HB 1948 -- WIRELESS COMMUNICATIONS INFRASTRUCTURE

SPONSOR: Rhoads

This bill relegates an authority's ability to manage the public right-of-way through permitting requirements for towers and other structures by limiting such permitting requirements to the provisions of Section 67.1832 and Sections 67.5090 through 67.5104 (Section 67.1830, RSMo).

The bill provides that grandfathered political subdivisions may charge public utility right-of-way users reasonable linear foot or antenna fees, and may enforce or renew existing linear foot ordinances for the use of the right-of-way, provided that public utility right-of-way users are:

1) Entitled to a credit for any amounts paid as business license taxes or gross receipt taxes; or

2) Not required to pay the linear foot fee or antenna fee when the public utility right-of-way user is paying gross receipts taxes, business license fees, or business license taxes that are not nominal and are not imposed specifically on communications related revenue (Section 67.1846).

The bill also proclaims that, except as specified therein, nothing in the Uniform Wireless Communications Infrastructure Deployment Act is meant to limit the deployment of wireless communications infrastructure or to preempt an authority's ability to require permits for the installation of wireless facilities and wireless support structures (Section 67.5090).

This bill also adds and amends various definitions to the Uniform Wireless Communication Infrastructure Deployment Act, while eliminating the definition for "base station" (Section 67.5092).

This bill provides that authorities shall not require the removal of existing wireless support structures or wireless facilities as a condition for the approval of a related application, unless such structures or facilities are abandoned and subject to Section 67.5101. Authorities shall not limit the duration of the approval of an application, except that authorities may require applicants for small wireless facilities to act upon the application within 18 months. If such a requirement is imposed, and the application is not acted upon, then the application is deemed withdrawn. Authorities may also require applicants for small wireless facilities to indemnify the authority (Section 67.5094).

The bill further provides that authorities may not require

applications, fees, nor permits for routine maintenance on previously permitted small wireless facility collocations, the replacement of small wireless facilities with those of a similar size, except that such replacement shall comport with Section 67.5100, or for the installation of micro wireless facilities that are suspended on cables (Section 67.5101).

Authorities shall process applications for small wireless facilities on a nondiscriminatory basis, and an application may include up to 25 separate small wireless facilities. The rejection of one individual small wireless facility shall not be the basis for denial of the application as a whole. Authorities shall not require a preexisting wireless facility on an existing structure before a small wireless facility or micro wireless facility may be installed upon said structure (Section 67.5101).

Authorities shall accept applications for new small wireless facility collocations on wireless support structures not located within public right-of-ways, and shall authorize the collocation, installation, or replacement of small wireless facilities not in the public right-of-way to the same extent the authority has done so for other infrastructure providers. After approval, applicants may maintain a small wireless facility collocation for 10 years, with an optional extension of three five-year terms or less than 10 years should the authority and the applicant so agree (Section 67.5101).

Authorities shall not issue any moratoriums on small wireless facilities. However, authorities may compel reasonable aesthetic alterations to small wireless, replacement pole or structure requirements for aesthetic purposes, or cost-efficient concealment requirements. No approval for the installation, maintenance, or operation of a small wireless facility shall be construed to confer any permission related to the installation and operation of wireline backhaul facilities or communications facilities within the public right-of-way (Section 67.5101).

Applicants may install replacement or modified utility poles or other support structures in the public right-of-way for small wireless facilities except in areas zoned as historic or single-family residential (Section 67.5101).

Applicants shall not be exempt from the financial requirements of moving small wireless facilities, communication facilities, or micro wireless facilities from within the right-of-way, as the result of a public project. If the project necessitating movement is a private commercial project then the project undertaker must provide an advanced payment before movement is required (Section 67.5101).

New wireless support structures shall only be erected in the right-of-way as provided under Section 67.5096. New utility poles shall be subject to the municipal approval process as other utility poles. A structure shall be considered a wireless support structure, and not a utility pole, if it exceeds the height of 10 feet above the tallest existing utility pole already in the right-of-way, located within 500 feet of the applicant's proposed structure, or 50 feet above ground level (Section 67.5101).

Authorities shall not charge any fee, tax, or other charge on small wireless facilities that collocate on property not owned by the authority in question. Rates and fees may only be applied as provided by the Uniform Wireless Communication Infrastructure Deployment Act and the associated statute on right-of-way permit fees, but such rates shall be competitively neutral and not be in the form of a franchise fee or tax (Section 67.5101).

Authorities shall also not apply any business license taxes, business license fees, or gross receipt taxes on wireless communications service providers and wireless communications infrastructure providers that are not also imposed on wireline telecommunications businesses, or that are based on factors other than gross receipts except as what may be mutually agreed upon by the authority and the applicant (Section 67.5101).

Except as provided by state or federal law, no authority or other political subdivision shall adopt or enforce any regulation on the installation and operation of communications facilities in public right-of-ways where such facilities are already authorized by a grant of power other than the Uniform Wireless Communication Infrastructure Deployment Act (Section 67.5101).

An authority may not require any rates or fees for the collocation of small wireless facilities beyond what is expressly provided by Sections 67.5090 to 67.5104. Collocation application fees shall be nondiscriminatory, and have several enumerated restrictions. The rate for the collocation of a small wireless facility shall not exceed $20 per pole per year. Right-of-way permit fees shall be limited to the conditions imposed under Section 67.1840 and Sections 67.5090 to 67.5104, and shall be competitively neutral. (Section 67.5102).

Communication infrastructure providers and wireless communications service providers may collocate small wireless facilities on municipal utility poles within public roads or right-of-ways without entering into any license or franchise, but such installation may be subject to reasonable and competitively neutral terms set forth in a pole attachment agreement provided that the

agreement complies with federal law. When determining whether enough sufficient capacity is available on a municipal utility or municipality's utility poles to accommodate a new attachment tentative access may be granted subject to a reservation to reclaim such space when said spaces are needed to meet the pole owner's core utility purpose (Section 67.5104).

Within the latter of six months after August 28, 2018 or three months after receiving a request from a wireless communications service provider or communications service provider, every municipality shall adopt a standard pole attachment agreement. Every agreement shall be considered a public record, and be substantially complete such that any wireless communications service provider or communications service provider may accept it with little negotiation (Section 67.5104).

Pole attachments made on or after the effective date of the bill shall not interfere with or impair the operation of existing utility facilities or preexisting third-party attachments (Section 67.5104).

Authorities may charge an annual recurring rate for collocation on authority owned utility poles, but such rate shall not exceed the Federal Communication Commission's formula for cable service pole attachments. The repayment costs for work necessary to prepare authority utility poles for small wireless facility collocation is also limited (Section 67.5104).

Section 67.5104 does not grant any wireless communications service provider or wireless communications infrastructure provider the power of eminent domain (Section 67.5104).

This bill is similar to SCS HCS HB 656 (2017).