

FIRST REGULAR SESSION

[CORRECTED]

[TRULY AGREED TO AND FINALLY PASSED]

SENATE SUBSTITUTE FOR

SENATE COMMITTEE SUBSTITUTE FOR

HOUSE COMMITTEE SUBSTITUTE FOR

# HOUSE BILL NO. 209

93RD GENERAL ASSEMBLY

0648S.10T

2005

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## AN ACT

To amend chapters 71, 92, and 227, RSMo, by adding thereto eighteen new sections relating to assessment and collection of various taxes on telecommunications companies, with an effective date for certain sections.

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*Be it enacted by the General Assembly of the state of Missouri, as follows:*

Section A. Chapters 71, 92, and 227, RSMo, are amended by adding thereto eighteen  
2 new sections, to be known as sections 71.675, 92.074, 92.077, 92.080, 92.083, 92.086, 92.089,  
3 92.092, 92.098, 227.241, 227.242, 227.243, 227.244, 227.245, 227.246, 227.247, 227.248, and  
4 227.249, to read as follows:

**71.675. 1. Notwithstanding any other provision of law to the contrary, no city or  
2 town shall bring any action in federal or state court in this state as a representative  
3 member of a class to enforce or collect any business license tax imposed on a  
4 telecommunications company. A city or town may, individually or as a single plaintiff in**

EXPLANATION — Matter enclosed in bold-faced brackets [thus] in the above bill is not enacted and is intended to be omitted from the law. Matter in **bold-face** type in the above bill is proposed language.

5 a multiple-plaintiff lawsuit, bring an action in federal or state court in this state to enforce  
6 or collect any business license tax imposed on a telecommunications company.

7 2. Nothing in this section shall be construed to preclude any taxpayer from  
8 initiating an action in federal or state court as a representative member of a class seeking  
9 injunctive relief against the Missouri department of revenue to enforce the imposition,  
10 assessment, or collection of the business license tax provided under sections 92.074 to  
11 92.098, RSMo.

2 92.074. Sections 92.074 to 92.098 shall be known as the "Municipal  
Telecommunications Business License Tax Simplification Act".

2 92.077. As used in sections 92.074 to 92.098, unless the context clearly requires  
otherwise, the following terms mean:

3 (1) "Business license tax", any tax, including any fee, charge, or assessment in the  
4 nature of a tax, assessed by a municipality on a telecommunications company for the  
5 privilege of doing business within the borders of such municipality, and specifically  
6 includes any tax assessed on a telecommunications company by a municipality under  
7 section 66.300, RSMo, and section 80.090, RSMo, section 92.073, section 94.110, 94.270, or  
8 94.360, RSMo, or under authority granted in its charter, as well as an occupation license  
9 tax, gross receipts tax, franchise tax, or similar tax, but shall not include:

10 (a) Any state or municipal sales tax imposed under sections 144.010 to 144.525,  
11 RSMo; or

12 (b) Any municipal right-of-way usage fee imposed under the authority of a  
13 municipality's police powers under Section 253(c) of the Federal Telecommunications Act  
14 of 1996, or under sections 67.1830 to 67.1846, RSMo; or

15 (c) Any tax or fee levied for emergency services under section 190.292, 190.305,  
16 190.325, 190.335, or 190.430, RSMo, or any tax authorized by the general assembly after  
17 August 28, 2005, for emergency services;

18 (d) Any flat tax duly imposed on or before August 28, 2005;

19 (2) "Director", the director of the department of revenue;

20 (3) "Municipal", of or relating to a municipality;

21 (4) "Municipality", any city, county, town, or village in Missouri entitled by  
22 authority of section 66.300, RSMo, section 80.090, RSMo, section 92.073, section 94.110,  
23 94.270, or 94.360, RSMo, or under authority granted in its charter to assess a business  
24 license tax on telecommunications companies;

25 (5) "Telecommunications company", any company doing business in this state that  
26 provides telecommunications service;

27           (6) "Telecommunications service", the same meaning as such term is defined in  
28 section 144.010, RSMo. The term telephone company, as used in sections 94.110, 94.270,  
29 and 94.360, RSMo, shall have the same meaning as telecommunications company as  
30 defined in this section.

**92.080.** Notwithstanding any provisions of this chapter or chapter 66, 80, or 94,  
2 RSMo, or the provisions of any municipal charter, after August 28, 2005, no municipality  
3 may impose any business license tax, tower tax, or antennae tax on a telecommunications  
4 company except as specified in sections 92.074 to 92.098.

**92.083. 1.** On or after July 1, 2006, if any city, county, village, or town has imposed  
2 a business license tax on a telecommunications company, as authorized in this chapter, or  
3 chapter 66, 80, or 94, RSMo, or under the authority granted in its charter, the terms used  
4 in such ordinance shall be construed, for the purposes of section 92.074 to 92.098, to have  
5 the meanings set forth in this section, regardless of any contrary definition in the  
6 ordinance:

7           (1) "Gross receipts" means all receipts from the retail sale of telecommunications  
8 service taxable under section 144.020, RSMo, and from any retail customer now or  
9 hereafter exempt from the state sales tax;

10           (2) "Telephone service", "telecommunications service", "telecommunications",  
11 "local exchange service", "local exchange telephone transmission service", "exchange  
12 telephone service" or similar terms means telecommunications service as defined in section  
13 92.077.

14           **2.** Nothing in this section shall have the effect of repealing any existing ordinance  
15 imposing a business license tax on a telecommunications company; provided that a city  
16 with an ordinance in effect prior to August 28, 2005, complies with the provisions of section  
17 92.086.

18           **3.** Any business license tax imposed on a telecommunications company after July  
19 1, 2006, shall be imposed on the retail sale of telecommunications service.

**92.086. 1.** On or before January 1, 2006, the director shall publish a list of the  
2 municipalities which have, prior to August 28, 2005, enacted ordinances imposing a  
3 business license tax on a telecommunications company. The list shall contain:

4           (1) The name of the municipality imposing the tax;

5           (2) The name of the tax as denoted by the municipality;

6           (3) The citation to the municipal code provisions imposing the tax; and

7           (4) The percentage of gross receipts.

8

9 The director shall not be required to include any figures for the percentage of gross  
10 receipts if the municipality in question at the time of August 28, 2005, had an ordinance  
11 which imposed a flat fee instead of a fee based on gross receipts as its business license tax.  
12 In compiling the list, the director shall collect information from telecommunications  
13 companies, municipalities, municipal codes, and other reliable sources.

14 2. (1) On or before February 1, 2006, all telecommunications companies in  
15 Missouri shall provide the director and the state auditor with the amount of municipal  
16 business license tax which they paid each Missouri municipality identified by the director  
17 in accordance with subsection 1 of this section for the previous four quarters. On or before  
18 February 1, 2006, all telecommunications companies in Missouri shall provide the director  
19 and the state auditor with an itemized list establishing their gross receipts for the previous  
20 four quarters for each category of gross receipts in each municipality identified by the  
21 director in accordance with subsection 1 of this section upon which a sales tax is paid;

22 (2) On or before February 1, 2006, each municipality shall provide the director and  
23 state auditor with the total amount of tax revenue collected for the previous fiscal year of  
24 taxable gross receipts from telecommunications companies. Any inconsistency or dispute  
25 arising from the information provided by the municipalities and telecommunications  
26 companies shall be resolved through an audit performed by the state auditor.

27 3. Beginning on July 1, 2006, the director shall henceforth collect, administer, and  
28 distribute telecommunications business license tax revenues in accordance with the  
29 provisions of sections 92.074 to 92.098.

30 4. Notwithstanding the provisions of any municipal business license tax ordinance,  
31 effective July 1, 2006, all business license taxes shall be based solely and exclusively on  
32 those gross receipts of telecommunications companies for the retail sale of  
33 telecommunications services which are subject to taxation under sections 144.010 and  
34 144.020, RSMo. Any provisions in any municipal taxing ordinances which provide  
35 different definitions, rules, or provisions are expressly preempted and are null and void.

36 5. The director is authorized to promulgate regulations to establish the appropriate  
37 procedures for collecting, administering, and distributing such taxes. A  
38 telecommunications company shall file a quarterly return with the director with an  
39 attached schedule setting forth the total amount of taxable gross receipts for the quarter  
40 and the amount of business license tax due to each municipality. The director shall  
41 distribute the appropriate amounts, as set forth in this section, to the municipalities. In  
42 exchange for its collection, administration, and distribution functions, the department of  
43 revenue shall retain a collection fee of up to one percent (not to exceed the actual costs  
44 incurred) on all funds collected and distributed and shall be allowed to collect the interest

45 off such funds during the time between collection and distribution. In no event shall the  
46 director fail to distribute the collected funds to a municipality more than thirty days after  
47 the collection of the funds.

48         **6. It is the intent of the general assembly that sections 92.074 to 92.098 comply with**  
49 **Article X, Section 22 of the Missouri Constitution, so that the application of sections 92.074**  
50 **to 92.098 shall have a revenue-neutral effect. Because business license taxes shall now be**  
51 **based on the gross receipts subject to the sales tax, it is anticipated that the base of the**  
52 **existing business license taxes in most cases shall be broadened, so in order to comply with**  
53 **Article X, Section 22 of the Missouri Constitution, the municipality shall adjust the gross**  
54 **receipts percentage rate identified by the director in accordance with subsection 2 of this**  
55 **section so that the amount collectable, in total from all telecommunications companies,**  
56 **excluding the collection fee authorized in subsection 5 as defined herein, before and**  
57 **immediately after enactment remains the same in each municipality. If the determination**  
58 **is made by a municipality that in order to comply with article X, section 22 of the Missouri**  
59 **Constitution the gross receipts percentage rate must be increased, such increase shall be**  
60 **passed by a majority vote of the qualified voters voting in that municipality. The existing**  
61 **tax base shall be an amount equal to the total amount of telecommunication business**  
62 **license taxes collected by a municipality for fiscal year 2005, increased by fifty percent of**  
63 **the difference between such amount and the business license tax receipts that would have**  
64 **been yielded by applying the gross receipts percentage rate identified in accordance with**  
65 **subsection 1 of this section to the total gross receipts for all wireless telecommunications**  
66 **services provided by telecommunications companies as identified in 47 U.S.C. section**  
67 **332(D)(1) and 47 C.F.R. Parts 22 or 24 in such fiscal year attributable to the municipality.**  
68 **Based upon the rate information received from the director under this section, each**  
69 **municipality shall, no later than April 1, 2006, promulgate and publish the revenue neutral**  
70 **rates to be applied in each municipality. Such tax rates shall be the applicable business**  
71 **license tax rate for bills rendered on or after July 1, 2006. Any percentages in any**  
72 **ordinance that are contrary to that established by the municipality herein are null and**  
73 **void. If any municipal business license tax ordinance as of January 1, 2005, had a**  
74 **provision stating that the tax only applied to business customers, the new calculated rate**  
75 **under this section also shall be determined based only on business customers and shall**  
76 **apply only to business customers.**

77         **7. On or before April 1, 2007, the director, in consultation with the state auditor**  
78 **and municipalities, shall examine revenues collected and forecast whether a shortfall or**  
79 **excess in municipal revenues for each municipality is likely to occur for the fiscal year**  
80 **ending June 30, 2007, due to data reporting errors or other errors in the calculation of the**

81 revenue neutral tax rate. Section 32.057, RSMo, shall not restrict the disclosure of  
82 information to perform such consultation. If a shortfall or excess is expected, the director,  
83 after review and comment from municipalities and telecommunications companies, shall  
84 promulgate and publish an adjustment in the rate in such municipalities. Such tax rate  
85 adjustment, if necessary, shall apply to bills issued after July 1, 2007.

86 **8. The director shall be notified in writing within thirty days of any change in the**  
87 **municipal business license tax rate adopted by a municipality. The director shall**  
88 **promulgate such rate changes, but such rate changes may only take effect on the first day**  
89 **of a calendar quarter and only after a minimum of ninety days notice from the director to**  
90 **a telecommunications company. Any subsequent increase in the business license tax rate**  
91 **passed through an ordinance by a municipality which is above that rate as established by**  
92 **the municipality under subsection 6 of this section shall be passed by a majority vote of the**  
93 **qualified voters voting in that municipality. No municipal tax rate shall exceed the cap**  
94 **provided in subsection 9 of this section.**

95 **9. Notwithstanding the provisions of subsections 3 to 8 of this section or any other**  
96 **provision of law to the contrary, for any municipality not subject to the provisions of**  
97 **subsection 10 of this section, the maximum rate of taxation on gross receipts shall not**  
98 **exceed five percent for bills rendered on or after July 1, 2006, except if the business license**  
99 **tax rate for any municipality, as calculated in subsection 6 of this section, or if necessary,**  
100 **subsection 7 of this section, is determined to be greater than five percent, then,**  
101 **notwithstanding the provisions of such subsections, the business license tax rates for such**  
102 **municipality on and after July 1, 2006, shall be as follows:**

103 **(1) For bills rendered between July 1, 2006, and June 30, 2008, the rate shall be the**  
104 **actual adjusted rate as determined by subsection 6 or this section, or, if necessary,**  
105 **subsection 7 of this section;**

106 **(2) For bills rendered between July 1, 2008, and June 30, 2010, the rate shall be half**  
107 **the sum of the rate determined in subdivision (1) of this subsection and five percent; and**

108 **(3) For all bills rendered on and after July 1, 2010, five percent.**

109 **10. (1) Any municipality which prior to November 4, 1980, had an ordinance**  
110 **imposing a business license tax on telecommunications companies which specifically**  
111 **included the words "wireless", "cell phones", or "mobile phones" in its business license**  
112 **tax ordinance as revenues upon which a business license tax could be imposed, and had not**  
113 **limited its tax to local exchange telephone service or landlines, and had taken affirmative**  
114 **action to collect such tax from wireless telecommunications providers prior to January 15,**  
115 **2005, shall not be required to adjust its business license tax rate as provided in subsection**  
116 **6 of this section and shall not be subject to the provisions of subsection 9 of this section.**

117           **(2) Any municipality which has an ordinance or an amendment to an ordinance**  
118 **imposing a business license tax on telecommunications companies which was authorized**  
119 **or amended by a public vote subsequent to November 4, 1980, and such authorization**  
120 **specifically included the terms "wireless", "cell phones", or "mobile telephones" as**  
121 **revenues upon which a business license tax could be imposed, and had not limited its tax**  
122 **to local exchange telephone service or landlines, and had taken affirmative action to collect**  
123 **such tax from wireless telecommunications providers prior to January 15, 2005, shall not**  
124 **be required to adjust its business license tax rate as provided in subsection 6 of this section**  
125 **and shall not be subject to the provisions of subsection 9 of this section.**

126           **11. For purposes of sections 92.074 to 92.098, the director and any municipality**  
127 **shall have the authority to audit any telecommunications company. Notwithstanding the**  
128 **provisions of section 32.057, RSMo, the director of revenue shall furnish any municipality**  
129 **with information it requests to permit the municipality to review and audit the payments**  
130 **of any telecommunications company.**

131           **12. The statute of limitations shall be three years for the alleged nonpayment or**  
132 **underpayment of the business license tax.**

133           **13. Any telecommunications company is authorized to pass through to its retail**  
134 **customers all or part of the business license tax.**

135           **14. The provisions of subsection 5 of section 144.190, RSMo, and subdivision (3) of**  
136 **subsection 12 of section 32.087, RSMo, shall apply to the tax imposed under sections 92.074**  
137 **to 92.098.**

138           **15. Unless specifically stated otherwise in sections 92.074 to 92.098, taxpayer**  
139 **remedies, enforcement mechanisms, tax refunds, tax protests, assessments, and all other**  
140 **procedures shall be the same as those provided in chapter 144, RSMo.**

141           **16. Any rule or portion of a rule, as that term is defined in section 536.010, RSMo,**  
142 **that is created under the authority delegated in this section shall become effective only if**  
143 **it complies with and is subject to all of the provisions of chapter 536, RSMo, and, if**  
144 **applicable, section 536.028, RSMo. This section and chapter 536, RSMo, are nonseverable**  
145 **and if any of the powers vested with the general assembly pursuant to chapter 536, RSMo,**  
146 **to review, to delay the effective date, or to disapprove and annul a rule are subsequently**  
147 **held unconstitutional, then the grant of rulemaking authority and any rule proposed or**  
148 **adopted after the effective date of this section, shall be invalid and void.**

**92.089. 1. The general assembly finds and declares it to be the policy of the state**  
2 **of Missouri that costly litigation which have or may be filed by Missouri municipalities**  
3 **against telecommunications companies, concerning the application of certain business**  
4 **license taxes to certain telecommunications companies, and to certain revenues of those**

5 telecommunications companies, as set forth below, is detrimental to the economic well  
6 being of the state, and the claims of the municipal governments regarding such business  
7 licenses have neither been determined to be valid nor liquidated. The general assembly  
8 further finds and declares that the resolution of such uncertain litigation, the uniformity,  
9 and the administrative convenience and cost savings to municipalities resulting from, and  
10 the revenues which will or may accrue to municipalities in the future as a result of the  
11 enactment of sections 92.074 to 92.098 are full and adequate consideration to  
12 municipalities, as the term "consideration" is used in Article III, Section 39(5) of the  
13 Missouri Constitution, for the immunity and dismissal of lawsuits outlined in subsection  
14 2 of this section.

15 2. In the event any telecommunications company, prior to July 1, 2006, failed to pay  
16 any amount to a municipality based on a subjective good faith belief that either:

17 (1) It was not a telephone company covered by the municipal business license tax  
18 ordinance, or the statute authorizing the enactment of such taxing ordinance, or did not  
19 provide telephone service as stated in the business license tax ordinance, and therefore  
20 owed no business license tax to the municipality; or

21 (2) That certain categories of its revenues did not qualify under the definition or  
22 wording of the ordinance as gross receipts or revenues upon which business license taxes  
23 should be calculated;

24

25 such a telecommunications company is entitled to full immunity from, and shall not be  
26 liable to a municipality for, the payment of the disputed amounts of business license taxes,  
27 up to and including July 1, 2006. However, such immunity and release from liability shall  
28 not apply to any business license tax imposed in accordance with subdivisions (1) and (2)  
29 of subsection 10 of section 92.086 or sections 92.074 to 92.098 after July 1, 2006. If any  
30 municipality, prior to July 1, 2006, has brought litigation or caused an audit of back taxes  
31 for the nonpayment by a telecommunications company of municipal business license taxes,  
32 it shall immediately dismiss such lawsuit without prejudice and shall cease and desist from  
33 continuing any audit, except those cities described in subsection 10 of section 92.086.

92.092. All provisions of sections 92.074 to 92.089 are so essentially and inseparably  
2 connected with, and so dependent upon, each other that no such provision would be  
3 enacted without all others. If a court of competent jurisdiction enters a final judgment on  
4 the merits that is not subject to appeal and that declares any provision or part of sections  
5 92.974 to 92.089 unconstitutional or unenforceable then sections 92.074 to 92.089, in their  
6 collective entirety, are invalid and shall have no legal effect as of the date of such judgment.  
7 In such event, both telecommunications companies and municipalities shall have the same



8 rights as existed before the enactment of sections 92.074 to 92.089, but shall not be entitled  
9 to reimbursement, or required to pay reimbursement, for any sums paid in the good faith  
10 belief in the validity and constitutionality of sections 92.074 to 92.089.

92.098. The provisions of section 71.675, RSMo, are severable from the provisions  
2 of sections 92.074 to 92.092. If any portion of sections 92.074 to 92.092 is declared  
3 unconstitutional or the application of any part of sections 92.074 to 92.092 to any person  
4 or circumstance is held invalid, section 71.675, RSMo, and its applicability to any person  
5 or circumstance shall remain valid and enforceable. If any portion of section 71.675,  
6 RSMo, is declared unconstitutional or the application of any part of section 71.675, RSMo,  
7 to any person or circumstance is held invalid, sections 92.074 to 92.092 and its applicability  
8 to any person or circumstance shall remain valid and enforceable.

227.241. Sections 227.241 to 227.249 shall be known as the "State Highway Utility  
2 Relocation Act". The commission shall not be required to redesign any project plans or  
3 mail additional notices, nor shall the owner of a utility facility be required to submit  
4 additional relocation plans or otherwise comply with requirements of sections 227.241 to  
5 227.249 for any construction project on a state highway for which the letting date was prior  
6 to December 31, 2005.

227.242. As used in sections 227.241 to 227.249, the following terms shall mean:

- 2 (1) "Act of God", an unanticipated grave natural disaster or other natural  
3 phenomenon of an exceptional, inevitable, and irresistible character, the effects of which  
4 could not have been prevented or avoided by the exercise of due care or foresight;
- 5 (2) "Commission," the highways and transportation commission created under  
6 section 226.020, RSMo, and article IV, section 29 of the Missouri Constitution, the director,  
7 or designees of the director for the purpose of sections 227.240 to 227.248;
- 8 (3) "Construction project", all contracts for construction of state highways let  
9 under section 227.100, except for contracts for maintenance or resurfacing determined by  
10 the commission not to conflict with public utilities and routine maintenance and repairs  
11 completed by employees of the commission. This term shall also include state highway  
12 construction projects of transportation development districts and corporations under  
13 chapter 238, RSMo, if such projects are awarded pursuant to section 227.100. The term  
14 "construction project" shall not include projects for road beautification, road irrigation,  
15 and drainage projects, culvert installation or repair, sound wall installation, decorative  
16 lighting, landscaping, or other projects not directly related to improving or routing  
17 highway traffic. The term "construction project" shall also not include any project  
18 authorized by the commission to accommodate any private development, including a  
19 shopping mall, stadium, office building, or arena;

20 (4) "Contractor", any person entering into a contract with the highway and  
21 transportation commission for purposes of completing a construction project on a state  
22 highway, including a subcontractor or supplier to such contractor;

23 (5) "Customer delays", delays in the relocation work due to delays caused by the  
24 utility's customers, including but not limited to delays in getting written or oral approvals  
25 from customers for permissible utility service cut-over dates;

26 (6) "Cut-over date", the date utility owner interrupts utility service to a utility  
27 customer provided through an existing utility facility and switches the service over to a new  
28 utility facility serving the customer;

29 (7) "Day" or "days", a business day or a period of consecutive business days  
30 consisting of every work day excluding Saturdays, Sundays, and legal holidays;

31 (8) "Director", the director of the Missouri department of transportation appointed  
32 pursuant to section 226.040;

33 (9) "Extreme weather event", a severe weather occurrence, including but not  
34 limited to fire, flood, earthquake, tornado, wind, hurricane, storm, ice, abnormal rainfall,  
35 blizzard, or extended periods of severe inclement weather;

36 (10) "Letting date", the date established by the commission for the acceptance of  
37 bids by contractors under section 227.100;

38 (11) "Mail", a dated written transmittal sent to the addressee by regular or  
39 certified mail;

40 (12) "Maintenance", routine work performed on state highways by employees of  
41 the commission or contractors to the commission, including minor pavement and shoulder  
42 repairs, striping, grading, irrigation ditch clearing, street overlays, and other work  
43 determined by the commission not to conflict with public utilities;

44 (13) "Notice to proceed", notice by the commission to a contractor to proceed with  
45 work on a contract awarded by the commission;

46 (14) "Owner", the individual, firm, joint venture, partnership, corporation,  
47 association, cooperative, municipality, county, district, political subdivision, department,  
48 agency, or any other institution owning or operating utility facilities;

49 (15) "Project plans", any plan for highway construction projects demonstrating the  
50 need to design and conduct utility facility alterations or relocations due to the work;

51 (16) "Relocate" or "relocation", the adjustment of utility facilities, as the  
52 commission or director may determine is necessary in connection with the construction of  
53 a state highway. Relocation includes:

54 (a) Removing and reinstalling the utility facility, including necessary temporary  
55 facilities;

56 (b) Moving, rearranging, or changing the type of existing utility facilities; and

57 (c) Taking any necessary safety and protective measures;

58 (17) "Relocation plan," a plan designed by the owner to carry out utility facility  
59 relocation work to accommodate a construction project on a state highway;

60 (18) "Resurfacing", work which provides a new roadway surface for existing  
61 pavement on a state highway, including minor base patching, intersection paving, shoulder  
62 work, and guard rail work which is determined by the commission not to conflict with  
63 public utilities;

64 (19) "State highway", a highway constructed or maintained at the cost of the state  
65 or constructed with the aid of state funds or United States government funds or any  
66 highway included by authority of law in the state highway system or any highway  
67 constructed under the authority of a transportation development district or corporation  
68 under chapter 238, RSMo, where such contract is awarded under section 227.100;

69 (20) "Utility contractor", a person contracting with an owner of a utility facility or  
70 a subcontractor to a person contracting with an owner of a utility facility, for the alteration  
71 relocation or installation of a utility facility in connection with a construction project on  
72 a state highway;

73 (21) "Utility facility", any underground facility as defined in section 319.015,  
74 RSMo, and aboveground facilities, including poles, lines, wires, and appurtenances for the  
75 purposes of electrical power, telephone, telegraph, fiber optic and cable television services,  
76 and any other purpose or which aboveground utility facilities may be located along state  
77 highways;

78 (22) "Work", construction and services required of the contractor by the  
79 contractor's contract with the commission, including excavation as that term is defined in  
80 section 319.015, RSMo.

227.243. 1. At the earliest possible date in the design of a construction project on  
2 a state highway, the commission shall attempt to determine what utility facilities are  
3 located within the right-of-way of the planned construction project by researching permit  
4 files and reviewing map files maintained by the commission. The commission shall also,  
5 as necessary, conduct field investigations and contact local governments to identify any  
6 utility facilities within the right-of-way.

7 2. Within thirty days of completion of the survey conducted under subsection 1 of  
8 this section, the commission shall notify in writing owners of each known utility facility  
9 that a construction project is planned that may conflict with their utility facility. The  
10 notification shall include the name or route number of the highway, the geographical limits  
11 of the planned construction project, a general description of the work to be done including

12 a preliminary plan, the desired date for completion of a relocation plan, and the  
13 anticipated month and year a letting date could be set for the construction project.

14 3. The owner shall examine the notice and notify the commission in writing of any  
15 utility facility not correctly described in the commission's notice. Within sixty days of  
16 receiving the notice required in subsection 2 of this section, the owner shall provide a  
17 written response to the commission. The response shall describe and provide the general  
18 location of each utility facility of the owner by confirming the location shown in the  
19 commission's notice or by providing additions or corrections.

227.244. 1. Upon completion of the initial design of the construction project, the  
2 commission shall provide at least one set of project plans to each owner of a utility facility  
3 identified under section 227.243.

4 2. The project plans shall show those portions of the construction project upon  
5 which the owner's utility facilities are located and where the utility facilities of other  
6 owners are located in relation to work required for the project. The commission shall also  
7 provide with the project plans a description of any right-of-way still to be purchased and  
8 the anticipated letting date of the project. The project plan shall be accompanied by a  
9 complete set of plans including profile, cross-section, drainage, signal, lighting, signing  
10 plans, temporary road plans that may affect utilities, and other pertinent plan sheets.  
11 Upon request of the owner, the commission shall provide any additional plan information  
12 needed by the owner to design and lay out the removal, relocation, or adjustment of  
13 existing facilities and the placement of relocated or new utility facilities within the limits  
14 of the construction project.

15 3. Within thirty days of receipt of the project plans, the utility owner shall develop  
16 a preliminary plan of adjustment and return the marked-up project plans to the  
17 commission. The plan of adjustment shall include:

- 18 (1) Verification that all utility facilities are shown;
- 19 (2) The proposed location of adjusted utility facilities;
- 20 (3) Any additional right-of-way requirements; and
- 21 (4) Any other concerns.

22 4. When two or more owners have facilities in the area encompassed by the  
23 construction project, the commission shall schedule a utility coordination meeting as soon  
24 as possible but no longer than thirty days from the date the project plans were mailed. The  
25 commission's project manager and all owners are required to attend this meeting. If there  
26 is a conflict between two owners which cannot be satisfactorily resolved by the owners, the  
27 commission shall determine the most appropriate method to resolve the conflict between  
28 the two owners, and, in making such determination, shall weigh equally the length of time

29 necessitated by each owner's proposal, and the relative cost to each owner if the other's  
30 proposal is adopted. The commission shall notify all utility owners involved with the  
31 project in writing of the commission's acceptance or revisions to the utility plan of  
32 adjustment.

227.245. 1. Within one hundred twenty days of receiving written notice of approval  
2 of the utility plan of adjustment from the commission, the owner shall provide the  
3 commission with a relocation plan. The one hundred twenty-day clock stops after the  
4 relocation plan is submitted by the owner. If, after timely submission of the relocation plan  
5 by the owner, revisions or alterations are necessary for any reason, or if the original  
6 relocation plan was incomplete due to information needed from other parties, the one  
7 hundred twenty-day clock begins to run again when the needed information is received  
8 back by the owner.

9 2. The relocation plan shall include a narrative description of work that will be  
10 done in relocating the owner's utility facilities and whether the work or a portion of the  
11 work must be coordinated with or is contingent upon work being performed by another  
12 utility facility owner or the contractor to the commission. The relocation plan shall list, if  
13 applicable, any anticipated issues or problems related to the acquisition of right-of-way.  
14 The relocation plan shall, if applicable, detail the anticipated number of days to acquire  
15 additional easements not provided within the new highway right-of-way. The relocation  
16 plan shall also give estimates as to the time needed to obtain any necessary customer  
17 approvals for cut-over dates, if necessary. The relocation plan shall state when the work  
18 will be started and the length of time in days estimated to complete the work. It is  
19 permissible for an owner to state in a relocation plan that the owner's work will be  
20 completed within a stated number of days from the date that a contractor or another  
21 owner completes certain identified work which interferes with the owner's work. The  
22 relocation plan shall identify any contingencies, if applicable, that may impact the  
23 anticipated start of relocation. The relocation plan shall also describe whether the plan is  
24 incomplete due to:

25 (1) Other owners failing to coordinate their plans with the owner submitting the  
26 plan;

27 (2) Other owners failing to provide information necessary to submit a complete  
28 relocation plan;

29 (3) The commission failing to provide any information required by subsection 2 of  
30 section 227.244; or

31 (4) Any other reason explained in the plan regarding the circumstances and cause  
32 of the plan being incomplete.

33           **3. The commission shall review the relocation plan to ensure compatibility with**  
34 **permit requirements, the project plan, and the anticipated letting date and notice to**  
35 **proceed for the project. If utility relocation is dependent upon or must be coordinated with**  
36 **work to be completed by the contractor, the relocation plan shall assure timely completion**  
37 **of the project. If the relocation plan is acceptable to the commission, the commission shall**  
38 **notify the owner in writing within thirty days of receiving the plan. If the relocation plan**  
39 **submitted by the owner is not compatible, reasonable, or does not allow timely completion**  
40 **of the project, the commission shall advise the owner in writing as soon as practicable, but**  
41 **not later than thirty days after receiving the relocation plan. The commission shall specify**  
42 **in the notice which parts of the relocation plan it finds objectionable, and the reasons for**  
43 **its conclusions. The owner shall submit a revised relocation plan within thirty calendar**  
44 **days after receipt of notice by the commission that the relocation plan is not acceptable.**  
45 **The commission shall review the revised relocation plan, and if the relocation plan is still**  
46 **not acceptable, the commission shall provide a relocation plan to the owner. The owner**  
47 **shall not be bound by the terms of the commission's relocation plan if such relocation plan:**

48           **(1) Requires the payment of overtime to employees to expedite the construction**  
49 **project; or**

50           **(2) Requires the owner to comply with a deadline which is not feasible due, in whole**  
51 **or in part, to one or more factors outside the control of the owner.**

52           **4. If the owner informs the commission, in writing, or the commission determines**  
53 **that the owner's relocation work is dependent upon or must be coordinated with work**  
54 **being performed by the commission's contractor, the commission shall convene a meeting**  
55 **of the contractor and the one or more owners whose relocation work is dependent upon or**  
56 **must be coordinated with the contractor's work. Such meeting shall be held after the**  
57 **letting date at which bids were received for the construction project, but prior to the**  
58 **issuance of a notice to proceed to the commission's contractor. After such meeting, and**  
59 **before or concurrent with the issuance of a notice to proceed, the commission shall provide**  
60 **a schedule for the relocation of utilities to the owner and the commission's contractor. If**  
61 **the approved relocation plan, or a portion of such plan, is dependent upon or must be**  
62 **coordinated with work to be performed by the contractor, the contractor shall notify the**  
63 **commission of its best estimate of the date that all construction necessary for the relocation**  
64 **of utilities will be completed, at least fourteen days prior to such date. If such completion**  
65 **date is delayed due to weather or other causes, the contractor shall immediately notify the**  
66 **commission of the delay and the revised expected completion date. The contractor shall**  
67 **give a second notice to the commission five days prior to the date work will be completed**  
68 **as necessary for relocation work to begin. It shall be the responsibility of the commission**

69 to notify the owner or owners of the contractor's estimated completion dates. The  
70 contractor may also notify the owner directly of such dates, if the contractor has received  
71 information from the owner under subsection 7 of this section, but such notice shall not  
72 relieve the commission of its obligation to notify the owner. If the contractor's delay causes  
73 additional delay by the owner, the commission and the owner shall negotiate in good faith  
74 to determine the new completion date.

75 5. (1) The commission shall notify the owner in writing not less than thirty days  
76 before the owner is required to begin relocation provided for in the approved relocation  
77 plan. Unless the owner has encountered excusable delay as set forth in subsection 4 of  
78 section 227.248, the owner shall complete its work within the time frame described in the  
79 relocation plan, and shall complete all work that can be done prior to construction before  
80 the issuance of the notice to proceed, including work that may need to be coordinated with  
81 other utility owners but is not dependent on the work of the contractor.

82 (2) The notice required by subdivision (1) of this subsection shall include the name,  
83 address, telephone number, facsimile number, and electronic mail address of the  
84 commission's contractor and any subcontractors performing work on the construction  
85 project. Such information shall also include the name and title of an individual employed  
86 by the contractor or subcontractor having primary responsibility for the construction  
87 project. Within fifteen days of receiving notice, the owner shall provide to the commission  
88 and the commission's contractor the name, address, telephone number, facsimile number,  
89 and electronic mail address of the employee of the owner who is responsible for  
90 implementation of the owner's relocation plan and the same information for any utility  
91 contractor to the owner for purposes of carrying out the relocation plan.

92 6. The owner shall notify the commission when relocation work has started. During  
93 the course of the relocation work, the commission may require owners to provide progress  
94 reports until its relocation is completed. The owner shall notify the commission when all  
95 relocation work is complete. All notices of either starting or completion of relocation work  
96 and all monthly progress reports shall be provided within five days after such dates.

227.246. 1. If, prior to the letting date of the construction project, the commission's  
2 project plan is changed so that additional or different utility relocation work is found  
3 necessary, the commission shall furnish a revised project plan under section 227.244, and  
4 the owner shall provide the commission with a revised relocation plan under section  
5 227.245, except that the time allowed for the owner to submit the revised relocation plan  
6 after receipt of the revised project plan shall not exceed sixty days.

7 2. If, after the letting date of the highway construction project, additional utility  
8 relocation work is found necessary which was not indicated on the original project plan,

9 the commission shall provide the owner with a revised project plan within fifteen days and  
10 the commission and the owner shall agree on a reasonable schedule for completion of the  
11 additional utility location.

227.247. 1. The commission shall have authority to require that any required  
2 notice, response, or plan be submitted by mail or certified mail. Otherwise notices, plans,  
3 and other statements in writing may be provided by mail, facsimile, or electronic mail. The  
4 commission may require that some form of proof of receipt be provided in regard to any  
5 notice, plan, or other statement in writing. Upon mutual agreement between the  
6 commission and an owner, additional time may be granted for the completion of any act  
7 required by sections 227.241 to 227.249.

8 2. Nothing in sections 227.241 to 227.249 shall be construed to relieve a contractor  
9 from making notice of excavation as required by sections 319.010 to 319.050, RSMo, of the  
10 underground facility safety and damage prevention act, or complying with the  
11 requirements of sections 319.075 to 319.090, RSMo, of the overhead powerline safety act,  
12 except to the extent that any provisions of sections 227.241 to 227.249 require additional  
13 obligations beyond those set forth in sections 319.011 to 319.050, RSMo, or sections 319.075  
14 to 319.090, RSMo, in which case the requirements of sections 227.241 to 227.249 shall  
15 prevail.

227.248. 1. If the owner of a utility facility fails to provide the responses or  
2 corrections to project plans required by sections 227.243 to 227.246, the commission may  
3 recover from the owner damages in the amount of up to one hundred dollars per day for  
4 each day the required act is not completed.

5 2. If the owner fails to provide a relocation plan or fails to timely relocate utility  
6 facilities in accordance with the relocation plan as required by section 227.245, the  
7 commission may recover from the owner damages in the amount of up to one thousand  
8 dollars per day for each day the required act is not completed.

9 3. The damages authorized by subsections 1 and 2 of this section may be recovered  
10 through actions brought by the chief counsel to the commission, or may be referred to the  
11 attorney general for appropriate action. An action to collect the damages authorized by  
12 this section shall be brought in a court of appropriate jurisdiction. All damages collected  
13 under this section shall be deposited in the state road fund.

14 4. No damages or fines of any kind shall be assessed for delays that result, in whole  
15 or in part, directly or indirectly, from any of the following:

- 16 (1) Customer delays;
- 17 (2) Labor strikes or shortages;
- 18 (3) Terrorist attacks, riots, civil unrest, or criminal sabotage;



- 19           **(4) Acts of God, or extreme weather events;**  
20           **(5) Delays caused by staffing shortages in the geographic area near the**  
21 **commission's construction project due to the owner's need to reassign an unusual number**  
22 **of workers to any other area to respond to an act of God or extreme weather event;**  
23           **(6) The failure of another owner to sufficiently complete its required relocation of**  
24 **utility facilities that interfere with an owner's relocation plan;**  
25           **(7) The failure of another owner or delay by another owner in submitting**  
26 **relocation plans that interfere with an owner's relocation plan;**  
27           **(8) Delays by the commission in acquiring necessary right-of-way or necessary**  
28 **easements;**  
29           **(9) Delays caused by facility damages or cable cuts caused by the commission's**  
30 **contractor, other owners, or third parties;**  
31           **(10) Unusual material shortages; and**  
32           **(11) Any other event or action beyond the reasonable control of the owner.**

33

34 **The occurrence of any of the unusual events listed in this section shall constitute an**  
35 **affirmative defense to the assessment of damages under the provisions of this section.**

36           **5. The removal and relocation of utility facilities shall be made at the expense of the**  
37 **owners unless otherwise provided by the commission. If the owner fails to relocate the**  
38 **utility facilities in accordance with the relocation plan as required by section 227.245, the**  
39 **utility facilities may be removed and relocated by the state highways and transportation**  
40 **commission, or under its direction, and the cost of relocating the utility facilities shall be**  
41 **collected from such owner. If the state highways and transportation commission or its**  
42 **designee removes and relocates the utility facilities, the utility owner shall not be liable to**  
43 **any party for any damages caused by the commission's or the commission's designee's**  
44 **removal and relocation of such facilities.**

**227.249. Any home rule city having a population of sixty thousand inhabitants or**  
2 **greater or any charter county of the first classification may adopt ordinances, policies,**  
3 **resolutions, or regulations consistent with sections 227.241 to 227.249 regarding the**  
4 **relocation of utility facilities located within the right-of-way of streets, highways, or roads**  
5 **under their respective jurisdiction, which are not state highways. Any ordinance, policy,**  
6 **resolution, or regulation adopted under the authority of this section shall not infringe**  
7 **upon, negate or otherwise abrogate an owner's right to construct, own, operate, and**  
8 **maintain utility facilities within the right-of-ways of such political subdivision that the**  
9 **owner otherwise enjoyed prior to the adoption of such ordinance, policy, resolution, or**  
10 **regulation.**

Section B. The provisions of sections 227.241 to 227.249 shall become effective  
2 January 1, 2006.