

HOUSE BILL No. 2588

AN ACT concerning counties; relating to the public right-of-way; authorizing telecommunication, broadband and video service providers to operate in county public right-of-way; limiting the fees and costs that a county may impose upon such providers for such activities.

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

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

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

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

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

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

(b) As used in this section:

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

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

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

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

(2) "Provider" means a local exchange carrier or telecommunications carrier as such terms are defined in K.S.A. 66-1,187 and amendments thereto, or a video service provider as defined in K.S.A. 12-2022, and amendments thereto. "Provider" does not include an applicant as defined in K.S.A. 66-2019, and amendments thereto.

(c) Without abrogating any rights held by a video service provider pursuant to a state-issued video service authorization, any provider shall have the right pursuant to this section 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 this state. Such poles, conduit, cable, switches and related appurtenances and facilities shall be so constructed and maintained as not to obstruct or hinder the usual travel or public safety on such public ways or the legal use by other utilities or providers.

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

(1) The permit fees charged by the county;

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

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

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

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

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

costs of managing the public right-of-way:

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

(2) an excavation permit fee for each pavement cut to recover the direct and reasonable costs associated with construction and repair activity of the provider. Any excavation permit fee imposed by the county shall be based upon a regional specific or other appropriate study establishing the basis for such costs that takes into account the life of the county road or highway prior to the construction or repair activity and the remaining life of the road or highway. Such excavation permit fee shall be expressly limited to the proportion of the cost attributable to the activity of the provider that results in an actual pavement cut; and

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

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

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

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

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

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

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

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

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

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

I hereby certify that the above BILL originated in the HOUSE, and was adopted by that body

HOUSE adopted
Conference Committee Report _____

Speaker of the House.

Chief Clerk of the House.

Passed the SENATE
as amended _____

SENATE adopted
Conference Committee Report _____

President of the Senate.

Secretary of the Senate.

APPROVED _____

Governor.