

FIRST REGULAR SESSION
[PERFECTED]
HOUSE COMMITTEE SUBSTITUTE FOR
HOUSE BILL NO. 656
99TH GENERAL ASSEMBLY

1391H.02P

D. ADAM CRUMBLISS, Chief Clerk

AN ACT

To repeal sections 67.1830, 67.1846, 67.5090, 67.5092, 67.5094, 67.5102, and 67.5104, RSMo, and to enact in lieu thereof eight new sections relating to the uniform wireless communication infrastructure deployment act.

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

Section A. Sections 67.1830, 67.1846, 67.5090, 67.5092, 67.5094, 67.5102, and 67.5104, RSMo, are repealed and eight new sections enacted in lieu thereof, to be known as sections 67.1830, 67.1846, 67.5090, 67.5092, 67.5094, 67.5101, 67.5102, and 67.5104, to read as follows:

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

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

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

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

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

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

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

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.

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

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

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

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

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

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

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

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

36 (a) Issuing, processing and verifying right-of-way permit applications;

37 (b) Inspecting job sites and restoration projects;

38 (c) Protecting or moving public utility right-of-way user construction equipment after
39 reasonable notification to the public utility right-of-way user during public right-of-way work;

40 (d) Determining the adequacy of public right-of-way restoration;

41 (e) Restoring work inadequately performed after providing notice and the opportunity
42 to correct the work; and

43 (f) Revoking right-of-way permits.

44

45 Right-of-way management costs shall be the same for all entities doing similar work.
46 Management costs or rights-of-way management costs shall not include payment by a public
47 utility right-of-way user for the use or rent of the public right-of-way, degradation of the public
48 right-of-way or any costs as outlined in paragraphs (a) to (f) of this subdivision which are

49 incurred by the political subdivision as a result of use by users other than public utilities, the
50 attorneys' fees and cost of litigation relating to the interpretation of this section or section
51 67.1832, or litigation, interpretation or development of any ordinance enacted pursuant to this
52 section or section 67.1832, or attorneys' fees and costs in connection with issuing, processing,
53 or verifying right-of-way permits or other applications or agreements, or the political
54 subdivision's fees and costs related to appeals taken pursuant to section 67.1838. In granting or
55 renewing a franchise for a cable television system, a political subdivision may impose a franchise
56 fee and other terms and conditions permitted by federal law;

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

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

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

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

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

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

80 (f) Establish permitting requirements for towers and other structures or equipment for
81 wireless communications facilities in the public right-of-way, notwithstanding the provisions of
82 section 67.1832;

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

- 85 (h) Impose permit conditions to protect public safety;
- 86 (7) "Political subdivision", a city, town, village, county of the first classification or
87 county of the second classification;
- 88 (8) "Public right-of-way", the area on, below or above a public roadway, highway, street
89 or alleyway in which the political subdivision has an ownership interest, but not including:
- 90 (a) The airwaves above a public right-of-way with regard to cellular or other nonwire
91 telecommunications or broadcast service;
- 92 (b) Easements obtained by utilities or private easements in platted subdivisions or tracts;
- 93 (c) Railroad rights-of-way and ground utilized or acquired for railroad facilities; or
- 94 (d) Poles, pipes, cables, conduits, wires, optical cables, or other means of transmission,
95 collection or exchange of communications, information, substances, data, or electronic or
96 electrical current or impulses utilized by a municipally owned or operated utility pursuant to
97 chapter 91 or pursuant to a charter form of government;
- 98 (9) "Public utility", every cable television service provider, every pipeline corporation,
99 gas corporation, electrical corporation, rural electric cooperative, telecommunications company,
100 water corporation, heating or refrigerating corporation or sewer corporation under the jurisdiction
101 of the public service commission; every municipally owned or operated utility pursuant to
102 chapter 91 or pursuant to a charter form of government or cooperatively owned or operated
103 utility pursuant to chapter 394; every street light maintenance district; every privately owned
104 utility; and every other entity, regardless of its form of organization or governance, whether for
105 profit or not, which in providing a public utility type of service for members of the general
106 public, utilizes pipes, cables, conduits, wires, optical cables, or other means of transmission,
107 collection or exchange of communications, information, substances, data, or electronic or
108 electrical current or impulses, in the collection, exchange or dissemination of its product or
109 services through the public rights-of-way;
- 110 (10) "Public utility right-of-way user", a public utility owning or controlling a facility
111 in the public right-of-way; and
- 112 (11) "Right-of-way permit", a permit issued by a political subdivision authorizing the
113 performance of excavation work in a public right-of-way.

67.1846. 1. Nothing in sections 67.1830 to 67.1846 relieves the political subdivision
2 of any obligations under an existing franchise agreement in effect on May 1, 2001. Nothing in
3 sections 67.1830 to 67.1846 will apply to that portion of any ordinance passed prior to May 1,
4 2001, which establishes a street degradation fee. Nothing in sections 67.1830 to 67.1846 shall
5 be construed as limiting the authority of county highway engineers or relieving public utility
6 right-of-way users from any obligations set forth in chapters 229 to 231. Nothing in sections
7 67.1830 to 67.1846 shall be deemed to relieve a public utility right-of-way user of the provisions

8 of an existing franchise, franchise fees, license or other agreement or permit in effect on May 1,
9 2001. Nothing in sections 67.1830 to 67.1846 shall prohibit a political subdivision or public
10 utility right-of-way user from renewing or entering into a new or existing franchise, as long as
11 all other public utility right-of-way users have use of the public right-of-way on a
12 nondiscriminatory basis. Nothing in sections 67.1830 to 67.1846 shall prevent a grandfathered
13 political subdivision from enacting new ordinances, including amendments of existing
14 ordinances, charging a public utility right-of-way user a fair and reasonable linear foot or antenna
15 fee or from enforcing or renewing existing linear foot ordinances for use of the right-of-way,
16 provided that the public utility right-of-way user either:

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

19 (2) Is not required by the political subdivision to pay the linear foot fee **or antenna fee**
20 if the public utility right-of-way user is paying gross receipts taxes, **business license fees, or**
21 **business license taxes.**

22

23 For purposes of this section, a "grandfathered political subdivision" is any political subdivision
24 which has, prior to May 1, 2001, enacted one or more ordinances reflecting a policy of imposing
25 any linear foot fees on any public utility right-of-way user, including ordinances which were
26 specific to particular public right-of-way users. Any existing ordinance or new ordinance passed
27 by a grandfathered political subdivision providing for payment of the greater of a linear foot fee
28 or a gross receipts ~~[fee]~~ **tax** shall be enforceable only with respect to the linear foot fee.

29 2. Nothing in sections 67.1830 to 67.1846 shall prohibit a political subdivision from
30 enacting, renewing or enforcing provisions of an ordinance to require a business license tax, sales
31 tax, occupation tax, franchise tax or franchise fee, property tax or other similar tax, to the extent
32 consistent with federal law. Nothing in sections 67.1830 to 67.1846 shall prohibit a political
33 subdivision from enacting, enforcing or renewing provisions of an ordinance to require a gross
34 receipts tax pursuant to chapter 66, chapter 92, or chapter 94. For purposes of this subsection,
35 the term "franchise fee" shall mean "franchise tax".

67.5090. Sections 67.5090 to 67.5103 shall be known and may be cited as the "Uniform
2 Wireless Communications Infrastructure Deployment Act" and is intended to encourage and
3 streamline the deployment of broadcast and broadband facilities and to help ensure that robust
4 wireless radio-based communication services are available throughout Missouri **by adopting a**
5 **uniform statewide framework for the deployment of wireless infrastructure consistent with**
6 **applicable right-of-way and zoning guidelines. Except as specified herein, nothing in this**
7 **act is intended to prevent or otherwise limit the ability of wireless communications service**
8 **providers and wireless communications infrastructure providers to deploy wireless**

9 **infrastructure consistent with this act and sections 67.1830 to 67.1846, to prevent or**
10 **otherwise limit an authority's ability to require wireless communications service providers**
11 **and wireless communications infrastructure providers to obtain permits for the installation**
12 **of wireless facilities or wireless support structures, or to prevent a municipal utility or**
13 **municipality from requiring wireless communications service providers and wireless**
14 **communications infrastructure providers collocating small wireless facilities on municipal**
15 **or municipal utility poles to comply with section 67.5104.**

67.5092. As used in sections 67.5090 to [67.5103] **67.5104**, the following terms mean:

- 2 (1) "Accessory equipment", any equipment serving or being used in conjunction with
3 a wireless communications facility or wireless support structure. The term includes utility or
4 transmission equipment, power supplies, generators, batteries, cables, equipment buildings,
5 cabinets and storage sheds, shelters, or similar structures;
- 6 (2) "Antenna", communications equipment that transmits or receives electromagnetic
7 radio signals used in the provision of any type of wireless communications services;
- 8 (3) "Applicant", any person engaged in the business of providing wireless
9 communications services or the wireless communications infrastructure required for wireless
10 communications services who submits an application;
- 11 (4) "Application", a request submitted by an applicant to an authority to construct a new
12 wireless support structure, for the substantial modification of a wireless support structure, or for
13 collocation of a wireless facility or replacement of a wireless facility on an existing structure;
- 14 (5) "Authority", each state, county, and municipal governing body, board, agency, office,
15 or commission authorized by law and acting in its capacity to make legislative, quasi-judicial,
16 or administrative decisions relative to zoning or building permit review of an application. The
17 term shall not include state courts having jurisdiction over land use, planning, or zoning
18 decisions made by an authority;
- 19 (6) ~~["Base station", a station at a specific site authorized to communicate with mobile~~
20 ~~stations, generally consisting of radio transceivers, antennas, coaxial cables, power supplies, and~~
21 ~~other associated electronics, and includes a structure that currently supports or houses an~~
22 ~~antenna, a transceiver, coaxial cables, power supplies, or other associated equipment;~~
- 23 ~~———(7)—~~["Building permit", a permit issued by an authority prior to commencement of work
24 on the collocation of wireless facilities on an existing structure, the substantial modification of
25 a wireless support structure, or the commencement of construction of any new wireless support
26 structure, solely to ensure that the work to be performed by the applicant satisfies the applicable
27 building code;
- 28 [(8)] (7) "Collocation", the placement or installation of a new wireless facility on [a]
29 **an existing structure, including associated ground mounted facilities immediately adjacent**

30 **to an existing structure**, that already has an existing wireless facility, including electrical
31 transmission towers, water towers, buildings, **utility poles, existing structures**, and other
32 structures capable of structurally supporting the attachment of wireless facilities in compliance
33 with applicable codes;

34 (8) **"Communications facility"**, the set of equipment and network components,
35 including wires and cables and associated facilities used by a cable operator, as defined in
36 47 U.S.C. Section 522(5), a telecommunications carrier, as defined in 47 U.S.C. Section
37 153(51), a provider of information service, as defined in 47 U.S.C. Section 153(24), or a
38 wireless communications provider, to provide cable service, as defined in 47 U.S.C. Section
39 522(6), telecommunications service, as defined in 47 U.S.C. Section 153(53), an information
40 service, as defined in 47 U.S.C. Section 153(24), wireless communications service, or other
41 one-way or two-way communications service;

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

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

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

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

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

60 [(13)] (14) **"Small wireless facility"**, a **wireless facility with an antenna of no more**
61 **than six cubic feet in volume and associated equipment with a cumulative volume no larger**
62 **than twenty-eight cubic feet. An associated electric meter, concealment, telecom**
63 **demarcation box, grounding equipment, power transfer switch, cutoff switch, vertical cable**
64 **runs and related conduit on a pole for the connection of power and other services may be**
65 **located outside the primary equipment enclosure and are not included in the calculation**

66 **of the equipment volume. Volume shall be a measure of the exterior displacement, not the**
67 **interior volume, of the enclosure. This term shall include a micro wireless facility;**

68 **(15)** "Substantial modification", the mounting of a proposed wireless facility on a
69 wireless support structure which, as applied to the structure as it was originally constructed:

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

71 a. More than ten percent; or

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

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

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

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

83 ~~[(14)]~~ **(16)** "Utility", any person, corporation, county, municipality acting in its capacity
84 as a utility, municipal utility board, or other entity, or department thereof or entity related thereto,
85 providing retail or wholesale electric, natural gas, water, waste water, data, cable television, or
86 telecommunications, **wireless communications service**, or internet protocol-related services;

87 ~~[(15)]~~ **(17)** "Utility pole", a structure owned or operated by a utility that is designed
88 specifically for and used to carry lines, cables, ~~[or]~~ **wires or wireless facilities** for telephony,
89 **wireless communications service**, cable television, or electricity, or to provide lighting, **traffic**
90 **control, signage, or similar function;**

91 ~~[(16)]~~ **(18)** "Water tower", a water storage tank, or a standpipe or an elevated tank
92 situated on a support structure, originally constructed for use as a reservoir or facility to store or
93 deliver water;

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

97 ~~[(17)]~~ **(20)** "Wireless communications service", includes the wireless facilities of all
98 services licensed to use radio communications pursuant to Section 301 of the Communications
99 Act of 1934, 47 U.S.C. Section 301, **and fixed or mobile communication transmission**
100 **services including, but not limited to, data or voice transmissions provided using wireless**
101 **facilities, including both one-way and two-way communications services, and services using**

102 **licensed or unlicensed spectrum including the use of wi-fi; provided that, using wireless**
103 **facilities does not include wireline backhaul facilities;**

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

106 ~~[(18)]~~ **(22) "Wireless facility", the set of equipment and network components, [exclusive**
107 ~~of the underlying wireless support structure,]~~ including, but not limited to, antennas, accessory
108 equipment, transmitters, receivers, power supplies, cabling, **small wireless facilities**, and
109 associated equipment necessary to provide wireless communications services. **The term shall**
110 **not include:**

111 **(a) The underlying wireless support structure;**

112 **(b) Wireline backhaul facilities; or**

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

115 ~~[(19)]~~ **(23) "Wireless support structure", a freestanding structure, such as a monopole,**
116 **tower, [or] electrical transmission tower, water tower, utility pole, building, or other existing**
117 **or proposed structure capable of supporting wireless facilities[;—This definition does not**
118 ~~include utility poles.] ;~~

119 **(24) "Wireline backhaul facility", the transport of communication data by wire**
120 **from wireless facilities to a network.**

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

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

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

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

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

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

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

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

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

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

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

45 (11) Charge an application fee, consulting fee, or other fee associated with the
46 submission, review, processing, and approval of an application that is not required for similar
47 types of commercial development within the authority's jurisdiction. Fees imposed by an
48 authority for or directly by a third-party entity providing review or technical consultation to the
49 authority must be based on actual, direct, and reasonable administrative costs incurred for the
50 review, processing, and approval of an application. Except when mutually agreeable to the
51 applicant and the authority, total charges and fees shall not exceed five hundred dollars for a
52 collocation application or one thousand five hundred dollars for an application for a new wireless
53 support structure or for a substantial modification of a wireless support structure.

54 Notwithstanding the foregoing, in no event shall an authority or any third-party entity include
55 within its charges any travel expenses incurred in a third-party's review of an application and in
56 no event shall an applicant be required to pay or reimburse an authority for consultation or other
57 third-party fees based on a contingency or result-based arrangement;

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

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

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

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

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

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

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

87 (19) Condition or require the approval of an application based on the applicant's
88 agreement to permit any wireless facilities provided or operated, in whole or in part, by an
89 authority or by any entity in which an authority has a competitive, economic, financial,

90 governance, or other interest, to be placed at or collocated with the applicant's wireless support
91 structure.

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

3 **(1) An authority shall not require an application for the following work:**

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

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

9 **(c) The installation, placement, maintenance, or replacement of micro wireless
10 facilities that are suspended on cables that are strung between existing utility poles in
11 compliance with applicable requirements under subsection 1 of section 67.5100;**

12 **(2) Nothing in this section shall prevent an authority from requiring a permit for
13 work in a right-of-way that will involve excavation, affect traffic patterns or obstruct the
14 right-of-way, or, for work described in subparagraph (b) of subdivision (1) of this section
15 that involves different equipment than that being replaced, a description of such new
16 equipment so that the authority may maintain an accurate inventory of the small wireless
17 facilities at that location;**

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

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

39 (5) An authority shall authorize the collocation or replacement or installation of a
40 small wireless facility on a wireless support structure not located within the public
41 right-of-way to the same extent the authority has granted access, whether by lease or other
42 rights granted, to such wireless support structures for other wireless communications
43 infrastructure providers, and may at the authority's sole discretion, authorize the
44 collocation or replacement or installation even if the authority has not previously
45 authorized such access, provided required permits are obtained under applicable
46 standards and requirements including those identified under subsection 1 of section
47 67.5100. Except in single-family residential or areas zoned as historic, an applicant may
48 install a replacement or modified utility pole or wireless support structure in the public
49 right-of-way for small wireless facilities as authorized by this section, and subject to no
50 greater zoning or permitting requirements than for small wireless facilities, so long as the
51 utility pole or wireless support structure meets the authority's requirements under this
52 section, including subdivision (10) of this section, and does not exceed the greater of the
53 following:

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

58 (b) Fifty feet above ground level;

59 (6) If an application for the collocation of small wireless facilities is denied, the
60 authority shall document the basis for a denial, including the specific standards on which
61 the denial was based, and send the documentation to the applicant on or before the day the
62 authority denies an application. The applicant may cure the deficiencies identified by the
63 authority and resubmit the application within thirty days of the denial without paying a
64 new application fee. The authority shall approve or deny the revised application within
65 thirty days, and may not raise new deficiencies that were not identified in the original
66 denial;

67 (7) Once an application for the collocation of small wireless facilities is approved,
68 the applicant may maintain the small wireless facility in the permitted location for at least
69 ten years, which period shall be extended automatically for at least three five-year periods
70 unless the applicant requests that the permit be terminated or unless the applicant and the

71 authority agree to an extension term of less than ten years. During the initial and renewal
72 periods, there shall be no requirement for the applicant to reapply to collocate in an
73 approved location. Nothing herein precludes the authority from adopting reasonable rules
74 with respect to the removal of abandoned small wireless facilities;

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

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

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

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

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

92 (11) No approval for the installation, placement, maintenance, or operation of a
93 small wireless facility under this section shall be construed to confer permission for the
94 installation, placement, maintenance, or operation of a wireline backhaul facility or
95 communications facility, other than a small wireless facility, in the right-of-way;

96 (12) Nothing in this section shall be interpreted to exempt an applicant, or any
97 entity which acquires the rights to any portion of a small wireless facility, communications
98 facility, or a micro wireless facility which is located in right-of-ways under the exclusive
99 control of an authority from the exclusive financial responsibility for the movement of the
100 small wireless facility, communication facility, micro wireless facility, equipment
101 compound, wireless facility, wireless support structure, or any associated equipment being
102 moved as a result of a public project undertaken by an authority. If the project
103 necessitating movement of the small wireless facility, communication facility, micro
104 wireless facility, equipment compound, wireless facility, wireless support structure, or any
105 associated equipment is a private commercial project, the entity undertaking the private
106 commercial project must make an advance payment for the movement of the subject

107 facilities before the applicant, or any entity which acquires the rights to any portion of a
108 small wireless facility, communications facility, or micro wireless facility which is located
109 in the right-of-way under the exclusive control of an authority is obligated to move the
110 subject facilities; and

111 (13) A new wireless support structure shall not be placed in the public right-of-way
112 unless such placement is approved by the process set forth in section 67.5096. A new utility
113 pole that is to be placed in the public right-of-way for the purpose of supporting small
114 wireless facilities and is not replacing an existing utility pole as described in subdivision
115 (5) shall be subject to the same municipal approval process as other utility poles. For the
116 purpose of this subdivision, a structure shall be considered a wireless support structure,
117 and not a utility pole, if it exceeds the greater of:

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

121 (b) Fifty feet above ground level.

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

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

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

11 (a) An authority may not charge a wireless service provider or wireless infrastructure
12 provider any rental, license, or other fee to locate a wireless facility or wireless support structure
13 on an authority's property in excess of the current market rates for rental or use of similarly
14 situated property. If the applicant and the authority do not agree on the applicable market rate
15 for any such public land and cannot agree on a process by which to derive the applicable market
16 rate for any such public land, then the market rate will be determined by a state-certified general
17 real estate appraiser licensed under chapter 339 mutually agreed upon by the parties at the
18 applicant's cost. The appraisal process shall be concluded within ninety calendar days from the
19 date the applicant first tenders its proposed lease rate to the authority. In the event either party
20 is dissatisfied with the value determined by the appraiser, such party may bring an action for
21 review in any court of competent jurisdiction. The court shall rule on any such petition for

22 review in an expedited manner. Nothing in this paragraph shall bar an applicant and an authority
23 from agreeing to reasonable, periodic reviews and adjustments of current market rates during the
24 term of a lease or contract to use an authority's property; ~~and~~

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

29 (c) **An authority may not charge a wireless communications service provider or**
30 **wireless communications infrastructure provider any fee, tax, or other charge, or require**
31 **any other form of payment or compensation, to locate a wireless facility or wireless support**
32 **structure on privately-owned property, or on a wireless support structure not owned by**
33 **the authority; and**

34 (d) **Except as otherwise expressly provided in sections 67.5090 to 67.5104, and**
35 **except for right-of-way permit fees consistent with the fees established under section**
36 **67.1840 for the recovery of actual, substantiated right-of-way management costs, no**
37 **authority nor any other political subdivision shall demand any fees, rentals, licenses,**
38 **charges, payments, or assessments from any applicant, wireless communications service**
39 **provider, or wireless communications infrastructure provider for, or in any way relating**
40 **to or arising from, the construction, deployment, installation, mounting, modification,**
41 **operation, use, replacement, maintenance, or repair of wireless facilities or wireless**
42 **support structures. Right-of-way permit fees imposed on applicants, wireless**
43 **communications service providers, and wireless communications infrastructure providers**
44 **shall be competitively neutral with regard to all other users of the right-of-way, shall not**
45 **be in the form of a franchise fee or tax, or other fee based on non-cost related factors such**
46 **as revenue, sales, profits, lines, subscriptions or customer counts, and shall not result in**
47 **double recovery where existing charges already recover the direct and actual costs of**
48 **managing the right-of-way. This paragraph precludes the imposition of any business**
49 **license taxes, business license fees, or gross receipt taxes on wireless communications**
50 **service providers and wireless communications infrastructure providers that are not**
51 **imposed on wireline telecommunications businesses operating within the jurisdiction of the**
52 **authority, or that are based on factors other than gross receipts except as mutually agreed**
53 **to by the authority and the wireless communications service provider or the wireless**
54 **communications infrastructure provider.**

55 (3) Nothing in subdivision (2) of this section is intended to limit an authority's lawful
56 exercise of zoning, land use, or planning and permitting authority with respect to applications

57 for new wireless support structures on an authority's property under subsection 1 of section
58 67.5096.

59 **(4) Except as provided in sections 67.5090 to 67.5104, or as required by federal law,**
60 **no authority or other political subdivision shall adopt or enforce any regulations on the**
61 **placement or operation of communications facilities in the right-of-way where such**
62 **facilities are already authorized by franchise or authorization other than that granted in**
63 **sections 67.5090 to 67.5104.**

64 **(5) No authority or other political subdivision shall regulate wireless**
65 **communications services or impose or collect fees on wireless communications services,**
66 **other than those addressed in paragraph (d) of subdivision (2) of this section, unless**
67 **expressly required by state or federal law.**

67.5104. 1. As used in this section, "pole attachment" means an attachment by an
2 attaching entity, including a video service provider, a telecommunications provider, **a wireless**
3 **communications service provider, as defined in section 67.5092, a wireless communications**
4 **infrastructure provider, as defined in section 67.5092,** or other communications-related
5 service provider to a pole owned or controlled by a municipal utility or municipality~~], but not a~~
6 ~~wireless antenna attachment or an attachment by a wireless communications provider to a pole].~~
7 As used in this section, "pole" means a utility pole which is owned or controlled by a municipal
8 utility or municipality~~], but shall not include poles that are not associated with the transmission~~
9 ~~or distribution of electric power, communications, broadband, or video services]~~ **that is**
10 **designed for or used to carry lines, cables, wires, wireless facilities for telephony, wireless**
11 **communications services as defined in section 67.5092, electricity, or to provide lighting,**
12 **traffic control, signage, or other similar function.** A municipal utility or municipality may
13 only deny an attaching entity access to the utility's poles on a nondiscriminatory basis **with**
14 **respect to particular poles or support structures** if there is insufficient capacity or for reasons
15 of safety and reliability, **generally applicable engineering standards or reasonably objective**
16 **and documented aesthetic considerations under section 67.5101(10),** and if the attaching
17 entity will not resolve the issue **at its own expense. In determining whether sufficient**
18 **capacity exists to accommodate a new attachment, a municipality or municipal utility may**
19 **grant access subject to a reservation to reclaim such space, when and if needed to meet the**
20 **pole owner's core utility purpose that was projected at the time of the application pursuant**
21 **to a bona fide development plan.** If a municipal utility or municipality does not find any
22 capacity, safety, or reliability issues, such municipal utility or municipality shall issue the
23 attaching entity a permit to attach to the municipal utility's or municipality's poles. Nothing in
24 this section shall be construed to prohibit a municipal utility or municipality from requiring an
25 attaching entity to enter into a pole attachment agreement consistent with this section; **except**

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

48 2. **(1)** Notwithstanding sections 67.1830 to 67.1846, any pole attachment fees, terms, and
49 conditions, including those related to the granting or denial of access, demanded by a municipal
50 utility pole owner or controlling authority of a municipality shall be nondiscriminatory, just, and
51 reasonable and shall not be subject to any required franchise authority or government entity
52 permitting, except as provided in this section. A pole attachment rental fee shall be calculated
53 on an annual, per-pole basis. Such rental fee shall be considered nondiscriminatory, just, and
54 reasonable if it is agreed upon by the parties or, in the absence of such an agreement, based on
55 cost but in no such case shall such fee so calculated be greater than the fee which would apply
56 if it were calculated in accordance with the cable service **pole attachment** rate formula
57 referenced in 47 U.S.C. ~~[See-]~~ **Section** 224(d) as applied by the Federal Communications
58 Commission. In addition, a municipal pole owner may be authorized to exceed the rate of return
59 cost components of the Federal Communications Commission formula referenced in this section
60 if necessary to comply with Article X of the Missouri Constitution. In the event of a dispute
61 between the parties, either party may bring an action for review in any court of competent

62 jurisdiction. The court shall rule on any such petition for review in an expedited manner by
63 moving the petition to the head of the docket consistent with ~~[subsection 2 of]~~ this section.
64 Nothing shall deny any party the right to a hearing before the court.

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

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

73 **(b) For municipal utility or municipality owned poles that do not support aerial**
74 **cables used for video, communications, or electric service, the municipal utility or**
75 **municipality shall provide a good faith estimate for any make-ready work necessary to**
76 **enable the pole to support the requested collocation, including pole replacement, if**
77 **necessary, within sixty days after receipt of a complete application. Make-ready work,**
78 **including any pole replacement, shall be completed within sixty days of written acceptance**
79 **of the good faith estimate and advance payment, if required, by the applicant; and**

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

86 **3. Pole attachments completed on or after August 28, 2017, shall not interfere with**
87 **or impair the operation of existing utility facilities or preexisting third-party attachments.**

88 ~~[3-]~~ **4. Where no pole attachment agreement exists between an attaching entity and the**
89 **municipal utility pole owner or controlling authority of a municipality, and a dispute between**
90 **a municipal utility pole owner or controlling authority of a municipality and an attaching entity**
91 **exclusively concerns the per-pole fee or any requirement or issue not directly related to pole**
92 **attachments consistent with this section or both, then the attaching entity may proceed with its**
93 **attachments during the pendency of the dispute under the agreed-upon terms and conditions at**
94 **a rental rate of no more than as set forth in subsection 2 of this section. The attaching entity shall**
95 **comply with applicable and reasonable engineering, safety, and reliability standards and shall**
96 **hold the municipal pole owner or controlling authority of the municipality harmless for any**
97 **liabilities or damages incurred that are caused by the attaching entity.**

98 ~~[4.]~~ **5.** The provisions of this section shall not supersede existing pole attachment
99 agreements established prior to August 28, ~~[2014]~~ **2017**.

100 ~~[5.]~~ **6.** Nothing in this section shall be construed as conferring any jurisdiction or
101 authority to the public service commission or any state agency to regulate either the fees, terms,
102 or conditions for pole attachments, or for any state agency to assert any jurisdiction over
103 attachments to poles regulated by 47 U.S.C. ~~[See.]~~ **Section 224**.

104 ~~[6.]~~ **7.** A municipal utility or municipality may, after reasonable written notice and an
105 opportunity to cure, as provided in the applicable pole attachment agreement between a
106 municipal utility or municipality and an attaching entity, revoke a pole attachment permit granted
107 to an attaching entity and require removal of the attachment with or without fee refund for breach
108 of the pole attachment agreement or permit until the breach is cured, but only in the event of a
109 substantial breach of material terms and conditions of the pole attachment agreement or permit.
110 A substantial breach by an attaching entity shall be limited to:

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

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

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

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

120 (5) A failure to correct, within the time and in accordance with the terms specified by
121 the municipal utility or municipality in the applicable pole attachment agreement or permit, work
122 by the attaching entity that does not conform to applicable national safety codes, industry
123 construction standards, or local safety codes that are not more stringent than national safety
124 codes, upon inspection and notification by the municipal utility or municipality of the faulty
125 condition. If the time for correction is not specified in the applicable pole attachment agreement
126 or permit, the time for correction shall be reasonable under the particular circumstances, and in
127 no event less than thirty days.

128 ~~[7.]~~ **8.** Unless otherwise provided for in an applicable pole attachment agreement, in the
129 event of an imminent threat to public health, life, or safety, a municipal utility or municipality
130 shall, upon notice to the attaching entity, request the attaching entity rearrange, relocate, or
131 remove a pole attachment from a pole or absent action from the attaching entity, have the
132 authority to rearrange, relocate, or remove a pole attachment consistent with industry practices.
133 The attaching entity shall be notified as soon as practicable upon the cessation of the threat to

134 public health, life, or safety, or upon restoration of the attachment by the municipal utility or
135 municipality.

136 **9. Nothing in this section grants any wireless communications service provider or**
137 **wireless communications infrastructure provider the power of eminent domain.**

✓