

PUBLIC UTILITIES IN PUBLIC RIGHTS-OF-WAY

480A.1 Purpose.

The general assembly finds that it is in the public interest to define the right of local governments to charge public utilities for the location and operation of public utility facilities in local government rights-of-way.

98 Acts, ch 1148, §3, 9

480A.2 Definitions.

As used in this chapter, unless the context otherwise requires:

1. "*Local government*" means a county, city, township, school district, or any special-purpose district or authority.
2. "*Management costs*" means the reasonable costs a local government actually incurs in managing public rights-of-way.
3. "*Public right-of-way*" means the area on, below, or above a public roadway, highway, street, bridge, cartway, bicycle lane, or public sidewalk in which the local government has an interest, including other dedicated rights-of-way for travel purposes and utility easements. A public right-of-way does not include the airwaves above a public right-of-way with regard to cellular or other nonwire telecommunications or broadcasts service or utility poles owned by a local government or a municipal utility.
4. "*Public utility*" means a person owning or operating a facility used for furnishing natural gas by piped distribution system, electricity, communications services not including cable television systems, or water by piped distribution system, to the public for compensation.

98 Acts, ch 1148, §4, 9

480A.3 Fees.

A local government shall not recover any fee from a public utility for the use of its right-of-way, other than a fee for its management costs. A local government may recover from a public utility only those management costs caused by the public utility's activity in the public right-of-way. A fee or other obligation under this section shall be imposed on a competitively neutral basis. When a local government's management costs cannot be attributed to only one entity, those costs shall be allocated among all users of the public rights-of-way, including the local government itself. The allocation shall reflect proportionately the costs incurred by the local government as a result of the various types of uses of the public rights-of-way.

This section does not prohibit the collection of a franchise fee as permitted in section 480A.6.

98 Acts, ch 1148, §5, 9

480A.4 In-kind services.

A local government, in lieu of a fee imposed under this chapter, shall not require in-kind services by a public utility right-of-way user, or require in-kind services as a condition of the use of the local government's public right- of-way.

98 Acts, ch 1148, §6, 9

480A.5 Arbitration.

1. A public utility that is denied registration, denied a right-of-way permit, that has its right-of-way permit revoked, or that believes that the fees imposed on such user by the local government do not conform to the requirements of this chapter may request in writing that such denial, revocation, or fee imposition be reviewed by the governing body of the local government. The governing body of the local government shall act within sixty days on a timely written request. A decision by the governing body affirming the denial, revocation, or fee imposition must be in writing and supported by written findings establishing the reasonableness of the decision.

2. Upon affirmation by the governing body of the denial, revocation, or fee imposition, the public utility may do either of the following:

a. With the consent of the governing body, have the matter finally resolved by binding arbitration. Binding arbitration must be before an arbitrator agreed to by both the local government and the public utility. If the parties are unable to agree on an arbitrator, the matter shall be resolved by a three-person arbitration panel made up of one arbitrator selected by the local government, one arbitrator selected by the public utility, and one arbitrator selected by the other two arbitrators. The cost and expense of a single arbitrator shall be borne equally by the local government and the public utility. If a three-person arbitration panel is selected, each party shall bear the expense of its own arbitrator and the parties shall jointly and equally bear the cost and expense of the third arbitrator, and of the arbitration. Each party to the arbitration shall pay its own costs, disbursements, and attorney fees.

b. Bring an action in district court to review a decision of the governing body made under this section.

98 Acts, ch 1148, §7, 9

480A.6 Franchise ordinance not superseded.

This chapter does not modify or supersede the rights and obligations of a local government and the public utility established by the terms of any existing or future franchise granted, approved, and accepted pursuant to section 364.2, subsection 4. A city which collects a city franchise fee from an entity pursuant to section 364.2, subsection 4, under an existing or future franchise, shall not also collect a fee from that entity under section 480A.3.

98 Acts, ch 1148, §8, 9