



HB 2237 - Authorizing certain telecommunications and video service providers to operate within county public right-of-way (Amending KSA 17-1902)

Chair Delperdang, Vice Chair Turner, and distinguished members of this Committee.

My name is Ethan Kaplan. I am General Counsel and Director of Broadband Development for Ideatek Telcom, an internet service provider headquartered in Buhler, Kansas with a mission for deploying high speed, affordable broadband to unserved and underserved communities throughout Kansas.

We are here today to discuss HB 2237 and an effort to amend the current statute, KSA 17-1902. The statute provides protections for both providers and cities in establishing use of the public right-of-way in deployment of infrastructure. It is our desire that these protections and fair limitations include Counties as well.

We at Ideatek are in a great position to speak to this bill as our co-founder and CIO, Daniel Friesen has over 24 years in the rural Kansas technological space and also serves as Chairman of the Reno County Commission. He also served on the State Broadband Planning task force which included both non-legislative stakeholders and legislative members. Unfortunately, he couldn't be here today, but he is a strong advocate of this bill for both counties and broadband providers.

K.S.A.17-1902 was enacted by this legislature to grant telecommunications companies statutory authority to place critical infrastructure facilities in the public right of way of this state. We believe the legislature understood that uniformed access for telecom providers across the state coupled with uniformed protections for the governmental bodies that control those rights of way was balanced well in this original legislation and that it only makes good sense to include counties and their numerous road rights of way as well.

The lack of inclusion of counties in the framework in KSA 17-1902 came to our attention as we worked to deploy broadband throughout rural Kansas and were met with inconsistencies in the various Counties permitting process and costs. In some cases, counties were charging permitting costs in the thousands of dollars which we believe is more akin to a tax than a recovery of reasonable costs and inconsistent with the spirit of the authority granted to providers in 17-1902. These costs and inconsistencies amount to delays and other obstacles in the deployment of much needed broadband service in rural areas of our state.

It is our understanding that the Kansas Association of Counties have made enabling broadband deployment a 2023 legislative priority.¹ Additionally, it is clear that Kansas Counties support policies that allow counties to operate more efficiently and to freely collaborate to provide services to its residents.² We feel this bill assists with these goals and others. It also conforms to the State of Kansas's Broadband Planning Task force recommendations to "develop, amend, or reduce policy and regulation which reduces barriers to the expedient deployment of broadband infrastructure."

As the statute currently stands, it does not provide the protections to counties like it does cities. For instance, paragraph (k) of 17-1902 indicates a city may require a provider or its subcontractors to repair any damage caused in the installation of its facilities in the right of way. In turn it provides that the provider pay for any cost burden put on the city for failing to repair such damage. Additionally, the statute requires that a provider relocate its facilities at no cost to the "political subdivision" in the event it is to accomplish construction and maintenance activities directly related to improvements for the health, safety and welfare of the public.

Despite not being included in the statute, it has been our experience that most Kansas counties operate in a reasonable and partnership-oriented manner and are very reasonable in their fees and working with us in utilizing their right of ways. However, some situations we have experienced have been inconsistent or even prohibitive. By unifying city and county regulation of public right of way we believe those inconsistencies and barriers will improve for the good of the public including further enhancing the broadband deployment priorities of this state.

To conclude, we respectfully request you consider passing this bill and codify equal protections for both providers and counties so that they may uniformly understand and apply right of way regulation. It is about uniformity and outlining a streamlined process for all stakeholders to work together to reach our goal of further broadband deployment in Kansas.. Thank you for your time and attention to this matter and I am happy to answer any questions any of you may have.

¹ See *Kansas Association of Counties 2023 Legislative Policy Statement*, p.1 (<https://www.kansascounties.org/legislative/2023-legislative-updates-related-information/final-approved-kac-2022-legislative-policy-statement.pdf>)

² See *Id.* at 2

HB 2237 – Proposed Amendment on the Adjustment/Relocation of Facilities

Beginning on Page 4, lines 10-20.

(1) (1) If requested by a ~~city~~ *municipality*, in order to accomplish construction and maintenance activities directly related to improvements for the health, safety and welfare of the public, a provider shall promptly remove its facilities from the public right-of-way or shall relocate or adjust its facilities within the public right-of-way at no cost to the ~~political subdivision~~ *municipality*. Such relocation or adjustment shall be completed as soon as reasonably possible within the time set forth in any request by the ~~city~~ *municipality* for such relocation or adjustment, provided that the City shall give a minimum of one hundred eighty (180) days advance written notice to comply with any such removal, relocation or adjustment. Any damages suffered by the ~~city~~ *municipality* or its contractors as a result of such provider's failure to timely relocate or adjust its facilities shall be borne by such provider.

(2) When a municipality requests removal, relocation or adjustment of a provider's facilities within the public right-of-way for construction or maintenance activities related to improvements that are in whole or in part, for private benefit, the municipality shall require, as a condition of its approval of any request from any private party or parties for alteration of the public right-of-way, that such private party or parties reimburse a provider for the cost of removal, relocation or adjustment, in an amount equal to the percentage of the private benefit received. Providers shall not be obligated to commence the removal, relocation or adjustment until receipt of funds for the costs from such private party or parties. For purposes of this section, a mixed purpose public/private project shall be subject to a presumption of a private benefit of no less than fifty (50) percent. A provider shall have no liability for delays caused by a private party's failure to reimburse costs. A municipality has no obligation to collect such reimbursement for a provider.