

Provider Use of County Public Right-of-way; HB 2588

HB 2588 creates certain rights and establishes limitations on the use of county public right-of-way by telecommunication, broadband, and video service providers. The bill's provisions resemble non-discrimination and neutrality provisions in continuing law for the use of city public right-of-way.

Findings and Definitions

The bill makes findings on the importance of telecommunications facilities and uses the definition of "public right-of-way" as found in law regarding telecommunications right-of-way access within cities, with the additional exemption of any real property, structures, or facilities under the ownership, control, or jurisdiction of the Secretary of Transportation. The bill's definition of "provider" is similar to that in law regarding telecommunications right-of-way access within cities.

Provider Rights

Under the bill, local exchange carriers, telecommunications carriers, and video service providers have the right to construct, maintain, and operate poles, conduit, cable, switches, and related appurtenances and facilities along, across, upon, and under any public right-of-way in a Kansas county, as long as any rights issued by the State to a video service provider are not invalidated by such an action. The bill requires such equipment and facilities to not obstruct or hinder the usual travel or public safety on public ways or the legal use by other utilities or providers.

Counties

The bill requires counties to treat similarly situated providers in a non-discriminatory and competitively neutral manner regarding:

- Permit fees;
- Forms and filings required for a permit application;
- Time in approving or denying a permit; and
- Options for waivers of such permit fees, forms, and filing.

Counties are prohibited from creating, enacting, or erecting any discriminatory, unreasonable condition, requirement, or barrier for entry into or use of the public right-of-way by a provider.

Fees

Counties are authorized to impose only the following fees, provided the fees are non-discriminatory, competitively neutral, and related to the county's reasonable, actual, and verifiable costs of managing the public right-of-way:

- A construction permit fee to compensate the county for reasonable administrative expenses for issuing, processing, and verifying the permit application;
- An excavation permit fee for each pavement cut to recover the direct and reasonable costs associated with the provider's construction and repair activity; and
- An inspection fee to recover all reasonable costs associated with the county's inspection of the provider's work.

Counties are expressly prohibited from assessing additional fees for occupying the public right-of-way.

Counties are required to authorize video service providers to offset any fees and charges against payment of any video service provider fee imposed pursuant to the Video Competition Act.

Damages

If a provider causes damages while working in the public right-of-way, the bill authorizes a county to assess against any provider costs associated with repairing and restoring the public right-of-way due to the damages. Additionally, the bill authorizes a county to require a provider to furnish a performance bond to ensure the appropriate and timely performance of construction and maintenance activities.

Upon request by a provider, a county is required to provide an accounting of the costs that are the basis for any damage fee charged.

Other Provisions

The bill also prohibits a provider from entering into a contract with a county to provide a product or service that the provider's business does not actually sell or provide.

Any ordinance pertaining to the use of the county public right-of-way in effect prior to the effective date of the bill is deemed to not conflict with the provisions of the bill.