

SECOND REGULAR SESSION

# HOUSE BILL NO. 2155

## 103RD GENERAL ASSEMBLY

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INTRODUCED BY REPRESENTATIVE HURLBERT.

5256H.01I

JOSEPH ENGLER, Chief Clerk

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### AN ACT

To repeal sections 67.2707, 71.340, 226.220, 227.558, 227.559, and 229.360, RSMo, and to enact in lieu thereof eight new sections relating to reimbursement of costs associated with utility facility relocation.

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

Section A. Sections 67.2707, 71.340, 226.220, 227.558, 227.559, and 229.360, RSMo, are repealed and eight new sections enacted in lieu thereof, to be known as sections 67.1849, 67.2707, 71.340, 226.220, 226.224, 227.558, 227.559, and 229.360, to read as follows:

**67.1849. Notwithstanding any rule, order, decision, permit, agreement, or other authorization to the contrary, a county shall not perform any project in the public right-of-way that requires a non-rate-regulated utility provider, as defined in section 71.340, to relocate, adjust, or remove its facilities unless the county reimburses the non-rate-regulated utility provider for such relocation, adjustment, or removal. A county shall be authorized to pay such facility relocation, adjustment, or removal costs as part of the cost of the public right-of-way project.**

67.2707. 1. A video service provider shall be subject to the provisions of sections 67.1830 to ~~[67.1846]~~ **67.1849** and chapter 229 and shall also be subject to the provisions of section 227.240 applying to cable television companies, and to all reasonable police power-based regulations of a political subdivision regarding the placement, screening, and relocation of facilities, including, but not limited to:

(1) Requirements that the video service provider provide landscaping to screen the placement of cabinets or structures from public view consistent with the location chosen;

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.

8 (2) Requirements that the video service provider contact the nearby property owners  
9 to communicate what work will be done and when;

10 (3) Requiring alternate placement of facilities, or prescribing the time, method, and  
11 manner of such placement, when it is necessary to protect the public right-of-way or the  
12 safety of the public, notwithstanding the provisions of sections 67.1830 to ~~[67.1846]~~ **67.1849**;

13 (4) Requirements that cabinets be removed or relocated ~~[at the expense of the video~~  
14 ~~service provider]~~ **under the provisions of section 67.1849 or 71.340, as applicable**, when  
15 necessary to accommodate construction, improvement, or maintenance of streets ~~[or]~~, other  
16 public works, ~~[excluding minor]~~ **or** beautification projects.

17 2. A political subdivision may not impose the following regulations on video service  
18 providers:

19 (1) Requirements that particular business offices or portions of a video service  
20 network be located in the political subdivision;

21 (2) Requirements for political subdivision approval of transfers of ownership or  
22 control of the business or assets of a video service provider's business, except that a political  
23 subdivision may require that such entity maintain current point-of-contact information and  
24 provide notice of a transfer within a reasonable time; and

25 (3) Requirements concerning the provisioning of or quality of customer services,  
26 facilities, equipment or goods in-kind for use by the political subdivision or any other video  
27 service provider or public utility.

71.340. 1. The mayor and city council of any city or the chairman and board of  
2 trustees of any incorporated town or village shall have the power to annually appropriate and  
3 pay out of the treasury of such city or incorporated town or village a sum of money, not to  
4 exceed ten percent of the annual general revenue thereof, for the purpose of constructing,  
5 building, repairing, working, grading or macadamizing any public road, street and highway  
6 and any bridge thereon leading to and from such city or incorporated town or village; and  
7 such appropriation shall be made by ordinance and the money so appropriated shall be  
8 applied under the supervision and direction of the engineers of such city or incorporated town  
9 or village, and of the county highway engineer of the county in which such city, town or  
10 village is located, or of some competent person selected by such city, town or village and  
11 approved by the county highway engineer, who shall make a report thereof, in writing, to the  
12 mayor and city council of such city, or to the chairman and board of trustees of such  
13 incorporated town or village; but this privilege shall not extend to a greater distance than five  
14 miles from the corporate limits of such city, town or village, and shall not be construed so as  
15 to allow any obstruction to or interference with the free use of any such public road, street or  
16 highway by the public, except so far as may be necessary while such work is being done, and

17 further shall not be construed to affect the liability of such city, town or village, which  
18 liability shall be the same as if such roads, streets and highways were inside the city limits.

19 **2. Notwithstanding any rule, order, decision, permit, agreement, or other**  
20 **authorization to the contrary, a city, incorporated town, or village shall not perform any**  
21 **road maintenance or construction project unless it reimburses any non-rate-regulated**  
22 **utility provider that incurs costs for facility relocation due to such maintenance or**  
23 **project. A city, incorporated town, or village shall be authorized to pay such facility**  
24 **relocation costs as part of the cost of the road project.**

25 **3. For the purposes of this section and sections 226.220 and 226.224, "non-rate-**  
26 **regulated utility provider" shall mean:**

27 **(1) A telecommunications company as defined in subdivision (52) of section**  
28 **386.020 whose telecommunications services are not subject to rate of return regulation**  
29 **by the public service commission pursuant to subsection 1 of section 392.240;**

30 **(2) A provider of broadband and other internet protocol-enabled services as**  
31 **defined in subsection 2 of section 392.611;**

32 **(3) A video service provider as defined in subdivision (17) of subsection 1 of**  
33 **section 67.2677; or**

34 **(4) A cable operator as defined in subdivision (1) of subsection 1 of section**  
35 **67.2677.**

226.220. 1. There is hereby created and set up the "State Road Fund" which shall  
2 receive all moneys and credits from:

3 (1) The sale of state road bonds;

4 (2) The United States government and intended for highway purposes;

5 (3) The state road bond and interest sinking fund as provided in section 226.210; and

6 (4) Any other source if they are held for expenditure by or under the department of  
7 transportation or the state highways and transportation commission and if they are not  
8 required by section 226.200 to be transferred to the state highway department fund.

9 2. The costs and expenses withdrawn from the state treasury:

10 (1) For locating, relocating, establishing, acquiring, reimbursing for, constructing,  
11 improving and maintaining state highways in the systems specified in Article IV, Section 30  
12 (b), of the Constitution;

13 **(2) For reimbursing non-rate-regulated utility providers, as defined in**  
14 **subsection 3 of section 71.340, for any costs incurred in facility relocation that is**  
15 **required due to road maintenance or construction;**

16 **(3) For acquiring materials, equipment and buildings; and**

17 ~~[(3)]~~ **(4) For other purposes and contingencies relating and appertaining to the**  
18 **construction and maintenance of said highways shall be paid from the state road fund upon**

19 warrants drawn by the state auditor, based upon bills of particulars and vouchers preapproved  
20 and certified for payment by the commissioner of administration and by the state highways  
21 and transportation commission acting through such of their employees as may be designated  
22 by them.

23 3. No payments or transfers shall ever be made from the state road fund except for an  
24 expenditure made:

25 (1) Under the supervision and direction of the state highways and transportation  
26 commission; and

27 (2) For a purpose set out in Subparagraph (1), (2), (3), (4), or (5) of Section 30(b),  
28 Article IV, of the Constitution.

**226.224. Notwithstanding any rule, order, decision, permit, agreement, or other  
2 authorization to the contrary, the department shall reimburse non-rate-regulated utility  
3 providers, as defined in subsection 3 of section 71.340, for any costs incurred in facility  
4 relocation that is required due to road maintenance, construction, or other right-of-way  
5 work activity.**

227.558. 1. If the owner of a utility facility fails to provide the responses or  
2 corrections to project plans required by sections 227.553 to 227.556, the commission may  
3 recover from the owner damages in the amount of up to one hundred dollars per day for each  
4 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 227.555, 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 this  
12 section shall be brought in a court of appropriate jurisdiction. All damages collected under  
13 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 or  
15 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 commission's  
21 construction project due to the owner's need to reassign an unusual number of workers to any  
22 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 relocation  
26 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.

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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. **Except as provided in section 226.224**, the removal and relocation of utility  
37 facilities **as a result of construction projects required by the commission** shall be made at  
38 the expense of the owners unless otherwise provided by the commission. If the owner fails to  
39 relocate the utility facilities in accordance with the relocation plan as required by section  
40 227.555, the utility facilities may be removed and relocated by the state highways and  
41 transportation commission, or under its direction, and the cost of relocating the utility  
42 facilities shall be ~~collected from such owner~~ **the responsibility of the commission, as**  
43 **required by section 226.224, or the owner.** If the state highways and transportation  
44 commission or its designee removes and relocates the utility facilities, the utility owner shall  
45 not be liable to any party for any damages caused by the commission's or the commission's  
46 designee's removal and relocation of such facilities.

227.559. 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 **67.1849, 71.340, and** 227.551 to 227.559  
4 regarding the relocation of utility facilities located within the right-of-way of streets,  
5 highways, or roads under their respective jurisdiction, which are not state highways. Any  
6 ordinance, policy, resolution, or regulation adopted under the authority of this section shall  
7 not infringe upon, negate or otherwise abrogate an owner's right to construct, own, operate,  
8 and 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.

229.360. **Unless otherwise required by law, including section 67.1849**, it shall be  
2 the duty of any person, firm or corporation owning, leasing, or operating any such conduits,  
3 poles, pole lines, wires, mains, pipes, conductors, sewers, drains, tramways or other objects,

4 after service of the notice required in section 229.350 to furnish such competent workmen and  
5 crews as may be necessary to effect such removal, change or alteration, and to pay all actual  
6 expenses which are incurred by any person, firm, corporation or political subdivision in so  
7 doing. In making such necessary removal, change or alteration, no other person, firm,  
8 corporation or political subdivision shall interfere with or make any such change, removal or  
9 alteration until the owner, lessee or operators of such object shall have been notified as  
10 provided in section 229.350, and shall have failed or refused to do so within a reasonable  
11 time, and in the event of such failure or refusal such work shall be done only by competent  
12 and experienced workmen at the cost and expense, however, of the owner, lessee or operators  
13 of such object.

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