

SECOND REGULAR SESSION  
[TRULY AGREED TO AND FINALLY PASSED]  
HOUSE COMMITTEE SUBSTITUTE FOR  
SENATE SUBSTITUTE FOR  
SENATE COMMITTEE SUBSTITUTE FOR  
**SENATE BILL NO. 653**  
97TH GENERAL ASSEMBLY  
2014

5011H.10T

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**AN ACT**

To repeal sections 67.1830 and 67.5104, RSMo, and to enact in lieu thereof two new sections relating to municipal utility poles.

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

Section A. Sections 67.1830 and 67.5104, RSMo, are repealed and two new  
2 sections enacted in lieu thereof, to be known as sections 67.1830 and 67.5104, to  
3 read as follows:

67.1830. As used in sections 67.1830 to 67.1846, the following terms shall  
2 mean:

3 (1) "Abandoned equipment or facilities", any equipment materials,  
4 apparatuses, devices or facilities that are:

5 (a) Declared abandoned by the owner of such equipment or facilities;

6 (b) No longer in active use, physically disconnected from a portion of the  
7 operating facility or any other facility that is in use or in service, and no longer  
8 capable of being used for the same or similar purpose for which the equipment,  
9 apparatuses or facilities were installed; or

10 (c) No longer in active use and the owner of such equipment or facilities  
11 fails to respond within thirty days to a written notice sent by a political  
12 subdivision;

13 (2) "Degradation", the actual or deemed reduction in the useful life of the  
14 public right-of-way resulting from the cutting, excavation or restoration of the  
15 public right-of-way;

16 (3) "Emergency", includes but is not limited to the following:

**EXPLANATION—Matter enclosed in bold-faced brackets [thus] in this bill is not enacted and is intended to be omitted in the law.**

17 (a) An unexpected or unplanned outage, cut, rupture, leak or any other  
18 failure of a public utility facility that prevents or significantly jeopardizes the  
19 ability of a public utility to provide service to customers;

20 (b) An unexpected or unplanned outage, cut, rupture, leak or any other  
21 failure of a public utility facility that results or could result in danger to the  
22 public or a material delay or hindrance to the provision of service to the public  
23 if the outage, cut, rupture, leak or any other such failure of public utility facilities  
24 is not immediately repaired, controlled, stabilized or rectified; or

25 (c) Any occurrence involving a public utility facility that a reasonable  
26 person could conclude under the circumstances that immediate and undelayed  
27 action by the public utility is necessary and warranted;

28 (4) "Excavation", any act by which earth, asphalt, concrete, sand, gravel,  
29 rock or any other material in or on the ground is cut into, dug, uncovered,  
30 removed, or otherwise displaced, by means of any tools, equipment or explosives,  
31 except that the following shall not be deemed excavation:

32 (a) Any de minimis displacement or movement of ground caused by  
33 pedestrian or vehicular traffic;

34 (b) The replacement of utility poles and related equipment at the existing  
35 general location that does not involve either a street or sidewalk cut; or

36 (c) Any other activity which does not disturb or displace surface conditions  
37 of the earth, asphalt, concrete, sand, gravel, rock or any other material in or on  
38 the ground;

39 (5) "Management costs" or "rights-of-way management costs", the actual  
40 costs a political subdivision reasonably incurs in managing its public  
41 rights-of-way, including such costs, if incurred, as those associated with the  
42 following:

43 (a) Issuing, processing and verifying right-of-way permit applications;

44 (b) Inspecting job sites and restoration projects;

45 (c) Protecting or moving public utility right-of-way user construction  
46 equipment after reasonable notification to the public utility right-of-way user  
47 during public right-of-way work;

48 (d) Determining the adequacy of public right-of-way restoration;

49 (e) Restoring work inadequately performed after providing notice and the  
50 opportunity to correct the work; and

51 (f) Revoking right-of-way permits.

52 Right-of-way management costs shall be the same for all entities doing similar

53 work. Management costs or rights-of-way management costs shall not include  
54 payment by a public utility right-of-way user for the use or rent of the public  
55 right-of-way, degradation of the public right-of-way or any costs as outlined in  
56 paragraphs (a) to [(h)] **(f)** of this subdivision which are incurred by the political  
57 subdivision as a result of use by users other than public utilities, the attorneys'  
58 fees and cost of litigation relating to the interpretation of this section or section  
59 67.1832, or litigation, interpretation or development of any ordinance enacted  
60 pursuant to this section or section 67.1832, or attorneys' fees and costs in  
61 connection with issuing, processing, or verifying right-of-way [permit] **permits**  
62 or other applications or agreements, or the political subdivision's fees and costs  
63 related to appeals taken pursuant to section 67.1838. In granting or renewing a  
64 franchise for a cable television system, a political subdivision may impose a  
65 franchise fee and other terms and conditions permitted by federal law;

66 (6) "Managing the public right-of-way", the actions a political subdivision  
67 takes, through reasonable exercise of its police powers, to impose rights, duties  
68 and obligations on all users of the right-of-way, including the political  
69 subdivision, in a reasonable, competitively neutral and nondiscriminatory and  
70 uniform manner, reflecting the distinct engineering, construction, operation,  
71 maintenance and public work and safety requirements applicable to the various  
72 users of the public right-of-way, provided that such rights, duties and obligations  
73 shall not conflict with any federal law or regulation. In managing the public  
74 right-of-way, a political subdivision may:

75 (a) Require construction performance bonds or insurance coverage or  
76 demonstration of self-insurance at the option of the political subdivision or if the  
77 public utility right-of-way user has twenty-five million dollars in net assets and  
78 does not have a history of permitting noncompliance within the political  
79 subdivision as defined by the political subdivision, then the public utility  
80 right-of-way user shall not be required to provide such bonds or insurance;

81 (b) Establish coordination and timing requirements that do not impose a  
82 barrier to entry;

83 (c) Require public utility right-of-way users to submit, for right-of-way  
84 projects commenced after August 28, 2001, requiring excavation within the public  
85 right-of-way, whether initiated by a political subdivision or any public utility  
86 right-of-way user, project data in the form maintained by the user and in a  
87 reasonable time after receipt of the request based on the amount of data  
88 requested;

89           (d) Establish right-of-way permitting requirements for street excavation;  
90           (e) Establish removal requirements for abandoned equipment or facilities,  
91 if the existence of such facilities prevents or significantly impairs right-of-way  
92 use, repair, excavation or construction;  
93           (f) Establish permitting requirements for towers and other structures or  
94 equipment for wireless communications facilities in the public right-of-way,  
95 notwithstanding the provisions of section 67.1832;  
96           (g) Establish standards for street restoration in order to lessen the impact  
97 of degradation to the public right-of-way; and  
98           (h) Impose permit conditions to protect public safety;  
99           (7) "Political subdivision", a city, town, village, county of the first  
100 classification or county of the second classification;  
101           (8) "Public right-of-way", the area on, below or above a public roadway,  
102 highway, street or alleyway in which the political subdivision has an ownership  
103 interest, but not including:  
104           (a) The airwaves above a public right-of-way with regard to cellular or  
105 other nonwire telecommunications or broadcast service;  
106           (b) Easements obtained by utilities or private easements in platted  
107 subdivisions or tracts;  
108           (c) Railroad rights-of-way and ground utilized or acquired for railroad  
109 facilities; or  
110           (d) **Poles**, pipes, cables, conduits, wires, optical cables, or other means of  
111 transmission, collection or exchange of communications, information, substances,  
112 data, or electronic or electrical current or impulses utilized by a municipally  
113 owned or operated utility pursuant to chapter 91 or pursuant to a charter form  
114 of government;  
115           (9) "Public utility", every cable television service provider, every pipeline  
116 corporation, gas corporation, electrical corporation, rural electric cooperative,  
117 telecommunications company, water corporation, heating or refrigerating  
118 corporation or sewer corporation under the jurisdiction of the public service  
119 commission; every municipally owned or operated utility pursuant to chapter 91  
120 or pursuant to a charter form of government or cooperatively owned or operated  
121 utility pursuant to chapter 394; every street light maintenance district; every  
122 privately owned utility; and every other entity, regardless of its form of  
123 organization or governance, whether for profit or not, which in providing a public  
124 utility type of service for members of the general public, utilizes pipes, cables,

125 conduits, wires, optical cables, or other means of transmission, collection or  
126 exchange of communications, information, substances, data, or electronic or  
127 electrical current or impulses, in the collection, exchange or dissemination of its  
128 product or services through the public rights-of-way;

129 (10) "Public utility right-of-way user", a public utility owning or  
130 controlling a facility in the public right-of-way; and

131 (11) "Right-of-way permit", a permit issued by a political subdivision  
132 authorizing the performance of excavation work in a public right-of-way.

67.5104. 1. As used in this section, "pole attachment" means an  
2 attachment by **an attaching entity, including** a video service provider, a  
3 telecommunications **provider** or other communications-related service provider  
4 to a pole owned **or controlled** by a municipal utility **or municipality**, but not  
5 a wireless antenna attachment or an attachment by a wireless communications  
6 provider to a pole. **As used in this section, "pole" means a utility pole**  
7 **which is owned or controlled by a municipal utility or municipality, but**  
8 **shall not include poles that are not associated with the transmission or**  
9 **distribution of electric power, communications, broadband, or video**  
10 **services. A municipal utility or municipality may only deny an**  
11 **attaching entity access to the utility's poles on a nondiscriminatory**  
12 **basis if there is insufficient capacity or for reasons of safety and**  
13 **reliability and if the attaching entity will not resolve the issue. If a**  
14 **municipal utility or municipality does not find any capacity, safety, or**  
15 **reliability issues, such municipal utility or municipality shall issue the**  
16 **attaching entity a permit to attach to the municipal utility's or**  
17 **municipality's poles. Nothing in this section shall be construed to**  
18 **prohibit a municipal utility or municipality from requiring an**  
19 **attaching entity to enter into a pole attachment agreement consistent**  
20 **with this section.**

21 2. Notwithstanding sections 67.1830 to 67.1846, any pole attachment fees,  
22 terms, and conditions, including those related to the granting or denial of access,  
23 demanded by a municipal utility pole owner or controlling authority of a  
24 municipality shall be nondiscriminatory, just, and reasonable and shall not be  
25 subject to any required franchise authority or government entity permitting,  
26 except as provided in this section. A pole attachment rental fee shall be  
27 calculated on an annual, per-pole basis. Such rental fee shall be considered  
28 nondiscriminatory, just, and reasonable if it is agreed upon by the parties or, in

29 the absence of such an agreement, based on cost but in no such case shall such  
30 fee so calculated be greater than the fee which would apply if it were calculated  
31 in accordance with the cable service rate formula referenced in 47 U.S.C. Sec.  
32 224(d) as applied by the Federal Communications Commission[, except as  
33 permitted by subsection 3 of this section.

34 3. Either party may seek review of any fee, term, or condition by means  
35 of binding arbitration conducted by a single arbitrator mutually agreeable to the  
36 parties or, in the absence of such an agreement, by means of binding arbitration  
37 conducted by the American Arbitration Association. An arbitrator's award  
38 regarding fees shall be confined to ensuring that the municipal utility pole owner  
39 recovers its direct costs and a reasonable share of the fully allocated costs  
40 attributable to the pole attachment, and that the fee may exceed the fee resulting  
41 from the application of the cable service rate formula referenced in this section  
42 only if based on an express written finding stated in the award that such award  
43 is based on competent and substantial evidence that the revenues produced under  
44 the cable service rate formula and other payments made by the service provider  
45 do not sufficiently recover the direct costs and a reasonable share of the fully  
46 allocated costs attributable to the pole attachment]. In addition, a municipal pole  
47 owner may be authorized to exceed the rate of return cost components of the  
48 Federal Communications Commission formula referenced in this section if  
49 necessary to comply with Article X of the Missouri Constitution. [Pending the  
50 arbitrator's rendering of such an award, the last existent rental fee applicable to  
51 the pole attachment shall remain in place and binding upon both parties] **In the**  
52 **event of a dispute between the parties, either party may bring an**  
53 **action for review in any court of competent jurisdiction. The court**  
54 **shall rule on any such petition for review in an expedited manner by**  
55 **moving the petition to the head of the docket consistent with**  
56 **subsection 2 of this section. Nothing shall deny any party the right to**  
57 **a hearing before the court.**

58 [4.] 3. Where no [prior contract] **pole attachment agreement** exists  
59 between an attaching entity and the municipal utility pole owner **or controlling**  
60 **authority of a municipality**, and a dispute between a municipal utility pole  
61 owner **or controlling authority of a municipality** and an attaching entity  
62 exclusively concerns the per-pole fee **or any requirement or issue not**  
63 **directly related to pole attachments consistent with this section or**  
64 **both**, then the attaching entity may proceed with its attachments during the

65 pendency of the [arbitration] **dispute** under the agreed-upon terms and  
66 conditions **at a rental rate of no more than as set forth in subsection 2 of**  
67 **this section. The attaching entity shall comply with applicable and**  
68 **reasonable engineering, safety and reliability standards and shall hold**  
69 **the municipal pole owner or controlling authority of the municipality**  
70 **harmless for any liabilities or damages incurred that are caused by the**  
71 **attaching entity.**

72 [5.] **4.** The provisions of this section shall not supersede existing pole  
73 attachment agreements established prior to August 28, [2013] **2014.**

74 [6.] **5.** Nothing in this section shall be construed as conferring any  
75 jurisdiction or authority to the public service commission **or any state agency**  
76 to regulate either the fees, terms, or conditions for pole attachments, or for any  
77 state agency to assert any jurisdiction over [pole attachments] **attachments to**  
78 **poles** regulated by 47 U.S.C. Sec. 224.

79 **6.** A municipal utility or municipality may, after reasonable  
80 written notice and an opportunity to cure, as provided in the  
81 applicable pole attachment agreement between a municipal utility or  
82 municipality and an attaching entity, revoke a pole attachment permit  
83 granted to an attaching entity and require removal of the attachment  
84 with or without fee refund for breach of the pole attachment agreement  
85 or permit until the breach is cured, but only in the event of a  
86 substantial breach of material terms and conditions of the pole  
87 attachment agreement or permit. A substantial breach by an attaching  
88 entity shall be limited to:

89 (1) A material violation of a material provision of the applicable  
90 pole attachment agreement or permit;

91 (2) An evasion or attempt to evade any material provision of the  
92 applicable pole attachment agreement or permit;

93 (3) A material misrepresentation of fact in the applicable pole  
94 attachment agreement or permit application;

95 (4) A failure to complete work by the date and in accordance  
96 with the terms specified in the applicable pole attachment agreement  
97 or permit, unless an extension is obtained or unless the failure to  
98 complete the work is due to reasons beyond the attaching entity's  
99 control; or

100 (5) A failure to correct, within the time and in accordance with  
101 the terms specified by the municipal utility or municipality in the

102 applicable pole attachment agreement or permit, work by the attaching  
103 entity that does not conform to applicable national safety codes,  
104 industry construction standards, or local safety codes that are not more  
105 stringent than national safety codes, upon inspection and notification  
106 by the municipal utility or municipality of the faulty condition. If the  
107 time for correction is not specified in the applicable pole attachment  
108 agreement or permit, the time for correction shall be reasonable under  
109 the particular circumstances, and in no event less than thirty days.

110 7. Unless otherwise provided for in an applicable pole  
111 attachment agreement, in the event of an imminent threat to public  
112 health, life, or safety, a municipal utility or municipality shall, upon  
113 notice to the attaching entity, request the attaching entity rearrange,  
114 relocate, or remove a pole attachment from a pole or absent action from  
115 the attaching entity, have the authority to rearrange, relocate, or  
116 remove a pole attachment consistent with industry practices. The  
117 attaching entity shall be notified as soon as practicable upon the  
118 cessation of the threat to public health, life, or safety, or upon  
119 restoration of the attachment by the municipal utility or municipality.

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