

SECOND REGULAR SESSION

HOUSE BILL NO. 1991

99TH GENERAL ASSEMBLY

INTRODUCED BY REPRESENTATIVE RHOADS.

5710H.011

D. ADAM CRUMBLISS, Chief Clerk

AN ACT

To repeal sections 67.1830 and 67.1846, RSMo, and to enact in lieu thereof fourteen new sections relating to the deployment of wireless facilities infrastructure.

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

Section A. Sections 67.1830 and 67.1846, RSMo, are repealed and fourteen new sections enacted in lieu thereof, to be known as sections 67.1830, 67.1846, 67.5110, 67.5111, 67.5112, 67.5113, 67.5114, 67.5115, 67.5116, 67.5117, 67.5118, 67.5119, 67.5120 and 67.5121 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:

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

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.

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~~ **under** the
82 provisions of section 67.1832, **which permitting requirements shall also be consistent with**
83 **sections 67.5090 to 67.5103 and sections 67.5110 to 67.5121;**

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

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

87 (7) "Political subdivision", a city, town, village, county of the first classification or
88 county of the second classification;

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

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

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

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

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

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

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

113 (11) "Right-of-way permit", a permit issued by a political subdivision authorizing the
114 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 fee or
15 antenna fee or from enforcing or renewing existing linear foot ordinances for use of the
16 right-of-way, 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 that are not nominal and that are imposed specifically on**
22 **communications-related revenue, services, or equipment.**

23

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

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

67.5110. Sections 67.5110 to 67.5121 shall be known and may be cited as the
2 "Uniform Small Wireless Facility Deployment Act", which is intended to encourage and
3 streamline the deployment of small wireless facilities and to help ensure that robust
4 wireless radio-based communication services are available throughout Missouri by
5 adopting a uniform statewide framework for the deployment of small wireless facilities and
6 the utility poles to which they are attached consistent with section 67.5110 to 67.5121 and
7 sections 67.1830 to 1846.

67.5111. As used in sections 67.5110 to 67.5121, the following terms shall mean:

2 (1) "Antenna", communications equipment that transmits or receives
3 electromagnetic radio frequency signals used in the provision of wireless services;

4 (2) "Applicable codes", uniform building, fire, electrical, plumbing, or mechanical
5 codes adopted by a recognized national code organization or local amendments to those
6 codes enacted solely to address imminent threats of destruction of property or injury to
7 persons to the extent not inconsistent with sections 67.5110 to 67.5121;

8 (3) "Applicant", any person who submits an application and is a wireless provider;

9 (4) "Application", a request submitted by an applicant to an authority for a permit
10 to collocate small wireless facilities or to approve the installation, modification, or
11 replacement of a utility pole or wireless support structure;

12 (5) "Authority", the state or any agency, county, municipality, district, or
13 subdivision thereof or any instrumentality of the same including, but not limited to, public
14 utility districts, irrigation districts, and municipal electric utilities. The term shall not
15 include state courts having jurisdiction over an authority;

16 (6) "Authority pole", a utility pole owned, managed, or operated by or on behalf
17 of an authority;

18 (7) "Authority wireless support structure", a wireless support structure owned,
19 managed, or operated by or on behalf of an authority;

20 (8) "Base station", wireless facilities, a wireless support structure, or a utility pole
21 that currently supports wireless facilities. The term does not include a tower, as defined
22 in 47 C.F.R. Section 1.40001(b)(9), and the associated wireless facilities;

23 (9) "Collocate", to install, mount, maintain, modify, operate, or replace wireless
24 facilities on or adjacent to a wireless support structure or utility pole. "Collocation" has
25 a corresponding meaning;

26 (10) "Communications facility", the set of equipment and network components,
27 including wires, cables, and associated facilities used by a cable operator, as defined in 47
28 U.S.C. Section 522(5); a telecommunications carrier, as defined in 47 U.S.C. Section
29 153(51); a provider of information service, as defined in 47 U.S.C. Section 153(24); or a
30 wireless communications provider to provide communications services, including cable
31 service, as defined in 47 U.S.C. Section 522(6); telecommunications service, as defined in
32 47 U.S.C. Section 153(53); an information service, as defined in 47 U.S.C. Section 153(24);
33 wireless communications service; or other one-way or two-way communications service;

34 (11) "Communications service provider", a cable operator, as defined in 47 U.S.C.
35 Section 522(5); a provider of information service, as defined in 47 U.S.C. Section 153(24);
36 a telecommunications carrier, as defined in 47 U.S.C. Section 153(51); or a wireless
37 provider;

38 (12) "Decorative pole", an authority pole that is specially designed and placed for
39 aesthetic purposes and on which no appurtenances or attachments, other than a small
40 wireless facility, specially designed informational or directional signage, or temporary
41 holiday or special event attachments, have been placed or are permitted to be placed
42 according to nondiscriminatory municipal rules or codes;

43 (13) "FCC", the Federal Communications Commission of the United States;

44 (14) "Fee", a one-time, nonrecurring charge;

45 (15) "Historic district", a group of buildings, properties, or sites that are either
46 listed in the National Register of Historic Places or formally determined eligible for listing
47 by the Keeper of the National Register, the individual who has been delegated the authority
48 by the federal agency to list properties and determine their eligibility for the National
49 Register, in accordance with Section VI.D.1.a.i-v of the Nationwide Programmatic
50 Agreement codified at 47 C.F.R. Part 1, Appendix C;

51 (16) "Law", federal, state, or local law, statute, common law, code, rule, regulation,
52 order, or ordinance;

53 (17) "Micro wireless facility", a small wireless facility that meets the following
54 qualifications:

55 (a) Is not larger in dimension than twenty-four inches in length, fifteen inches in
56 width, and twelve inches in height; and

57 (b) Any exterior antenna no longer than eleven inches;

58 (18) "Permit", a written authorization required by an authority to perform an
59 action or initiate, continue, or complete a project;

60 (19) "Person", an individual, corporation, limited liability company, partnership,
61 association, trust, or other entity or organization, including an authority;

62 (20) "Rate", a recurring charge;

63 (21) "Right-of-way" or "ROW", the area on, below, or above a public roadway,
64 highway, street, sidewalk, alley, utility easement, or similar property, but not including a
65 federal interstate highway;

66 (22) "Small wireless facility", a wireless facility that meets both of the following
67 qualifications:

68 (a) Each wireless provider's antenna could fit within an enclosure of no more than
69 six cubic feet in volume; and

70 (b) all other wireless equipment associated with the wireless facility, whether
71 ground- or pole-mounted, is cumulatively no more than twenty-eight cubic feet in volume.

72

73 The following types of associated ancillary equipment are not included in the calculation
74 of equipment volume: electric meter, concealment elements, telecommunications
75 demarcation box, grounding equipment, power transfer switch, cut-off switch, and vertical
76 cable runs and related conduit for the connection of power and other services;

77 (23) "Technically feasible", that by virtue of engineering or spectrum usage, the
78 proposed placement for a small wireless facility or its design or site location can be
79 implemented without a reduction in the functionality of the small wireless facility;

80 (24) "Utility pole", a pole or similar structure that is or may be used in whole or
81 in part by or for wireline communications, electric distribution, lighting, traffic control,
82 signage, or a similar function, or for the collocation of small wireless facilities; provided,
83 however, such term shall not include wireless support structures or electric transmission
84 structures;

85 (25) "Wireless facility", equipment at a fixed location that enables wireless
86 communications between user equipment and a communications network, including
87 equipment associated with wireless communications and radio transceivers, antennas,
88 coaxial or fiber-optic cable, regular and backup power supplies, and comparable
89 equipment, regardless of technological configuration. The term includes small wireless
90 facilities. The term does not include the structure or improvements on, under, or within
91 which the equipment is collocated; coaxial or fiber-optic cable that is between wireless
92 structures or utility poles or that is otherwise not immediately adjacent to or directly
93 associated with a particular antenna; or a wireline backhaul facility;

94 (26) "Wireless infrastructure provider", any person, including a person authorized
95 to provide telecommunications service in the state, that builds or installs wireless
96 communication transmission equipment, wireless facilities, or wireless support structures,
97 but that is not a wireless services provider;

98 (27) "Wireless provider", a wireless infrastructure provider or a wireless services
99 provider;

100 (28) "Wireless services", any services, whether at a fixed location or mobile,
101 provided to the public using wireless facilities;

102 (29) "Wireless services provider", a person who provides wireless services;

103 (30) "Wireless support structure", a structure, such as a monopole; tower, whether
104 guyed or self-supporting; billboard; building; or other existing or proposed structure
105 designed to support or capable of supporting wireless facilities, other than a structure
106 designed solely for the collocation of small wireless facilities. Such term shall not include
107 a utility pole;

108 (31) "Wireline backhaul facility", a facility used for the transport of
109 communication data by wire from a wireless facility to a network.

67.5112. 1. The provisions of this section shall only apply to activities of a wireless
2 provider within the ROW to deploy small wireless facilities and associated utility poles.

3 2. An authority shall not enter into an exclusive arrangement with any person for
4 use of the ROW for the collocation of small wireless facilities or the installation, operation,
5 marketing, modification, maintenance, or replacement of utility poles.

6 3. Subject to the provisions of this section, a wireless provider shall have the right,
7 as a permitted use not subject to zoning review or approval, to collocate small wireless
8 facilities and install, maintain, modify, operate, and replace utility poles along, across,
9 upon, and under the ROW, except that the placement in the ROW of new or modified
10 utility poles in single-family residential or areas zoned as historic as of August 28, 2018,
11 remain subject to any applicable zoning requirements that are consistent with sections
12 67.5090 to 67.5103. Such structures and facilities shall be so installed and maintained as
13 not to obstruct or hinder the usual travel or public safety on such ROW or obstruct the
14 legal use of such ROW by utilities. Nothing in this section grants any wireless provider the
15 power of eminent domain.

16 4. Each new or modified utility pole installed in the ROW shall not exceed the
17 greater of ten feet in height above the tallest existing utility pole in place as of the effective
18 date of sections 67.5110 to 67.5121 located within five hundred feet of the new pole in the
19 same ROW, or fifty feet above ground level. New small wireless facilities in the ROW shall
20 not extend more than ten feet above an existing utility pole in place as of the effective date
21 of this sections 67.5110 to 67.5121; or for small wireless facilities on a new utility pole,
22 above the height permitted for a new utility pole under this section. A new utility pole that
23 exceeds these height limits and is to be placed in the ROW for the purpose of supporting
24 small wireless facilities and is not replacing an existing utility pole shall be subject to any
25 applicable zoning requirements that apply to other utility poles and are consistent with
26 sections 67.5090 to 67.5103.

27 5. A wireless provider shall be permitted to replace decorative poles when necessary
28 to collocate a small wireless facility, but any replacement pole shall reasonably conform to
29 the design aesthetics of the decorative pole or poles being replaced.

30 6. Subject to subsection 4 of section 67.5113, and except for facilities excluded from
31 evaluation for effects on historic properties under 47 C.F.R. Section 1.1307(a)(4) of the
32 FCC rules, an authority may require reasonable, technically feasible, nondiscriminatory,
33 and technologically neutral design or concealment measures in a historic district. Any such
34 design or concealment measures shall not have the effect of prohibiting any provider's

35 technology, nor shall any such measures be considered a part of the small wireless facility
36 for purposes of the size restrictions in the definition of small wireless facility.

37 7. The authority, in the exercise of its administration and regulation related to the
38 management of the ROW, shall be competitively neutral with regard to other users of the
39 ROW, including that terms shall not be unreasonable or discriminatory and shall not
40 violate any applicable law. Nothing in sections 67.5110 to 67.5121 shall in any way be
41 construed to modify or otherwise affect the rights, privileges, obligations, or duties, existing
42 prior to the effective date of sections 67.5110 to 67.5121, of an electrical corporation, as
43 defined in section 386.020, or of a rural electric cooperative under chapter 394, except to
44 the extent that the corporation or cooperative deploys small wireless facilities that are used
45 to provide services unrelated to the provision of their electric and gas utility service.

46 8. Small wireless facility collocations completed on or after August 28, 2018, shall
47 not interfere with or impair the operation of existing utility facilities or third-party
48 attachments. The authority may require a wireless provider to repair all damage to the
49 ROW directly caused by the activities of the wireless provider in the ROW and to return
50 the ROW to its functional equivalence before the damage under the competitively neutral,
51 reasonable requirements and specifications of the authority. If the wireless provider fails
52 to make the repairs required by the authority within a reasonable time after written notice,
53 the authority may affect those repairs and charge the applicable party the reasonable,
54 documented cost of such repairs.

67.5113. 1. The provisions of this section shall apply to the permitting of small
2 wireless facilities by a wireless provider in or outside the ROW as specified in subsection
3 3 and to the permitting of the installation, modification, and replacement of utility poles
4 by a wireless provider inside the ROW.

5 2. Except as provided in sections 51.5110 to 51.5121, an authority shall not prohibit,
6 regulate, or charge for the collocation of small wireless facilities.

7 3. Small wireless facilities shall be classified as permitted uses and not subject to
8 zoning review or approval if they are collocated in the ROW in any zone or outside the
9 ROW in property not zoned exclusively for single-family residential use.

10 4. An authority shall require an applicant to obtain one or more permits to
11 collocate a small wireless facility or install a new, modified, or replacement utility pole
12 associated with a small wireless facility as provided in subsection 3 of section 67.5112,
13 provided such permits are of general applicability and do not apply exclusively to wireless
14 facilities. An authority shall receive applications for, process, and issue such permits
15 subject to the following requirements:

16 (1) An authority shall not directly or indirectly require an applicant to perform
17 services or provide goods unrelated to the permit, such as in-kind contributions to the
18 authority, including reserving fiber, conduit, or pole space for the authority;

19 (2) An applicant shall not be required to provide more information to obtain a
20 permit than communications service providers that are not wireless providers, provided
21 that an applicant shall be required to include construction and engineering drawings and
22 information demonstrating compliance with the criteria in subdivision (9) of this
23 subsection;

24 (3) An authority shall not require the placement of small wireless facilities on any
25 specific utility pole or category of poles or require multiple antenna systems on a single
26 utility pole;

27 (4) An authority shall not limit the placement of small wireless facilities by
28 minimum separation distances;

29 (5) An authority shall require a small wireless facility to comply with reasonable,
30 objective, and cost-effective concealment requirements adopted by the authority;

31 (6) The authority shall require an applicant to include an attestation that the small
32 wireless facilities will be operational for use by a wireless services provider within one year
33 after the permit issuance date, unless the authority and the applicant agree to extend this
34 period or delay is caused by lack of commercial power or communications transport
35 facilities to the site;

36 (7) Within ten days of receiving an application, an authority shall determine and
37 notify the applicant in writing whether the application is complete. If an application is
38 incomplete, an authority shall specifically identify the missing information in writing. The
39 processing deadline in subdivision (8) of this subsection is tolled from the time the
40 authority sends the notice of incompleteness to the time the applicant provides the missing
41 information. That processing deadline shall also be tolled by agreement of the applicant
42 and the authority;

43 (8) An application shall be processed on a nondiscriminatory basis and deemed
44 approved if the authority fails to approve or deny the application within forty-five days of
45 receipt of the application;

46 (9) An authority shall deny a proposed collocation of a small wireless facility or
47 installation, modification, or replacement of a utility pole that meets the requirements in
48 subsection 4 of section 67.5112 only if the proposed application:

49 (a) Materially interferes with the safe operation of traffic control equipment;

50 (b) Materially interferes with sight lines or clear zones for transportation or
51 pedestrians;

52 (c) Materially interferes with compliance with the Americans with Disabilities Act,
53 42 U.S.C. Section 12101 to 12213, similar federal laws, or chapter 213 regarding pedestrian
54 access or movement;

55 (d) Fails to comply with reasonable and nondiscriminatory spacing requirements
56 of general application adopted by ordinance that concern the location of ground-mounted
57 equipment and new utility poles. Such spacing requirements shall not prevent a wireless
58 provider from serving any location and shall include a waiver, zoning, or other process that
59 addresses wireless provider requests for exception or variance and does not prohibit
60 granting of such exceptions or variances; and

61 (e) Fails to comply with applicable codes or does not match the reasonably objective
62 and documented aesthetics of a utility pole and the attaching entity shall not pay to match
63 the decorative elements;

64 (10) The authority shall document the basis for a denial, including the specific code
65 provisions on which the denial was based, and send the documentation to the applicant on
66 or before the day the authority denies an application. The applicant shall cure the
67 deficiencies identified by the authority and resubmit the application within thirty days of
68 the denial without paying an additional application fee. The authority shall approve or
69 deny the revised application within thirty days. Any subsequent review shall be limited
70 to the deficiencies cited in the denial;

71 (11) (a) An applicant seeking to collocate small wireless facilities within the
72 jurisdiction of a single authority shall be allowed at the applicant's discretion to file a
73 consolidated application and receive a single permit for the collocation of multiple small
74 wireless facilities; provided, however, the denial of one or more small wireless facilities in
75 a consolidated application shall not delay processing of any other small wireless facilities
76 in the same batch; and

77 (b) An application may include up to twenty-five separate small wireless facilities,
78 provided that they are for the same or materially same design of small wireless facility
79 being collocated on the same or materially the same type of utility pole or wireless support
80 structure. If an authority receives applications for approval of more than seventy-five
81 small wireless facilities within a fourteen-day period, whether from a single or multiple
82 applicants, the authority may, upon its own request, obtain an automatic thirty-day
83 extension for any additional collocation or replacement or installation application
84 submitted during that fourteen-day period or in the fourteen-day period immediately
85 following the prior fourteen-day period. An authority shall promptly communicate its
86 request to each and any affected applicant. In rendering a decision on an application for
87 multiple small wireless facilities, the authority may approve the application as to certain

88 individual small wireless facilities while denying it as to others based on applicable
89 requirements and standards, including those identified in this section. The authority's
90 denial of any individual small wireless facility or subset of small wireless facilities within
91 an application is not a basis to deny the application as a whole;

92 (12) Installation or collocation for which a permit is granted under this section shall
93 be completed within one year of the permit issuance date unless the authority and the
94 applicant agree to extend this period or a delay is caused by the lack of commercial power
95 or communications facilities at the site. Approval of an application authorizes the applicant
96 to:

97 (a) Undertake the installation or collocation; and

98 (b) Subject to applicable relocation requirements and the applicant's right to
99 terminate at any time, operate and maintain the small wireless facilities and any associated
100 utility pole covered by the permit for a period of not less than ten years, which shall be
101 renewed for equivalent durations so long as they are in compliance with the criteria set
102 forth in subdivision (9) of this subsection, unless the applicant and the authority agree to
103 an extension term of less than ten years;

104 (13) An authority shall not institute, either expressly or de facto, a moratorium on
105 filing, receiving, or processing applications or issuing permits or other approvals, if any,
106 for the collocation of small wireless facilities or the installation, modification, or
107 replacement of utility poles to support small wireless facilities. Notwithstanding the
108 foregoing, an authority may impose a temporary moratorium on applications for small
109 wireless facilities and the collocation thereof for the duration of a federal or state-declared
110 natural disaster, or for no more than thirty days in the event of a major and protracted
111 staffing shortage that reduces the number of personnel necessary to the receipt, review,
112 processing, and approval or denial of applications for the collocation of small wireless
113 facilities by more than fifty percent;

114 (14) Nothing in this section precludes the authority from adopting reasonable rules
115 with respect to the removal of abandoned small wireless facilities; and

116 (15) In determining whether sufficient capacity exists to accommodate the
117 attachment of a new small wireless facility, an authority shall grant access subject to a
118 reservation to reclaim such space, when and if needed, to meet the pole owner's core utility
119 purpose that was projected at the time of the application pursuant to a bona fide
120 development plan.

121 5. An authority shall not require an application for the following:

122 (1) Routine maintenance on previously permitted small wireless facilities;

(2) The replacement of small wireless facilities with small wireless facilities that are the same or smaller in size, weight, and height; or

(3) For the installation, placement, maintenance, operation, or replacement of micro wireless facilities that are strung on cables between existing utility poles, in compliance with the National Electrical Safety Code. An authority shall, however, require a permit to work within the ROW for such activities, if applicable. Any such permits shall be subject to the requirements provided in subsections 3 and 4 of this section.

Nothing in this subsection shall prevent an authority from requiring a permit for work in a ROW that will involve excavation, affect traffic patterns or obstruct vehicular traffic in the ROW, or, for work described in this subdivision that involves different equipment than that being replaced, a description of such new equipment so that the authority may maintain an accurate inventory of the small wireless facilities at that location.

6. No approval for the installation, placement, maintenance, or operation of a small wireless facility under this section shall be construed to confer authorization for the provision of cable television service or installation, placement, maintenance, or operation of a wireline backhaul facility or communications facility, other than a small wireless facility, in the ROW.

67.5114. 1. This section only applies to collocations on authority poles and authority wireless support structures that are located on authority property outside the ROW. Treatment of existing agreements for such collocations that do not comply with this section is addressed in section 67.5119.

2. Subject to subsection 3 of this section, an authority shall authorize the collocation of small wireless facilities on authority wireless support structures and authority poles to the same extent, if any, that the authority permits access to such structures for other commercial projects or uses. Such collocations shall be subject to reasonable and nondiscriminatory rates, fees, and terms as provided in an agreement between the authority, or its agent, and the wireless provider.

3. An authority shall not enter into an exclusive agreement with a wireless provider concerning authority poles or authority wireless support structures, including stadiums and enclosed arenas, unless the agreement meets the following requirements:

(1) The wireless provider provides service using a shared network of wireless facilities that it makes available for access by other wireless providers, on reasonable and nondiscriminatory rates and terms that shall include use of the entire shared network, as to itself, an affiliate, or any other entity; or

18 **(2) The wireless provider allows other wireless providers to collocate small wireless**
19 **facilities, on reasonable and nondiscriminatory rates and terms, as to itself, an affiliate, or**
20 **any other entity.**

21 **4. When determining whether a rate, fee, or term is reasonable and**
22 **nondiscriminatory for the purposes of this section, consideration shall be given to any**
23 **relevant facts, including alternative financial or service remuneration, characteristics of**
24 **the proposed equipment or installation, structural limitations, or other commercial or**
25 **unique features or components.**

67.5115. 1. The provisions of this section shall apply to activities of the wireless
2 **provider within the ROW.**

3 **2. A person owning, managing, or controlling authority poles in the ROW shall not**
4 **enter into an exclusive arrangement with any person for the right to attach to such poles.**
5 **A person who purchases or otherwise acquires an authority pole is subject to the**
6 **requirements of this section.**

7 **3. An authority shall allow the collocation of small wireless facilities on authority**
8 **poles using the process in section 67.5113.**

9 **4. Make-ready work shall be addressed as follows, unless the parties agree to**
10 **different terms in a pole attachment agreement:**

11 **(1) The rates, fees, and terms and conditions for the make-ready work to collocate**
12 **on an authority pole shall be nondiscriminatory, competitively neutral, and commercially**
13 **reasonable and shall comply with sections 51.5110 to 51.5121;**

14 **(2) The authority shall provide a good-faith estimate for any make-ready work**
15 **necessary to enable the pole to support the requested collocation by a wireless provider,**
16 **including pole replacement if necessary, within sixty days after receipt of a complete**
17 **application. Make-ready work, including any pole replacement, shall be completed within**
18 **sixty days of written acceptance of the good-faith estimate and advance payment, if**
19 **required, by the applicant. An authority shall require replacement of the authority pole**
20 **only if it demonstrates that the collocation would make the authority pole structurally**
21 **unsound;**

22 **(3) The person owning, managing, or controlling the authority pole shall not**
23 **require more make-ready work than required to meet applicable codes or industry**
24 **standards. Fees for make-ready work shall not include costs related to pre-existing or**
25 **prior damage or noncompliance. Fees for make-ready work including any pole**
26 **replacement shall not exceed actual costs or the amount charged to other communications**
27 **service providers for similar work and shall not include third-party fees, charges, or**

28 expenses, except for amounts charged by licensed contractors actually performing the
29 make-ready work.

67.5116. 1. This section shall govern an authority's rates and fees for the placement
2 of a wireless facility, wireless support structure, or utility pole.

3 2. An authority shall not require a wireless provider to pay any rates, fees, or
4 compensation to the authority or other person other than what is expressly authorized by
5 sections 51.5110 to 51.5121 for the right to use or occupy a ROW, for collocation of small
6 wireless facilities on utility poles in the ROW, or for the installation, maintenance,
7 modification, operation, and replacement of utility poles in the ROW.

8 3. Application fees shall be subject to the following requirements:

9 (1) An authority shall charge an application fee only if such fee is required for
10 similar types of commercial development or construction within the authority's
11 jurisdiction;

12 (2) Where costs to be recovered by an application fee are already recovered by
13 existing fees, rates, licenses, or taxes paid by a wireless provider, no application fee shall
14 be assessed;

15 (3) An application fee shall not include travel expenses incurred by a third party
16 in its review of an application or direct payment or reimbursement of third party rates or
17 fees charged on a contingency basis or a result-based arrangement;

18 (4) An application fee for a collocation shall be limited to the cost of granting a
19 building permit for similar types of commercial development or construction within the
20 authority's jurisdiction. The total fee for any application under subsection 4 of section
21 67.5113 for collocation of small wireless facilities on existing or replacement authority poles
22 shall not exceed five hundred dollars per application; and

23 (5) The application fees for the installation, modification, or replacement of a
24 non-authority utility pole and the collocation of an associated small wireless facility that
25 are permitted uses in accordance with the specifications in subsection 3 of section 67.5112
26 shall not exceed two hundred fifty dollars per pole for access to the ROW.

27 4. (1) The rate for collocation of a small wireless facility to an authority pole shall
28 not exceed twenty dollars per authority pole per year;

29 (2) An authority shall not charge a wireless provider any fee, tax other than a tax
30 authorized by subdivision (3) of this subsection, or other charge, or require any other form
31 of payment or compensation, to locate a wireless facility or wireless support structure on
32 privately-owned property, or on a wireless support structure not owned by the authority;
33 and

34 **(3) No authority nor any other political subdivision shall demand any fees, rentals,**
35 **licenses, charges, payments, or assessments from any applicant or wireless provider for,**
36 **or in any way relating to or arising from, the construction, deployment, installation,**
37 **mounting, modification, operation, use, replacement, maintenance, or repair of small**
38 **wireless facilities or wireless support structures, except for the following:**

39 **(a) As otherwise expressly provided in sections 51.5110 to 51.5121; and**

40 **(b) Right-of-way permit fees established under 67.1840 for the recovery of actual,**
41 **substantiated right-of-way management costs.**

42

43 **Right-of-way permit fees imposed on applicants and wireless providers shall be**
44 **competitively neutral with regard to all other users of the right-of-way, shall not be in the**
45 **form of a franchise fee or tax or other fee based on noncost related factors such as revenue,**
46 **sales, profits, lines, subscriptions, or customer counts, and shall not result in double**
47 **recovery where existing charges already recover the direct and actual costs of managing**
48 **the right-of-way. This paragraph precludes the imposition of business license taxes,**
49 **business license fees, or gross receipts taxes on wireless providers, whether based on gross**
50 **receipts or other factors, except that this subdivision allows the imposition of such taxes**
51 **and fees that are also imposed on wireline telecommunications businesses operating within**
52 **the jurisdiction of the authority, or as mutually agreed to by the authority and the wireless**
53 **provider.**

67.5117. This section applies to activities in the ROW only. Nothing in sections
2 **51.5110 to 51.5121 shall be interpreted to allow any entity to provide services regulated**
3 **under 47 U.S.C. Section 521 to 573 without compliance with all laws applicable to such**
4 **providers. Nor shall sections 51.5110 to 51.5121 be interpreted to impose any new**
5 **requirements on cable providers for the provision of such service in this state.**

67.5118. Subject to the provisions of sections 51.5110 to 51.5121 and applicable
2 **federal law, an authority shall continue to exercise zoning, land use, planning, and**
3 **permitting authority within its territorial boundaries, including with respect to wireless**
4 **support structures and utility poles, except that no authority shall have or exercise any**
5 **jurisdiction or authority over the design, engineering, construction, installation, or**
6 **operation of any small wireless facility located in an interior structure or upon the site of**
7 **any campus, stadium, or athletic facility not owned or controlled by the authority, other**
8 **than to comply with applicable codes, and an authority shall evaluate the structure**
9 **classification for wireless support structures under the latest version of the American**
10 **National Standards Institute/Telecommunications Industry Association-222. Nothing in**

11 sections 51.5110 to 51.5121 authorizes the state or any political subdivision, including an
12 authority, to require wireless facility deployment or to regulate wireless services.

67.5119. 1. An authority shall adopt an ordinance that makes available to wireless
2 providers rates, fees, and other terms that comply with sections 51.5110 to 51.5121, subject
3 to subsections 2, 3, and 4 of this section, in the absence of an ordinance that fully complies
4 with sections 51.5110 to 51.5121, and until such a compliant ordinance is adopted, if at all,
5 wireless providers shall install and operate small wireless facilities and utility poles under
6 the requirements of sections 51.5110 to 51.5121. An authority and a wireless provider shall
7 enter into an agreement implementing sections 51.5110 to 51.5121, but an authority shall
8 not require a wireless provider to enter into such an agreement.

9 2. Notwithstanding the provisions of subsection 1 of this section, a municipal
10 electric utility shall require an attaching entity to enter into a pole attachment agreement
11 consistent with this section, except that wireless providers shall collocate small wireless
12 facilities on municipal electric utility-owned utility poles located within public roads or
13 ROWs without being required to apply for, or enter into, any individual license or
14 franchise with the municipal electric utility, municipality, or other entity, but subject to
15 nondiscriminatory, competitively neutral, and commercially reasonable terms and
16 conditions as may be set forth in a pole attachment agreement with the municipal electric
17 utility, which terms and conditions shall comply with this section and federal pole
18 attachment requirements under 47 U.S.C. Section 224 and corresponding regulations in
19 effect as of August 28, 2018. Within the later of three months after August 28, 2018, or
20 three months after receiving a request by a wireless provider, each municipal electric
21 utility shall, acting in good faith, prepare and make available a standard wireless pole
22 attachment agreement that complies with the requirements of sections 51.5110 to 51.5121.
23 A standard wireless pole attachment agreement shall be in a form that is substantially
24 complete so that a wireless provider, acting in good faith, shall accept it with little
25 substantive negotiation. Notwithstanding any provision of law to the contrary, nothing
26 shall preclude the contractual parties to a standard pole attachment agreement, if mutually
27 agreeable, from negotiating terms beyond those contemplated by the standard pole
28 attachment agreement. In the absence of a standard pole attachment agreement that
29 complies with the requirements of sections 51.5110 to 51.5121 by the dates set forth in this
30 subsection, wireless providers shall install and operate small wireless facilities and utility
31 poles under the requirements of sections 51.5110 to 51.5121. All pole attachment
32 agreements with wireless providers shall be considered a public record as defined in
33 chapter 610.

34 **3. Agreements between an authority and a wireless provider for the deployment of**
35 **small wireless facilities in the ROW under the terms of sections 51.5110 to 51.5121 are**
36 **public/private agreements. Such agreements, and any ordinances implementing sections**
37 **51.5110 to 51.5121, are matters of legitimate and significant statewide concern. Sections**
38 **51.5110 to 51.5121 are fair, reasonable, and necessary to protect the health, safety, and**
39 **welfare of the public throughout the state by facilitating the deployment and operation of**
40 **robust and dependable wireless networks.**

41 **4. An agreement or ordinance that does not fully comply with sections 51.5110 to**
42 **51.5121 shall apply only to small wireless facilities and utility poles that became operational**
43 **or were installed before the effective date of sections 51.5110 to 51.5121, which shall not**
44 **nullify, modify, amend, or prohibit a mutual agreement made prior to the effective date of**
45 **sections 51.5110 to 51.5121 between an authority and any wireless provider for the**
46 **placement of small wireless facilities that were installed or approved for installation prior**
47 **to the effective date of sections 51.5110 to 51.5121. Such an agreement or ordinance shall**
48 **not be renewed, extended, or made to apply to any other small wireless facility, unless it**
49 **is modified to fully comply with sections 51.5110 to 51.5121. If an agreement or ordinance**
50 **is invalid in accordance with this subsection, in the absence of an agreement or ordinance**
51 **that fully complies with sections 51.5110 to 51.5121 and until such a compliant agreement**
52 **or ordinance is entered or adopted, small wireless facilities and utility poles that become**
53 **operational or were constructed before the effective date of sections 51.5110 to 51.5121**
54 **shall remain installed and be operated under the requirements of sections 51.5110 to**
55 **51.5121.**

67.5120. A court of competent jurisdiction shall have jurisdiction to determine all
2 **disputes arising under sections 51.5110 to 51.5121. Pending resolution of a dispute**
3 **concerning rates for collocation of small wireless facilities on authority poles, the person**
4 **owning or controlling the pole shall allow the collocating person to collocate on its poles at**
5 **annual rates of no more than twenty dollars, with rates to be trued-up upon final**
6 **resolution of the dispute.**

67.5121. 1. An authority shall adopt indemnification, insurance, and bonding
2 **requirements related to small wireless facility permits subject to the requirements of this**
3 **section.**

4 **2. An authority shall not require a wireless provider to indemnify and hold the**
5 **authority and its officers and employees harmless against any claims, lawsuits, judgments,**
6 **costs, liens, losses, expenses, or fees, except when a court of competent jurisdiction has**
7 **found that the negligence of the wireless provider while installing, repairing, or**

8 maintaining caused the harm that created such claims, lawsuits, judgments, costs, liens,
9 losses, expenses, or fees.

10 3. An authority shall require a wireless provider to have in effect insurance
11 coverage consistent with subsection 2 of this section, so long as the authority imposes
12 similar requirements on other ROW users and such requirements are reasonable and
13 nondiscriminatory. An authority shall not require a wireless provider to obtain insurance
14 naming the authority or its officers and employees an additional insured. An authority
15 shall require a wireless provider to furnish proof of insurance, if required, prior to the
16 effective date of any permit issued for a small wireless facility.

17 4. An authority shall adopt bonding requirements for small wireless facilities if the
18 authority imposes similar requirements in connection with permits issued for other ROW
19 users. The purpose of such bonds shall be to:

20 (1) Provide for the removal of abandoned or improperly maintained small wireless
21 facilities, including those that an authority determines need to be removed to protect public
22 health, safety, or welfare;

23 (2) Restore the ROW in connection with removals; or

24 (3) Recoup rates or fees that have not been paid by a wireless provider in over
25 twelve months, so long as the wireless provider has received reasonable notice from the
26 authority of any noncompliance listed above and been given an opportunity to cure.

27
28 Bonding requirements shall not exceed two hundred dollars per small wireless facility. For
29 wireless providers with multiple small wireless facilities within the jurisdiction of a single
30 authority, the total bond amount across all facilities shall not exceed ten thousand dollars,
31 which amount may be combined into one bond instrument.

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