

House _____ Amendment NO. _____

Offered By _____

1 AMEND House Committee Substitute for Senate Committee Substitute for Senate Bill No. 11, Page
2 1, Section A, Line 3, by inserting immediately after said line the following:

3 "67.1830. As used in sections 67.1830 to 67.1846, the following terms shall mean:

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

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

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

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

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

14 (3) "Emergency", includes but is not limited to the following:

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

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

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

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

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

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

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

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

Action Taken _____ Date _____

- 1 (a) Issuing, processing and verifying right-of-way permit applications;
- 2 (b) Inspecting job sites and restoration projects;
- 3 (c) Protecting or moving public utility right-of-way user construction equipment after
- 4 reasonable notification to the public utility right-of-way user during public right-of-way work;
- 5 (d) Determining the adequacy of public right-of-way restoration;
- 6 (e) Restoring work inadequately performed after providing notice and the opportunity to
- 7 correct the work; and
- 8 (f) Revoking right-of-way permits.

9 Right-of-way management costs shall be the same for all entities doing similar work. Management
 10 costs or rights-of-way management costs shall not include payment by a public utility right-of-way
 11 user for the use or rent of the public right-of-way, degradation of the public right-of-way or any
 12 costs as outlined in paragraphs (a) to (f) of this subdivision which are incurred by the political
 13 subdivision as a result of use by users other than public utilities, the attorneys' fees and cost of
 14 litigation relating to the interpretation of this section or section 67.1832, or litigation, interpretation
 15 or development of any ordinance enacted pursuant to this section or section 67.1832, or attorneys'
 16 fees and costs in connection with issuing, processing, or verifying right-of-way permits or other
 17 applications or agreements, or the political subdivision's fees and costs related to appeals taken
 18 pursuant to section 67.1838. In granting or renewing a franchise for a cable television system, a
 19 political subdivision may impose a franchise fee and other terms and conditions permitted by federal
 20 law;

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

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

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

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

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

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

41 (f) Establish permitting requirements for towers and other structures or equipment for
 42 wireless communications facilities in the public right-of-way, ~~[notwithstanding]~~ under the
 43 provisions of section 67.1832, which permitting requirements shall also be consistent with sections
 44 67.5090 to 67.5104;

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

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

48 (7) "Political subdivision", a city, town, village, county of the first classification or county

1 of the second classification;

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

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

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

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

8 (d) Poles, pipes, cables, conduits, wires, optical cables, or other means of transmission,
9 collection or exchange of communications, information, substances, data, or electronic or electrical
10 current or impulses utilized by a municipally owned or operated utility pursuant to chapter 91 or
11 pursuant to a charter form of government;

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

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

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

27 67.1846. 1. Nothing in sections 67.1830 to 67.1846 relieves the political subdivision of any
28 obligations under an existing franchise agreement in effect on May 1, 2001. Nothing in sections
29 67.1830 to 67.1846 will apply to that portion of any ordinance passed prior to May 1, 2001, which
30 establishes a street degradation fee. Nothing in sections 67.1830 to 67.1846 shall be construed as
31 limiting the authority of county highway engineers or relieving public utility right-of-way users
32 from any obligations set forth in chapters 229 to 231. Nothing in sections 67.1830 to 67.1846 shall
33 be deemed to relieve a public utility right-of-way user of the provisions of an existing franchise,
34 franchise fees, license or other agreement or permit in effect on May 1, 2001. Nothing in sections
35 67.1830 to 67.1846 shall prohibit a political subdivision or public utility right-of-way user from
36 renewing or entering into a new or existing franchise, as long as all other public utility right-of-way
37 users have use of the public right-of-way on a nondiscriminatory basis. Nothing in sections 67.1830
38 to 67.1846 shall prevent a grandfathered political subdivision from enacting new ordinances,
39 including amendments of existing ordinances, charging a public utility right-of-way user a fair and
40 reasonable linear foot or antenna fee or from enforcing or renewing existing linear foot ordinances
41 for use of the right-of-way, provided that the public utility right-of-way user either:

42 (1) Is entitled under the ordinance to a credit for any amounts paid as business license taxes
43 or gross receipts taxes; or

44 (2) Is not required by the political subdivision to pay the linear foot fee or antenna fee if the
45 public utility right-of-way user is paying gross receipts taxes, business license fees, or business
46 license taxes that are not nominal and that are imposed specifically on communications-related
47 revenue, services, or equipment.

48 For purposes of this section, a "grandfathered political subdivision" is any political subdivision

1 which has, prior to May 1, 2001, enacted one or more ordinances reflecting a policy of imposing
 2 any linear foot fees on any public utility right-of-way user, including ordinances which were
 3 specific to particular public right-of-way users. Any existing ordinance or new ordinance passed by
 4 a grandfathered political subdivision providing for payment of the greater of a linear foot fee or a
 5 gross receipts [fee] tax shall be enforceable only with respect to the linear foot fee.

6 2. Nothing in sections 67.1830 to 67.1846 shall prohibit a political subdivision from
 7 enacting, renewing or enforcing provisions of an ordinance to require a business license tax, sales
 8 tax, occupation tax, franchise tax or franchise fee, property tax or other similar tax, to the extent
 9 consistent with federal law. Nothing in sections 67.1830 to 67.1846 shall prohibit a political
 10 subdivision from enacting, enforcing or renewing provisions of an ordinance to require a gross
 11 receipts tax pursuant to chapter 66, chapter 92, or chapter 94. For purposes of this subsection, the
 12 term "franchise fee" shall mean "franchise tax".; and

13
 14 Further amend said bill, Page 3, Section 67.2050, Line 72, by inserting immediately after said line
 15 the following:

16 "67.5090. Sections 67.5090 to 67.5103 shall be known and may be cited as the "Uniform
 17 Wireless Communications Infrastructure Deployment Act" and is intended to encourage and
 18 streamline the deployment of broadcast and broadband facilities and to help ensure that robust
 19 wireless radio-based communication services are available throughout Missouri by adopting a
 20 uniform statewide framework for the deployment of wireless infrastructure consistent with
 21 applicable right-of-way and zoning guidelines. Except as specified herein, nothing in this act is
 22 intended to prevent or otherwise limit the ability of wireless communications service providers and
 23 wireless communications infrastructure providers to deploy wireless infrastructure consistent with
 24 this act and sections 67.1830 to 67.1846, to prevent or otherwise limit an authority's ability to
 25 require wireless communications service providers and wireless communications infrastructure
 26 providers to obtain permits for the installation of wireless facilities or wireless support structures, or
 27 to prevent a municipal utility or municipality from requiring wireless communications service
 28 providers and wireless communications infrastructure providers collocating small wireless facilities
 29 on municipal or municipal utility poles to comply with section 67.5104.

30 67.5092. As used in sections 67.5090 to 67.5103, the following terms mean:

31 (1) "Accessory equipment", any equipment serving or being used in conjunction with a
 32 wireless communications facility or wireless support structure. The term includes utility or
 33 transmission equipment, power supplies, generators, batteries, cables, equipment buildings, cabinets
 34 and storage sheds, shelters, or similar structures;

35 (2) "Antenna", communications equipment that transmits or receives electromagnetic radio
 36 signals used in the provision of any type of wireless communications services;

37 (3) "Applicant", any person engaged in the business of providing wireless communications
 38 services or the wireless communications infrastructure required for wireless communications
 39 services who submits an application;

40 (4) "Application", a request submitted by an applicant to an authority to construct a new
 41 wireless support structure, for the substantial modification of a wireless support structure, or for
 42 collocation of a wireless facility or replacement of a wireless facility on an existing structure;

43 (5) "Authority", each state, county, and municipal governing body, board, agency, office, or
 44 commission authorized by law and acting in its capacity to make legislative, quasi-judicial, or
 45 administrative decisions relative to zoning or building permit review of an application. The term
 46 shall not include state courts having jurisdiction over land use, planning, or zoning decisions made
 47 by an authority;

48 (6) ~~["Base station", a station at a specific site authorized to communicate with mobile~~

stations, generally consisting of radio transceivers, antennas, coaxial cables, power supplies, and other associated electronics, and includes a structure that currently supports or houses an antenna, a transceiver, coaxial cables, power supplies, or other associated equipment;

———(7)] "Building permit", a permit issued by an authority prior to commencement of work on the collocation of wireless facilities on an existing structure, the substantial modification of a wireless support structure, or the commencement of construction of any new wireless support structure, solely to ensure that the work to be performed by the applicant satisfies the applicable building code;

[(8)] (7) "Collocation", the placement or installation of a new wireless facility on [a] an existing structure, including associated ground mounted facilities immediately adjacent to an existing structure, that already has an existing wireless facility, including electrical transmission towers, water towers, buildings, utility poles, existing structures, and other structures capable of structurally supporting the attachment of wireless facilities in compliance with applicable codes;

(8) "Communications facility", the set of equipment and network components, including wires and cables and associated facilities used by a cable operator, as defined in 47 U.S.C. Section 522(5), a telecommunications carrier, as defined in 47 U.S.C. Section 153(51), a provider of information service, as defined in 47 U.S.C. Section 153(24), or a wireless communications provider, to provide communications services hereby defined to include cable service, as defined in 47 U.S.C. Section 522(6), telecommunications service, as defined in 47 U.S.C. Section 153(53), an information service, as defined in 47 U.S.C. Section 153(24), wireless communications service, or other one-way or two-way communications service;

(9) "Electrical transmission tower", an electrical transmission structure used to support high voltage overhead power lines. The term shall not include any utility pole;

(10) "Equipment compound", an area surrounding or near a wireless support structure within which are located wireless facilities;

(11) "Existing structure", a wireless support structure that exists at the time a request to place wireless facilities on a structure is filed with an authority. The term includes any structure that is capable of supporting the attachment of wireless facilities in compliance with applicable building codes, National Electric Safety Codes, and recognized industry standards for structural safety, capacity, reliability, and engineering, including, but not limited to, towers, buildings, ~~[and]~~ water towers~~]. The term shall not include any utility pole]~~, and utility poles;

(12) "Micro wireless facility", a small wireless facility that is no larger in dimension than twenty-four inches in length, fifteen inches in width, twelve inches in height, and that has an exterior antenna, if any, no longer than eleven inches;

(13) "Replacement", includes constructing a new wireless support structure of equal proportions and of equal height or such other height that would not constitute a substantial modification to an existing structure in order to support wireless facilities or to accommodate collocation and includes the associated removal of the preexisting wireless facilities or wireless support structure;

[(13)] (14) "Small wireless facility", a wireless facility with an antenna of no more than six cubic feet in volume and associated equipment with a cumulative volume no larger than twenty-eight cubic feet. An associated electric meter, concealment, telecom demarcation box, grounding equipment, power transfer switch, cutoff switch, vertical cable runs and related conduit on a pole for the connection of power and other services may be located outside the primary equipment enclosure and are not included in the calculation of the equipment volume. Volume shall be a measure of the exterior displacement, not the interior volume, of the enclosure. This term shall include a micro wireless facility;

(15) "Substantial modification", the mounting of a proposed wireless facility on a wireless

support structure which, as applied to the structure as it was originally constructed:

(a) Increases the existing vertical height of the structure by:

a. More than ten percent; or

b. The height of one additional antenna array with separation from the nearest existing antenna not to exceed twenty feet, whichever is greater; or

(b) Involves adding an appurtenance to the body of a wireless support structure that protrudes horizontally from the edge of the wireless support structure more than twenty feet or more than the width of the wireless support structure at the level of the appurtenance, whichever is greater (except where necessary to shelter the antenna from inclement weather or to connect the antenna to the tower via cable);

(c) Involves the installation of more than the standard number of new outdoor equipment cabinets for the technology involved, not to exceed four new equipment cabinets; or

(d) Increases the square footage of the existing equipment compound by more than one thousand two hundred fifty square feet;

~~[(14)]~~ (16) "Utility", any person, corporation, county, municipality acting in its capacity as a utility, municipal utility board, or other entity, or department thereof or entity related thereto, providing retail or wholesale electric, natural gas, water, waste water, data, cable television, or telecommunications, wireless communications service, or internet protocol-related services;

~~[(15)]~~ (17) "Utility pole", a structure owned or operated by a utility that is designed specifically for and used to carry lines, cables, ~~[or]~~ wires or wireless facilities for telephony, wireless communications service, cable television, or electricity, or to provide lighting, traffic control, signage, or similar function;

~~[(16)]~~ (18) "Water tower", a water storage tank, or a standpipe or an elevated tank situated on a support structure, originally constructed for use as a reservoir or facility to store or deliver water;

(19) "Wireless communications infrastructure provider", a person or entity that installs or constructs facilities or structures used to provide wireless communications service;

~~[(17)]~~ (20) "Wireless communications service", includes the wireless facilities of all services licensed to use radio communications pursuant to Section 301 of the Communications Act of 1934, 47 U.S.C. Section 301, and fixed or mobile communication transmission services including, but not limited to, data or voice transmissions provided using wireless facilities, including both one-way and two-way communications services, and services using licensed or unlicensed spectrum including the use of wi-fi; provided that, using wireless facilities does not include wireline backhaul facilities;

(21) "Wireless communications service provider", a provider of wireless communications service;

~~[(18)]~~ (22) "Wireless facility", the set of equipment and network components, ~~[exclusive of the underlying wireless support structure,]~~ including, but not limited to, antennas, accessory equipment, transmitters, receivers, power supplies, cabling, small wireless facilities, and associated equipment necessary to provide wireless communications services. The term shall not include:

(a) The underlying wireless support structure;

(b) Wireline backhaul facilities; or

(c) Coaxial or fiber-optic cable that is not immediately adjacent to or directly associated with a particular collocation;

~~[(19)]~~ (23) "Wireless support structure", a freestanding structure, such as a monopole, tower, ~~[or]~~ electrical transmission tower, water tower, utility pole, building, or other existing or proposed structure capable of supporting wireless facilities~~[- This definition does not include utility poles.];~~

1 (24) "Wireline backhaul facility", a facility used for the transport of communication data by
2 wire from wireless facilities to a network.

3 67.5094. In order to ensure uniformity across the state of Missouri with respect to the
4 consideration of every application, an authority shall not:

5 (1) Require an applicant to submit information about, or evaluate an applicant's business
6 decisions with respect to its designed service, customer demand for service, or quality of its service
7 to or from a particular area or site;

8 (2) Evaluate an application based on the availability of other potential locations for the
9 placement of wireless support structures or wireless facilities, including without limitation the
10 option to collocate instead of construct a new wireless support structure or for substantial
11 modifications of a support structure, or vice versa; provided, however, that solely with respect to an
12 application for a new wireless support structure, an authority may require an applicant to state in
13 such applicant's application that it conducted an analysis of available collocation opportunities on
14 existing wireless towers within the same search ring defined by the applicant, solely for the purpose
15 of confirming that an applicant undertook such an analysis. For collocation to any certified historic
16 structure as defined in section 253.545, in addition to all other applicable time requirements, there
17 shall be a thirty-day time period before approval of an application. During such time period, an
18 authority shall hold one or more public hearings on collocation to a certified historic structure;

19 (3) Dictate the type of wireless facilities, infrastructure or technology to be used by the
20 applicant, including, but not limited to, requiring an applicant to construct a distributed antenna
21 system in lieu of constructing a new wireless support structure;

22 (4) Require the removal of existing wireless support structures or wireless facilities,
23 wherever located, as a condition for approval of an application, unless such structures or facilities
24 owned by the applicant are abandoned and subject to rules adopted under section 67.5101(7);

25 (5) With respect to radio frequency emissions, impose environmental testing, sampling, or
26 monitoring requirements or other compliance measures on wireless facilities that are categorically
27 excluded under the Federal Communication Commission's rules for radio frequency emissions under
28 47 CFR 1.1307(b)(1) or other applicable federal law, as the same may be amended or supplemented;

29 (6) Establish or enforce regulations or procedures for RF signal strength or the adequacy of
30 service quality;

31 (7) Establish or enforce regulations or procedures for environmental safety for any wireless
32 communications facility that is inconsistent with or in excess of those required by Office of
33 Engineering and Technology (OET) Bulletin 65, entitled Evaluating Compliance with FCC
34 Guidelines for Human Exposure to Radio Frequency Electromagnetic Fields, Edition 97-01,
35 released August, 1997, and Supplement A: Additional Information for Radio and Television
36 Broadcast Stations;

37 (8) In conformance with 47 U.S.C. Section 332(c)(7)(b)(4), reject an application, in whole
38 or in part, based on perceived or alleged environmental effects of radio frequency emissions;

39 (9) Impose any restrictions with respect to objects in navigable airspace that are greater than
40 or in conflict with the restrictions imposed by the Federal Aviation Administration;

41 (10) Prohibit the placement of emergency power systems that comply with federal and state
42 environmental requirements;

43 (11) Charge an application fee, consulting fee, or other fee associated with the submission,
44 review, processing, and approval of an application that is not required for similar types of
45 commercial development within the authority's jurisdiction. Fees imposed by an authority for or
46 directly by a third-party entity providing review or technical consultation to the authority must be
47 based on actual, direct, and reasonable administrative costs incurred for the review, processing, and
48 approval of an application. Except when mutually agreeable to the applicant and the authority, total

charges and fees shall not exceed five hundred dollars for a collocation application or one thousand five hundred dollars for an application for a new wireless support structure or for a substantial modification of a wireless support structure. Notwithstanding the foregoing, in no event shall an authority or any third-party entity include within its charges any travel expenses incurred in a third-party's review of an application and in no event shall an applicant be required to pay or reimburse an authority for consultation or other third-party fees based on a contingency or result-based arrangement;

(12) Impose surety requirements, including bonds, escrow deposits, letters of credit, or any other type of financial surety, to ensure that abandoned or unused facilities can be removed unless the authority imposes similar requirements on other permits for other types of commercial development or land uses;

(13) Condition the approval of an application on the applicant's agreement to provide space on or near the wireless support structure for authority or local governmental services at less than the market rate for space or to provide other services via the structure or facilities at less than the market rate for such services;

(14) Limit the duration of the approval of an application, except that an authority may require an applicant for a small wireless facility to act upon the approved application within eighteen months. If an authority so requires and an application is not acted upon within said time, the application shall be considered withdrawn by the applicant, and the approval shall be null and void;

(15) Discriminate or create a preference on the basis of the ownership, including ownership by the authority, of any property, structure, or tower when promulgating rules or procedures for siting wireless facilities or for evaluating applications;

(16) Impose any requirements or obligations regarding the presentation or appearance of facilities, including, but not limited to, those relating to the kind or type of materials used and those relating to arranging, screening, or landscaping of facilities if such regulations or obligations are unreasonable;

(17) Impose any requirements that an applicant purchase, subscribe to, use, or employ facilities, networks, or services owned, provided, or operated by an authority, in whole or in part, or by any entity in which an authority has a competitive, economic, financial, governance, or other interest;

(18) Condition the approval of an application on, or otherwise require, the applicant's agreement to indemnify or insure the authority in connection with the authority's exercise of its police power-based regulations, except that an authority may require an applicant for a small wireless facility to indemnify the authority in the same manner and to the same extent as utilities using the right-of-way; or

(19) Condition or require the approval of an application based on the applicant's agreement to permit any wireless facilities provided or operated, in whole or in part, by an authority or by any entity in which an authority has a competitive, economic, financial, governance, or other interest, to be placed at or collocated with the applicant's wireless support structure.

67.5101. Notwithstanding sections 67.5090 to 67.5103, the following provisions shall apply to applications relating to small wireless facilities:

(1) An authority shall not require an application, nor any permits or fees, for the following work:

(a) Routine maintenance on previously permitted small wireless facilities;

(b) The replacement of previously permitted small wireless facilities with small wireless facilities that are the same or smaller in size, weight, and height, except the replacement shall be in accordance with applicable requirements under subsection 1 of section 67.5100; or

1 (c) The installation, placement, maintenance, or replacement of micro wireless facilities that
2 are suspended on cables that are strung between existing utility poles in compliance with the
3 National Electric Safety Code;

4 (2) Nothing in this section shall prevent an authority from requiring a permit for work in a
5 right-of-way that will involve excavation, affect traffic patterns or obstruct vehicular traffic in the
6 right-of-way, or, for work described in paragraph (b) of subdivision (1) of this section that involves
7 different equipment than that being replaced, a description of such new equipment so that the
8 authority may maintain an accurate inventory of the small wireless facilities at that location;

9 (3) An authority shall process an application for the collocation or replacement or
10 installation of small wireless facilities on a nondiscriminatory basis, and an application may include
11 up to twenty-five separate small wireless facilities, provided that they are for the same or materially
12 same design of small wireless facility being collocated on the same or materially the same type of
13 utility pole or wireless support structure. If an authority receives applications for approval of more
14 than seventy-five small wireless facilities within a fourteen-day period, whether from a single or
15 multiple applicants, the authority may, upon its own request, obtain an automatic thirty-day
16 extension for any additional collocation or replacement or installation application submitted during
17 that fourteen-day period or in the fourteen-day period immediately following the prior fourteen-day
18 period. An authority shall promptly communicate its request to each and any affected applicant. In
19 rendering a decision on an application for multiple small wireless facilities, the authority may
20 approve the application as to certain individual small wireless facilities while denying it as to others
21 based on applicable requirements and standards including those identified in subsection 1 of section
22 67.5100. The authority's denial of any individual small wireless facility or subset of small wireless
23 facilities within an application is not a basis to deny the application as a whole;

24 (4) Notwithstanding any provision of law to the contrary, an authority shall not require that
25 an existing structure have an existing wireless facility before a small wireless facility or micro
26 wireless facility may be placed, attached, or installed upon such existing structure;

27 (5) An authority shall authorize the collocation or replacement that does not meet the
28 standards of paragraphs (b) or (c) of subdivision (1) of this section of a small wireless facility on a
29 wireless support structure not located within the public right-of-way to the same extent the authority
30 has granted access, whether by lease or other rights granted, to such wireless support structures for
31 other wireless communications infrastructure providers, and may at the authority's sole discretion,
32 authorize the collocation or replacement that does not meet the standards of paragraphs (b) or (c) of
33 subdivision (1) of this section even if the authority has not previously authorized such access,
34 provided required permits are obtained under applicable standards and requirements including those
35 identified under subsection 1 of section 67.5100. Except in single-family residential or areas zoned
36 as historic, an applicant may install a replacement or modified utility pole or wireless support
37 structure in the public right-of-way for small wireless facilities as authorized by this section, and
38 subject to no greater zoning or permitting requirements than for small wireless facilities, so long as
39 the utility pole or wireless support structure meets the authority's requirements under this section,
40 including subdivision (10) of this section, and does not exceed the greater of the following:

41 (a) Ten feet above the tallest existing utility pole already in the public right-of-way. For
42 purposes of this subparagraph, "existing utility pole" means a utility pole already in the same public
43 right-of-way as of August 28, 2017 and which is located within five hundred feet of the applicant's
44 proposed utility pole or wireless support structure; or

45 (b) Fifty feet above ground level;

46 (6) If an application for the collocation of small wireless facilities is denied, the authority
47 shall document the basis for a denial, including the specific standards on which the denial was
48 based, and send the documentation to the applicant on or before the day the authority denies an

1 application. The applicant may cure the deficiencies identified by the authority and resubmit the
 2 application within thirty days of the denial without paying a new application fee. The authority
 3 shall approve or deny the revised application within thirty days, and may not raise new deficiencies
 4 that were not identified in the original denial;

5 (7) Once an application for the collocation of small wireless facilities is approved, the
 6 applicant may maintain the small wireless facility in the permitted location for at least ten years,
 7 which period shall be extended automatically for at least three five-year periods unless the applicant
 8 requests that the permit be terminated or unless the applicant and the authority agree to an extension
 9 term of less than ten years. During the initial and renewal periods, there shall be no requirement for
 10 the applicant to reapply to collocate in an approved location. Nothing herein precludes the authority
 11 from adopting reasonable rules with respect to the removal of abandoned small wireless facilities;

12 (8) An authority may not institute a moratorium, whether directly through a written policy
 13 or indirectly through action or inaction, on:

14 (a) Filing, receiving, or processing applications for the collocation of small wireless
 15 facilities; or

16 (b) Issuing permits or approvals for the collocation of small wireless facilities;

17 (9) Notwithstanding subdivision (8) of this section, an authority may impose a temporary
 18 moratorium on applications for small wireless facilities and the collocation thereof for the duration
 19 of a federal or state-declared natural disaster or for no more than thirty days in the event of a major
 20 and protracted staffing shortage that reduces the number of personnel necessary to the receipt,
 21 review, processing, and approval or denial of applications for the collocation of small wireless
 22 facilities by more than fifty percent;

23 (10) An authority may require that an application for a permit for a small wireless facility,
 24 to replace a utility pole, or for a support structure to accommodate such a facility, demonstrate that
 25 the small wireless facility or the replacement pole or structure reasonably matches the aesthetics of a
 26 utility pole or wireless support structure with decorative elements to which it will be attached, or an
 27 authority may subject small wireless facilities to reasonable and cost-efficient concealment
 28 requirements;

29 (11) No approval for the installation, placement, maintenance, or operation of a small
 30 wireless facility under this section shall be construed to confer authorization for the provision of
 31 cable television service or installation, placement, maintenance, or operation of a wireline backhaul
 32 facility or communications facility, other than a small wireless facility, in the right-of-way;

33 (12) Nothing in sections 67.5090 to 67.5103 shall be interpreted to exempt an applicant, or
 34 any entity which acquires the rights to any portion of a small wireless facility, which is located in
 35 right-of-ways under the exclusive control of an authority from the exclusive financial responsibility
 36 for the movement of the small wireless facility, equipment compound, wireless facility, wireless
 37 support structure, or any associated equipment being moved as a result of a public project
 38 undertaken by an authority. If the project necessitating movement of the small wireless facility,
 39 equipment compound, wireless facility, wireless support structure, or any associated equipment is a
 40 private commercial project, the entity undertaking the private commercial project must make an
 41 advance payment for the movement of the subject facilities before the applicant, or any entity which
 42 acquires the rights to any portion of a small wireless facility which is located in the right-of-way
 43 under the exclusive control of an authority is obligated to move the subject facilities; and

44 (13) A new wireless support structure shall not be placed in the public right-of-way unless
 45 such placement is approved by the process set forth in section 67.5096. A new utility pole that is to
 46 be placed in the public right-of-way for the purpose of supporting small wireless facilities and is not
 47 replacing an existing utility pole as described in subdivision (5) shall be subject to the same
 48 municipal approval process as other utility poles. For the purpose of this subdivision, a structure

1 shall be considered a wireless support structure, and not a utility pole, if it exceeds the greater of:

2 (a) Ten feet above the tallest existing utility pole already in the public right-of-way as of
 3 August 28, 2017, located within five hundred feet of the applicant's proposed structure; or

4 (b) Fifty feet above ground level.

5 67.5102. In accordance with the policies of this state to further the deployment of wireless
 6 communications infrastructure:

7 (1) [An authority] Except as provided under subdivision (9) of section 67.5101, an authority
 8 may not institute any moratorium on the permitting, construction, or issuance of approval of new
 9 wireless support structures, substantial modifications of wireless support structures, or collocations
 10 if such moratorium exceeds six months in length and if the legislative act establishing it fails to state
 11 reasonable grounds and good cause for such moratorium. No such moratorium shall affect an
 12 already pending application;

13 (2) To encourage applicants to request construction of new wireless support structures on
 14 public lands and to increase local revenues:

15 (a) An authority may not charge a wireless service provider or wireless infrastructure
 16 provider any rental, license, or other fee to locate a wireless facility or wireless support structure on
 17 an authority's property in excess of the current market rates for rental or use of similarly situated
 18 property. If the applicant and the authority do not agree on the applicable market rate for any such
 19 public land and cannot agree on a process by which to derive the applicable market rate for any such
 20 public land, then the market rate will be determined by a state-certified general real estate appraiser
 21 licensed under chapter 339 mutually agreed upon by the parties at the applicant's cost. The
 22 appraisal process shall be concluded within ninety calendar days from the date the applicant first
 23 tenders its proposed lease rate to the authority. In the event either party is dissatisfied with the value
 24 determined by the appraiser, such party may bring an action for review in any court of competent
 25 jurisdiction. The court shall rule on any such petition for review in an expedited manner. Nothing
 26 in this paragraph shall bar an applicant and an authority from agreeing to reasonable, periodic
 27 reviews and adjustments of current market rates during the term of a lease or contract to use an
 28 authority's property; [and]

29 (b) An authority may not offer a lease or contract to use public lands to locate a wireless
 30 support structure or wireless facility on an authority's property that is less than fifteen years in
 31 duration unless the applicant agrees to accept a lease or contract of less than fifteen years in
 32 duration;

33 (c) An authority may not charge a wireless communications service provider or wireless
 34 communications infrastructure provider any fee, tax other than a tax authorized by paragraph (d) of
 35 subdivision (2) of this section, or other charge, or require any other form of payment or
 36 compensation, to locate a wireless facility or wireless support structure on privately-owned property,
 37 or on a wireless support structure not owned by the authority; and

38 (d) No authority nor any other political subdivision shall demand any fees, rentals, licenses,
 39 charges, payments, or assessments from any applicant, wireless communications service provider, or
 40 wireless communications infrastructure provider for, or in any way relating to or arising from, the
 41 construction, deployment, installation, mounting, modification, operation, use, replacement,
 42 maintenance, or repair of wireless facilities or wireless support structures, except for the following:

43 a. As otherwise expressly provided in sections 67.5090 to 67.5104;

44 b. Right-of-way permit fees established under 67.1840 for the recovery of actual,
 45 substantiated right-of-way management costs; and

46 c. Antenna fees authorized by section 67.1846, except that such antenna fee shall not be
 47 imposed on small wireless facilities.

48 Right-of-way permit fees imposed on applicants, wireless communications service providers, and

1 wireless communications infrastructure providers shall be competitively neutral with regard to all
 2 other users of the right-of-way, shall not be in the form of a franchise fee or tax, or other fee based
 3 on non-cost related factors such as revenue, sales, profits, lines, subscriptions or customer counts,
 4 and shall not result in double recovery where existing charges already recover the direct and actual
 5 costs of managing the right-of-way. This paragraph precludes the imposition of business license
 6 taxes, business license fees, or gross receipts taxes on wireless communications service providers
 7 and wireless communications infrastructure providers, whether based on gross receipts or other
 8 factors, except that this paragraph allows the imposition of such taxes and fees that are also imposed
 9 on wireline telecommunications businesses operating within the jurisdiction of the authority, or as
 10 mutually agreed to by the authority and the wireless communications service provider or the
 11 wireless communications infrastructure provider.

12 (3) Nothing in subdivision (2) of this section is intended to limit an authority's lawful
 13 exercise of zoning, land use, or planning and permitting authority with respect to applications for
 14 new wireless support structures on an authority's property under subsection 1 of section 67.5096.

15 (4) Except as provided in sections 67.5090 to 67.5104, or as required by federal law, no
 16 authority or other political subdivision shall adopt or enforce any regulations or impose any
 17 additional fees on the placement or operation of communications facilities in the right-of-way where
 18 such facilities are already authorized by franchise or authorization other than that granted in sections
 19 67.5090 to 67.5104.

20 (5) No authority or other political subdivision shall regulate wireless communications
 21 services or impose or collect fees on wireless communications services, other than those addressed
 22 in paragraph (d) of subdivision (2) of this section, unless expressly authorized by state or federal
 23 statute.

24 67.5104. 1. As used in this section, "pole attachment" means an attachment by an attaching
 25 entity, including a video service provider, a telecommunications provider, a wireless
 26 communications service provider, as defined in section 67.5092, a wireless communications
 27 infrastructure provider, as defined in section 67.5092, or other communications-related service
 28 provider to a pole owned or controlled by a municipal utility or municipality~~[-but not a wireless~~
 29 ~~antenna attachment or an attachment by a wireless communications provider to a pole].~~ As used in
 30 this section, "pole" means a utility pole which is owned or controlled by a municipal utility or
 31 municipality~~[-but shall not include poles that are not associated with the transmission or distribution~~
 32 ~~of electric power, communications, broadband, or video services]~~ that is designed for or used to
 33 carry lines, cables, wires, wireless facilities for telephony, wireless communications services as
 34 defined in section 67.5092, electricity, or to provide lighting, traffic control, signage, or other
 35 similar function. A municipal utility or municipality may only deny an attaching entity access to
 36 the utility's poles on a nondiscriminatory basis with respect to particular poles or support structures
 37 if there is insufficient capacity or for reasons of safety and reliability, or generally applicable
 38 engineering standards or, for application under subdivision (10) of section 67.5101, for reasonably
 39 objective and documented aesthetic considerations under subdivision (1) of section 67.5101, and if
 40 the attaching entity will not resolve the issue at its own expense. In determining whether sufficient
 41 capacity exists to accommodate the attachment of a new small wireless facility as defined in section
 42 67.5092, a municipality or municipal utility may grant access subject to a reservation to reclaim
 43 such space, when and if needed to meet the pole owner's core utility purpose that was projected at
 44 the time of the application pursuant to a bona fide development plan. If a municipal utility or
 45 municipality does not find any capacity, safety, or reliability issues, such municipal utility or
 46 municipality shall issue the attaching entity a permit to attach to the municipal utility's or
 47 municipality's poles. Nothing in this section shall be construed to prohibit a municipal utility or
 48 municipality from requiring an attaching entity to enter into a pole attachment agreement consistent

with this section; except that, wireless communications infrastructure providers or wireless communications service providers may collocate small wireless facilities on municipal utility or municipally owned poles located within public roads or right-of-ways without being required to apply for, or enter into, any individual license or franchise with the municipal utility, municipality, or other entity, but subject to nondiscriminatory, competitively neutral, and commercially reasonable terms and conditions as may be set forth in a pole attachment agreement with the municipal utility or municipality, which terms and conditions shall comply with this section and federal pole attachment requirements under 47 U.S.C. Section 224 and corresponding regulations in effect as of January 1, 2017. Within the later of six months after August 28, 2017, or three months after receiving a request by a wireless communications service provider or wireless communications infrastructure provider, each municipal utility and municipality shall, acting in good faith, prepare and make available a standard wireless pole attachment agreement that complies with the requirements of sections 67.5092 to 67.5104. A standard wireless pole attachment agreement shall be in a form that is substantially complete so that a wireless communications service provider or wireless communications infrastructure provider, acting in good faith, may accept it with little substantive negotiation. Notwithstanding any provision of law to the contrary, nothing shall preclude the contractual parties to a standard pole attachment agreement, if mutually agreeable, from negotiating terms beyond those contemplated by the standard pole attachment agreement. All pole attachment agreements with wireless communications service providers and wireless communications infrastructure providers shall be considered a public record as defined under chapter 610.

2. (1) Notwithstanding sections 67.1830 to 67.1846, any pole attachment fees, terms, and conditions, including those related to the granting or denial of access, demanded by a municipal utility pole owner or controlling authority of a municipality shall be nondiscriminatory, just, and reasonable and shall not be subject to any required franchise authority or government entity permitting, except as provided in this section. A pole attachment rental fee shall be calculated on an annual, per-pole basis. Such rental fee shall be considered nondiscriminatory, just, and reasonable if it is agreed upon by the parties or, in the absence of such an agreement, based on cost but in no such case shall such fee so calculated be greater than the fee which would apply if it were calculated in accordance with the cable service pole attachment rate formula referenced in 47 U.S.C. [See-] Section 224(d) as applied by the Federal Communications Commission. In addition, a municipal pole owner may be authorized to exceed the rate of return cost components of the Federal Communications Commission formula referenced in this section if necessary to comply with Article X of the Missouri Constitution. In the event of a dispute between the parties, either party may bring an action for review in any court of competent jurisdiction. The court shall rule on any such petition for review in an expedited manner by moving the petition to the head of the docket consistent with ~~[subsection 2 of]~~ this section. Nothing shall deny any party the right to a hearing before the court.

(2) Make-ready work shall be addressed as follows, unless the parties agree to different terms in a pole attachment agreement:

(a) For municipal utility or municipality owned poles that support aerial cables used for video, communications, or electric service, the parties shall comply with the process for make-ready work under 47 U.S.C. Section 224 and implementing regulations. The good faith estimate of the entity owning or controlling the pole for any make-ready work necessary to enable the pole to support the requested collocation shall include pole replacement, if necessary;

(b) For municipal utility or municipality owned poles that do not support aerial cables used for video, communications, or electric service, the municipal utility or municipality shall provide a good faith estimate for any make-ready work necessary to enable the pole to support the requested

collocation, including pole replacement, if necessary, within sixty days after receipt of a complete application. Make-ready work, including any pole replacement, shall be completed within sixty days of written acceptance of the good faith estimate and advance payment, if required, by the applicant; and

(c) Make-ready work shall not require more work than required to meet applicable codes or industry standards. Charges for make-ready work, including any pole replacement, shall not exceed actual costs or the amount charged to other communications service providers for similar work and shall not include third-party fees, charges, or expenses, except for amounts charged by licensed contractors actually performing the make-ready work.

3. Small wireless facility pole attachments completed on or after August 28, 2017, shall not interfere with or impair the operation of existing utility facilities or preexisting third-party attachments.

~~[3-]~~ 4. Where no pole attachment agreement exists between an attaching entity and the municipal utility pole owner or controlling authority of a municipality, and a dispute between a municipal utility pole owner or controlling authority of a municipality and an attaching entity exclusively concerns the per-pole fee or any requirement or issue not directly related to pole attachments consistent with this section or both, then the attaching entity may proceed with its attachments during the pendency of the dispute under the agreed-upon terms and conditions at a rental rate of no more than as set forth in subsection 2 of this section. The attaching entity shall comply with applicable and reasonable engineering, safety, and reliability standards and shall hold the municipal pole owner or controlling authority of the municipality harmless for any liabilities or damages incurred that are caused by the attaching entity.

~~[4-]~~ 5. The provisions of this section shall not supersede existing pole attachment agreements established prior to August 28, ~~[2014]~~ 2017.

~~[5-]~~ 6. Nothing in this section shall be construed as conferring any jurisdiction or authority to the public service commission or any state agency to regulate either the fees, terms, or conditions for pole attachments, or for any state agency to assert any jurisdiction over attachments to poles regulated by 47 U.S.C. ~~[See-]~~ Section 224.

~~[6-]~~ 7. A municipal utility or municipality may, after reasonable written notice and an opportunity to cure, as provided in the applicable pole attachment agreement between a municipal utility or municipality and an attaching entity, revoke a pole attachment permit granted to an attaching entity and require removal of the attachment with or without fee refund for breach of the pole attachment agreement or permit until the breach is cured, but only in the event of a substantial breach of material terms and conditions of the pole attachment agreement or permit. A substantial breach by an attaching entity shall be limited to:

(1) A material violation of a material provision of the applicable pole attachment agreement or permit;

(2) An evasion or attempt to evade any material provision of the applicable pole attachment agreement or permit;

(3) A material misrepresentation of fact in the applicable pole attachment agreement or permit application;

(4) A failure to complete work by the date and in accordance with the terms specified in the applicable pole attachment agreement or permit, unless an extension is obtained or unless the failure to complete the work is due to reasons beyond the attaching entity's control; or

(5) A failure to correct, within the time and in accordance with the terms specified by the municipal utility or municipality in the applicable pole attachment agreement or permit, work by the attaching entity that does not conform to applicable national safety codes, industry construction standards, or local safety codes that are not more stringent than national safety codes, upon

1 inspection and notification by the municipal utility or municipality of the faulty condition. If the
2 time for correction is not specified in the applicable pole attachment agreement or permit, the time
3 for correction shall be reasonable under the particular circumstances, and in no event less than thirty
4 days.

5 [7:] 8. Unless otherwise provided for in an applicable pole attachment agreement, in the
6 event of an imminent threat to public health, life, or safety, a municipal utility or municipality shall,
7 upon notice to the attaching entity, request the attaching entity rearrange, relocate, or remove a pole
8 attachment from a pole or absent action from the attaching entity, have the authority to rearrange,
9 relocate, or remove a pole attachment consistent with industry practices. The attaching entity shall
10 be notified as soon as practicable upon the cessation of the threat to public health, life, or safety, or
11 upon restoration of the attachment by the municipal utility or municipality.

12 9. Nothing in this section grants any wireless communications service provider or wireless
13 communications infrastructure provider the power of eminent domain."; and
14

15 Further amend said bill by amending the title, enacting clause, and intersectional references
16 accordingly.