation, except that an entity shall not be*
29 *entitled to receive reimbursement for any costs that were paid with moneys*
30 *advanced by the secretary pursuant to subsection (b). After modifying or*
31 *relocating any such facilities, the entity shall submit to the secretary of*
32 *transportation a description of the costs incurred by such entity and a*
33 *request for reimbursement of such costs. Within 90 days following receipt*
34 *of a request for reimbursement, the secretary of transportation shall*
35 *authorize and make such reimbursement payment to the requesting entity.*
36 *Notwithstanding any provision of law, or any rule, permit, agreement,*
37 *franchise or other authorization, to the contrary, the provisions of this*
38 *section shall apply to all highway projects, including any highway projects*
39 *currently in progress, whether funded by state or federal moneys.*

40 *(d) The secretary of transportation shall adopt rules and regulations*
41 *establishing the procedure and criteria for the advancement and*
42 *reimbursement of moneys under the provisions of this subsection.*

43 *(e)(e) (1) Notwithstanding the provisions of subsection (a), any rural*

1 water district created under the provisions of K.S.A. 82a-612 et seq., and
2 amendments thereto, or any public wholesale water supply district created
3 pursuant to K.S.A. 19-3545 et seq., and amendments thereto, ~~which that,~~
4 after excluding such water lines that cross a highway, has 90% or more of
5 its remaining water lines on private right-of-way and is required to relocate
6 such district's water lines in accordance with subsection (a):

7 ~~(+)(A)~~ Shall be reimbursed for such district's costs for relocating such
8 water lines; or

9 ~~(2)(B)~~ if the secretary of transportation relocates the district's water
10 lines, such district shall not be required to reimburse the secretary of
11 transportation the costs for relocating such water lines.

12 (2) The provisions of this subsection shall apply to all state highway
13 funded projects, including any highway projects currently in progress.

14 Sec. 3. K.S.A. 68-2005 is hereby amended to read as follows: 68-
15 2005. (a) The authority shall have power to construct grade separations at
16 intersections of any turnpike project with public highways and to change
17 and adjust the lines and grades of such highways so as to accommodate the
18 same to the design of such grade separation. The cost of such grade
19 separations and any damage incurred in changing and adjusting the lines
20 and grades of such highways shall be ascertained and paid by the authority
21 as a part of the cost of such turnpike project.

22 (b) If the authority shall find it necessary to change the location of
23 any portion of any public highway, it shall cause the same to be
24 reconstructed at such location as the authority shall deem most favorable
25 and of substantially the same type and in as good condition as the original
26 highway. The cost of such reconstruction and any damage incurred in
27 changing the location of any such highway shall be ascertained and paid
28 by the authority as a part of the cost of such turnpike project. ~~Provided,~~
29 The authority shall not change the location of any portion of a public
30 highway ~~which that~~ is a part of the state highway system without the
31 approval of the secretary of transportation.

32 (c) Any public highway affected by the construction of any turnpike
33 project may be vacated or relocated by the authority in the manner now
34 provided by law for the vacation or relocation of public roads, and any
35 damages awarded on account thereof shall be paid by the authority as a
36 part of the cost of such project.

37 (d) In addition to the foregoing powers, the authority ~~and its the~~
38 *authority's* authorized agents and employees may enter upon any lands,
39 waters and premises in the state for the purpose of making surveys,
40 soundings, drillings and examinations ~~as they the authority~~ may deem
41 necessary or convenient for the purposes of this act, and such entry shall
42 not be deemed a trespass; nor shall an entry for such purposes be deemed
43 an entry under any *pending* condemnation proceedings ~~which may be then~~

1 ~~pending.~~ The authority shall make reimbursement for any actual damage
2 resulting to such lands, waters and premises as a result of such activities.

3 (e) The authority ~~shall also have power to~~ *may* make reasonable
4 regulations for the installation, construction, maintenance, repair, renewal,
5 relocation and removal of *any facilities, including any tracks, pipes, mains,*
6 *conduits, cables, wires, towers, poles and other equipment and appliances*
7 *(herein called "transmission facilities") of any video service provider, as*
8 *defined in K.S.A. 12-2022, and amendments thereto, provider of*
9 *broadband internet access service, as defined in 47 C.F.R. § 8.1, public*
10 *utility, pipeline company or pipeline operator located in, on, along, over or*
11 *under any turnpike project. Whenever the authority shall determine that it*
12 *is necessary that any such* ~~transmission~~ *facilities which now are, or*
13 *hereafter may be, located in, on, along, over or under any turnpike project,*
14 ~~should be relocated in such turnpike project, or should be removed from~~
15 *such turnpike project, the owner or operator of such facilities shall relocate*
16 *or remove the same such facilities* in accordance with the order of the
17 authority: ~~Provided, however, That.~~ The cost and expenses of such
18 relocation or removal, including the cost of installing ~~such~~ facilities in a
19 new location ~~or new locations~~, and the cost of any lands, or any rights or
20 interests in lands, and any other rights, acquired to accomplish such
21 relocation or removal, shall be ascertained and paid by the authority as a
22 part of the cost of such turnpike project. ~~In case of~~ *After* any such
23 relocation or removal of facilities, the owner or operator ~~of the same, their~~
24 *and any such* successors or assigns; may maintain and operate such
25 facilities, with the necessary appurtenances, in the new location ~~or new~~
26 ~~locations~~, for as long a period, and upon the same terms and conditions; as
27 ~~they~~ *such owner or operator* had the right to maintain and operate such
28 facilities ~~in their former location or locations~~ *prior to the relocation or*
29 *removal.*

30 (f) The authority ~~shall also have power to~~ *may* enter into contracts
31 with any landowners for the construction and maintenance of underpasses
32 and bridges under and across any turnpike project running across or
33 through such landowner's land.

34 (g) The state hereby consents to the use of all lands owned by it,
35 including lands lying under water, which are deemed by the authority to be
36 necessary for the construction or operation of any turnpike project.

37 Sec. 4. K.S.A. 68-402b, 68-415 and 68-2005 are hereby repealed.

38 Sec. 5. This act shall take effect and be in force from and after its
39 publication in the statute book.