

SECOND REGULAR SESSION

HOUSE BILL NO. 1191

97TH GENERAL ASSEMBLY

INTRODUCED BY REPRESENTATIVE MILLER.

5033L.011

D. ADAM CRUMBLISS, Chief Clerk

AN ACT

To repeal sections 67.1830, 67.1836, 67.1838, and 67.1842, RSMo, and to enact in lieu thereof four new sections relating to rights-of-way of political subdivisions.

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

Section A. Sections 67.1830, 67.1836, 67.1838, and 67.1842, RSMo, are repealed and four new sections enacted in lieu thereof, to be known as sections 67.1830, 67.1836, 67.1838, and 67.1842, to read as follows:

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

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

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

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

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

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

(3) "Emergency", includes but [is] **shall not be** limited to the following:

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

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.

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

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

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

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

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

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

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

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

37 (b) Inspecting job sites and restoration projects;

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

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

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

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

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45 Right-of-way management costs shall be the same for all entities doing similar work.
46 Management costs or rights-of-way management costs shall not include payment by a public
47 utility right-of-way user for the use or rent of the public right-of-way, degradation of the public
48 right-of-way or any costs as outlined in paragraphs (a) to [(h)] **(f)** of this subdivision which are
49 incurred by the political subdivision as a result of use by users other than public utilities, the
50 attorneys' fees and cost of litigation relating to the interpretation of this section or section
51 67.1832, or litigation, interpretation or development of any ordinance enacted pursuant to this

52 section or section 67.1832, or attorneys' fees and costs in connection with issuing, processing,
53 or verifying right-of-way [permit] **permits** or other applications or agreements, or the political
54 subdivision's fees and costs related to appeals taken pursuant to section 67.1838. In granting or
55 renewing a franchise for a cable television system, a political subdivision may impose a franchise
56 fee and other terms and conditions permitted by federal law;

57 (6) "Managing the public right-of-way", the actions a political subdivision takes, through
58 reasonable exercise of its police powers, to impose rights, duties and obligations on all users of
59 the right-of-way, including the political subdivision, in a reasonable, competitively neutral and
60 nondiscriminatory and uniform manner, reflecting the distinct engineering, construction,
61 operation, maintenance and public work and safety requirements applicable to the various users
62 of the public right-of-way, provided that such rights, duties and obligations shall not conflict
63 with any federal law or regulation. In managing the public right-of-way, a political subdivision
64 may:

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

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

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

76 (d) Establish right-of-way permitting requirements for street excavation;

77 (e) Establish removal requirements for abandoned equipment or facilities, if the
78 existence of such facilities prevents or significantly impairs right-of-way use, repair, excavation
79 or construction;

80 (f) Establish permitting requirements for towers and other structures or equipment for
81 wireless communications facilities in the public right-of-way, notwithstanding the provisions of
82 section 67.1832;

83 (g) Establish standards for street restoration in order to lessen the impact of degradation
84 to the public right-of-way; and

85 (h) Impose permit conditions to protect public safety;

86 (7) "Political subdivision", a city, town, village, county of the first classification or
87 county of the second classification;

88 (8) "Public right-of-way", the area on, below or above a public roadway, highway, street
89 or alleyway in which the political subdivision has an ownership interest, but not including:

90 (a) The airwaves above a public right-of-way with regard to cellular or other nonwire
91 telecommunications or broadcast service;

92 (b) Easements obtained by utilities or private easements in platted subdivisions or tracts;

93 (c) Railroad rights-of-way and ground utilized or acquired for railroad facilities; or

94 (d) Pipes, cables, conduits, wires, optical cables, or other means of transmission,
95 collection or exchange of communications, information, substances, data, or electronic or
96 electrical current or impulses utilized by a municipally owned or operated utility pursuant to
97 chapter 91 or pursuant to a charter form of government;

98 (9) "Public utility", every cable television service provider, every pipeline corporation,
99 gas corporation, electrical corporation, rural electric cooperative, telecommunications company,
100 water corporation, heating or refrigerating corporation or sewer corporation under the jurisdiction
101 of the public service commission; every municipally owned or operated utility pursuant to
102 chapter 91 or pursuant to a charter form of government or cooperatively owned or operated
103 utility pursuant to chapter 394; every street light maintenance district; every privately owned
104 utility; and every other entity, regardless of its form of organization or governance, whether for
105 profit or not, which in providing a public utility type of service for members of the general
106 public, utilizes pipes, cables, conduits, wires, optical cables, or other means of transmission,
107 collection or exchange of communications, information, substances, data, or electronic or
108 electrical current or impulses, in the collection, exchange or dissemination of its product or
109 services through the public rights-of-way;

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

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

67.1836. 1. A political subdivision may deny an application for a right-of-way permit
2 if:

3 (1) The public utility right-of-way user fails to provide all the necessary information
4 requested by the political subdivision for managing the public right-of-way;

5 (2) The public utility right-of-way user has failed to return the public right-of-way to its
6 previous condition under a previous permit;

7 (3) The political subdivision has provided the public utility right-of-way user with a
8 reasonable, competitively neutral, and nondiscriminatory justification for requiring an alternative
9 method for performing the work identified in the permit application or a reasonable alternative

10 route that will result in neither additional installation expense up to ten percent to the public
11 utility right-of-way user nor a declination of service quality;

12 (4) The political subdivision determines that [the] denial is necessary to protect the
13 public health and safety, provided that the authority of the political subdivision does not extend
14 to those items under the jurisdiction of the public service commission, such denial shall not
15 interfere with a public utility's right of eminent domain of private property, and such denials shall
16 only be imposed on a competitively neutral and nondiscriminatory basis; or

17 (5) The area is environmentally sensitive as defined by state statute or federal law or is
18 a historic district as defined by local ordinance.

19 2. A political subdivision may, after reasonable notice and an opportunity to cure, revoke
20 a right-of-way permit granted to a public utility right-of-way user, with or without fee refund,
21 and/or impose a penalty as established by the political subdivision until the breach is cured, but
22 only in the event of a substantial breach of the terms and material conditions of the permit. A
23 substantial breach by a permittee includes but is not limited to:

24 (1) A material violation of a provision of the right-of-way permit;

25 (2) An evasion or attempt to evade any material provision of the right-of-way permit, or
26 the perpetration or attempt to perpetrate any fraud or deceit upon the political subdivision or its
27 citizens;

28 (3) A material misrepresentation of fact in the right-of-way permit application;

29 (4) A failure to complete work by the date specified in the right-of-way permit, unless
30 a permit extension is obtained or unless the failure to complete the work is due to reasons beyond
31 the permittee's control; and

32 (5) A failure to correct, within the time specified by the political subdivision, work that
33 does not conform to applicable national safety codes, industry construction standards, or local
34 safety codes that are no more stringent than national safety codes, upon inspection and
35 notification by the political subdivision of the faulty condition.

36 3. Any political subdivision that requires public utility right-of-way users to obtain a
37 right-of-way permit, except in an emergency, prior to performing excavation work within a
38 public right-of-way shall promptly, but not longer than thirty-one days, process all completed
39 permit applications. If a political subdivision fails to act on an application for a right-of-way
40 permit within thirty-one days, the application shall be deemed approved. In order to avoid
41 excessive processing and accounting costs to either the political subdivision or the public utility
42 right-of-way user, the political subdivision may establish procedures for bulk processing of
43 permits and periodic payment of permit fees.

67.1838. A public utility right-of-way user that has been denied a right-of-way permit,
2 has had its right-of-way permit revoked, believes that the fees imposed on the public

3 right-of-way user by the political subdivision do not conform to the requirements of section
4 67.1840, believes the political subdivision has violated any provision of sections 67.1830 to
5 67.1848, or asserts any other issues related to the use of the public right-of-way, may bring an
6 action for review in any court of competent jurisdiction **within this state**. The court shall rule
7 on any such petition for review in an expedited manner by moving the petition to the head of the
8 docket. Nothing shall deny the authority of its right to a hearing before the court.

67.1842. 1. In managing the public right-of-way and in imposing fees pursuant to
2 sections 67.1830 to 67.1846, no political subdivision shall:

3 (1) Unlawfully discriminate among public utility right-of-way users;

4 (2) Grant a preference to any public utility right-of-way user;

5 (3) Create or erect any unreasonable requirement for entry to the public right-of-way by
6 public utility right-of-way users;

7 (4) Require a telecommunications company to obtain a franchise or require a public
8 utility right-of-way user to pay for the use of the public right-of-way, except as provided in
9 sections 67.1830 to 67.1846;

10 (5) Enter into a contract or any other agreement for providing for an exclusive use,
11 occupancy or access to any public right-of-way; or

12 (6) Require any public utility that has legally been granted access to the political
13 subdivision's right-of-way [prior to August 28, 2001,] to enter into an agreement or obtain a
14 permit for general access to or the right to remain in the right-of-way of the political subdivision.

15 2. A public utility right-of-way user shall not be required to apply for or obtain
16 right-of-way permits for projects commenced prior to August 28, 2001, requiring excavation
17 within the public right-of-way, for which the user has obtained the required consent of the
18 political subdivision, or that are otherwise lawfully occupying or performing work within the
19 public right-of-way. The public utility right-of-way user may be required to obtain right-of-way
20 permits prior to any excavation work performed within the public right-of-way after August 28,
21 2001.

22 3. A political subdivision shall not collect a fee imposed pursuant to section 67.1840
23 through the provision of in-kind services by a public utility right-of-way user, nor require the
24 provision of in-kind services as a condition of consent to use the political subdivision's public
25 right-of-way; however, nothing in this subsection shall preclude requiring services of a cable
26 television operator, open video system provider or other video programming provider as
27 permitted by federal law.

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