

SECOND REGULAR SESSION

SENATE BILL NO. 837

99TH GENERAL ASSEMBLY

INTRODUCED BY SENATOR ROWDEN.

Pre-filed December 29, 2017, and ordered printed.

ADRIANE D. CROUSE, Secretary.

5533S.011

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.

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Section A. Sections 67.1830 and 67.1846, RSMo, are repealed and fourteen
2 new sections enacted in lieu thereof, to be known as sections 67.1830, 67.1846,
3 67.5110, 67.5111, 67.5112, 67.5113, 67.5114, 67.5115, 67.5116, 67.5117, 67.5118,
4 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
2 mean:

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

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

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

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

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

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

17 (a) An unexpected or unplanned outage, cut, rupture, leak or any other

EXPLANATION—Matter enclosed in bold-faced brackets [thus] in this bill is not enacted and is intended to be omitted in the law.

18 failure of a public utility facility that prevents or significantly jeopardizes the
19 ability of a public utility to provide service to customers;

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

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

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

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

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

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

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

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

44 (b) Inspecting job sites and restoration projects;

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

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

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

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

52 Right-of-way management costs shall be the same for all entities doing similar
53 work. Management costs or rights-of-way management costs shall not include

54 payment by a public utility right-of-way user for the use or rent of the public
55 right-of-way, degradation of the public right-of-way or any costs as outlined in
56 paragraphs (a) to (f) of this subdivision which are incurred by the political
57 subdivision as a result of use by users other than public utilities, the attorneys'
58 fees and cost of litigation relating to the interpretation of this section or section
59 67.1832, or litigation, interpretation or development of any ordinance enacted
60 pursuant to this section or section 67.1832, or attorneys' fees and costs in
61 connection with issuing, processing, or verifying right-of-way permits or other
62 applications or agreements, or the political subdivision's fees and costs related to
63 appeals taken pursuant to section 67.1838. In granting or renewing a franchise
64 for a cable television system, a political subdivision may impose a franchise fee
65 and other terms and conditions permitted by federal law;

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

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

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

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

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

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

93 (f) Establish permitting requirements for towers and other structures or
94 equipment for wireless communications facilities in the public right-of-way,
95 notwithstanding the provisions of section 67.1832, **which permitting**
96 **requirements shall also be consistent with sections 67.5090 to 67.5103**
97 **and sections 67.5110 to 67.5121;**

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

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

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

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

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

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

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

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

117 (9) "Public utility", every cable television service provider, every pipeline
118 corporation, gas corporation, electrical corporation, rural electric cooperative,
119 telecommunications company, water corporation, heating or refrigerating
120 corporation or sewer corporation under the jurisdiction of the public service
121 commission; every municipally owned or operated utility pursuant to chapter 91
122 or pursuant to a charter form of government or cooperatively owned or operated
123 utility pursuant to chapter 394; every street light maintenance district; every
124 privately owned utility; and every other entity, regardless of its form of
125 organization or governance, whether for profit or not, which in providing a public

126 utility type of service for members of the general public, utilizes pipes, cables,
127 conduits, wires, optical cables, or other means of transmission, collection or
128 exchange of communications, information, substances, data, or electronic or
129 electrical current or impulses, in the collection, exchange or dissemination of its
130 product or services through the public rights-of-way;

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

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

67.1846. 1. Nothing in sections 67.1830 to 67.1846 relieves the political
2 subdivision of any obligations under an existing franchise agreement in effect on
3 May 1, 2001. Nothing in sections 67.1830 to 67.1846 will apply to that portion
4 of any ordinance passed prior to May 1, 2001, which establishes a street
5 degradation fee. Nothing in sections 67.1830 to 67.1846 shall be construed as
6 limiting the authority of county highway engineers or relieving public utility
7 right-of-way users from any obligations set forth in chapters 229 to 231. Nothing
8 in sections 67.1830 to 67.1846 shall be deemed to relieve a public utility
9 right-of-way user of the provisions of an existing franchise, franchise fees, license
10 or other agreement or permit in effect on May 1, 2001. Nothing in sections
11 67.1830 to 67.1846 shall prohibit a political subdivision or public utility
12 right-of-way user from renewing or entering into a new or existing franchise, as
13 long as all other public utility right-of-way users have use of the public
14 right-of-way on a nondiscriminatory basis. Nothing in sections 67.1830 to 67.1846
15 shall prevent a grandfathered political subdivision from enacting new ordinances,
16 including amendments of existing ordinances, charging a public utility
17 right-of-way user a fair and reasonable linear foot fee or antenna fee or from
18 enforcing or renewing existing linear foot ordinances for use of the right-of-way,
19 provided that the public utility right-of-way user either:

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

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

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

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

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

**67.5110. Sections 67.5110 to 67.5121 shall be known and may be
2 cited as the "Uniform Small Wireless Facility Deployment Act". This act
3 is intended to encourage and streamline the deployment of small
4 wireless facilities and to help ensure that robust wireless radio-based
5 communication services are available throughout Missouri by adopting
6 a uniform statewide framework for the deployment of small wireless
7 facilities and the utility poles to which they are attached consistent
8 with sections 67.1830 to 67.1846.**

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

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

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

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

13 (4) "Application", a request submitted by an applicant to an

14 **authority:**

15 **(a) For a permit to collocate small wireless facilities; or**

16 **(b) To approve the installation, modification, or replacement of**
17 **a utility pole or wireless support structure;**

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

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

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

27 **(8) "Base station", wireless facilities or a wireless support**
28 **structure or utility pole that currently supports wireless facilities. The**
29 **term does not include a tower, as defined in 47 U.S.C.**
30 **Section 1.40001(b)(9), and the associated wireless facilities;**

31 **(9) "Collocate" or "collocation", to install, mount, maintain,**
32 **modify, operate, or replace wireless facilities on or adjacent to a**
33 **wireless support structure or utility pole;**

34 **(10) "Communications facility", the set of equipment and network**
35 **components, including wires, cables, and associated facilities used by**
36 **a cable operator, as defined in 47 U.S.C. Section 522(5), a**
37 **telecommunications carrier, as defined in 47 U.S.C. Section 153(51), a**
38 **provider of information service, as defined in 47 U.S.C. Section 153(24),**
39 **or a wireless communications provider, to provide communications**
40 **services, hereby defined to include cable service, as defined in 47 U.S.C.**
41 **Section 522(6), telecommunications service, as defined in 47 U.S.C.**
42 **Section 153(53), an information service, as defined in 47 U.S.C. Section**
43 **153(24), wireless communications service, or other one-way or two-way**
44 **communications service;**

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

49 **(12) "Decorative pole", an authority pole that is specially**
50 **designed and placed for aesthetic purposes and on which no**

51 appurtenances or attachments, other than a small wireless facility or
52 specially designed informational or directional signage or temporary
53 holiday or special event attachments, have been placed or are
54 permitted to be placed according to nondiscriminatory municipal rules
55 or codes;

56 (13) "Fee", a one-time, nonrecurring charge;

57 (14) "Historic district", a group of buildings, properties, or sites
58 that are either listed in the National Register of Historic Places or
59 formally determined eligible for listing by the Keeper of the National
60 Register, the individual who has been delegated the authority by the
61 federal agency to list properties and determine their eligibility for the
62 National Register, in accordance with Section VI.D.1.a of the
63 Nationwide Programmatic Agreement codified at 47 C.F.R. Part 1,
64 Appendix C;

65 (15) "Micro wireless facility", a small wireless facility that meets
66 the following qualifications:

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

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

70 (16) "Permit", a written authorization required by an authority
71 to perform an action or initiate, continue, or complete a project;

72 (17) "Person", an individual, corporation, limited liability
73 company, partnership, association, trust, or other entity or
74 organization, including an authority;

75 (18) "Rate", a recurring charge;

76 (19) "Right-of-way", the area on, below, or above a public
77 roadway, highway, street, sidewalk, alley, utility easement, or similar
78 property, but not including a federal interstate highway;

79 (20) "Small wireless facility", a wireless facility that meets the
80 following qualifications:

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

83 (b) All other wireless equipment associated with the wireless
84 facility, whether ground- or pole-mounted, is cumulatively no more
85 than twenty-eight cubic feet in volume. The following types of
86 associated ancillary equipment shall not be included in the calculation
87 of equipment volume: electric meter, concealment elements,

88 telecommunications demarcation box, grounding equipment, power
89 transfer switch, cut-off switch, and vertical cable runs and related
90 conduit for the connection of power and other services;

91 (21) "Technically feasible", by virtue of engineering or spectrum
92 usage the proposed placement for a small wireless facility, or its design
93 or site location can be implemented without a reduction in the
94 functionality of the small wireless facility;

95 (22) "Utility pole", a pole or similar structure that is or may be
96 used in whole or in part by or for wireline communications, electric
97 distribution, lighting, traffic control, signage, or a similar function, or
98 for the collocation of small wireless facilities; provided, however, such
99 term shall not include wireless support structures or electric
100 transmission structures;

101 (23) "Wireless facility", equipment at a fixed location that enables
102 wireless communications between user equipment and a
103 communications network, including equipment associated with wireless
104 communications, radio transceivers, antennas, coaxial or fiber-optic
105 cable, regular and backup power supplies, and comparable equipment,
106 regardless of technological configuration. The term includes small
107 wireless facilities. The term does not include:

108 (a) The structure or improvements on, under, or within which
109 the equipment is collocated;

110 (b) Coaxial or fiber-optic cable that is between wireless
111 structures or utility poles or that is otherwise not immediately adjacent
112 to or directly associated with a particular antenna; or

113 (c) A wireline backhaul facility;

114 (24) "Wireless infrastructure provider", any person, including a
115 person authorized to provide telecommunications service in the state,
116 that builds or installs wireless communication transmission equipment,
117 wireless facilities or wireless support structures, but that is not a
118 wireless services provider;

119 (25) "Wireless provider", a wireless infrastructure provider or a
120 wireless services provider;

121 (26) "Wireless services", any services, whether at a fixed location
122 or mobile, provided to the public using wireless facilities;

123 (27) "Wireless services provider", a person who provides wireless
124 services;

125 **(28) "Wireless support structure", a structure, such as a**
126 **monopole, tower, either guyed or self-supporting, billboard, building,**
127 **or other existing or proposed structure designed to support or capable**
128 **of supporting wireless facilities, other than a structure designed solely**
129 **for the collocation of small wireless facilities. Such term shall not**
130 **include a utility pole;**

131 **(29) "Wireline backhaul facility", a facility used for the transport**
132 **of communication data by wire from a wireless facility to a network.**

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

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

8 **3. Subject to the provisions of this section, a wireless provider**
9 **shall have the right, as a permitted use not subject to zoning review or**
10 **approval, to collocate small wireless facilities and install, maintain,**
11 **modify, operate, and replace utility poles along, across, upon, and**
12 **under the right-of-way, except that the placement in the right-of-way**
13 **of new or modified utility poles in single-family residential or areas**
14 **zoned as historic as of August 28, 2018, remain subject to any applicable**
15 **zoning requirements that are consistent with sections 67.5090 to**
16 **67.5103. Such structures and facilities shall be so installed and**
17 **maintained as not to obstruct or hinder the usual travel or public**
18 **safety on such right-of-way or obstruct the legal use of such right-of-**
19 **way by utilities. Nothing in this section shall grant any wireless**
20 **provider the power of eminent domain.**

21 **4. Each new or modified utility pole installed in the right-of-way**
22 **shall not exceed the greater of:**

23 **(1) Ten feet in height above the tallest existing utility pole in**
24 **place as of August 28, 2018, located within five hundred feet of the new**
25 **pole in the same right-of-way; or**

26 **(2) Fifty feet above ground level. New small wireless facilities**
27 **in the right-of-way shall not extend:**

28 **(a) More than ten feet above an existing utility pole in place as**
29 **of August 28, 2018; or**

30 **(b) For small wireless facilities on a new utility pole, above the**
31 **height permitted for a new utility pole under this section. A new utility**
32 **pole that exceeds these height limits and is to be placed in the right-of-**
33 **way for the purpose of supporting small wireless facilities and is not**
34 **replacing an existing utility pole shall be subject to any applicable**
35 **zoning requirements that apply to other utility poles and are consistent**
36 **with sections 67.5090 to 67.5103.**

37 **5. A wireless provider shall be permitted to replace decorative**
38 **poles when necessary to collocate a small wireless facility, but any**
39 **replacement pole shall reasonably conform to the design aesthetics of**
40 **the decorative pole being replaced.**

41 **6. Subject to subsection 4 of section 67.5113, and except for**
42 **facilities excluded from evaluation for effects on historic properties**
43 **under 47 C.F.R. Section 1.1307(a)(4), an authority may require**
44 **reasonable, technically feasible, nondiscriminatory, and technologically**
45 **neutral design or concealment measures in a historic district. Any such**
46 **design or concealment measures shall not have the effect of prohibiting**
47 **any provider's technology, nor may any such measures be considered**
48 **a part of the small wireless facility for purposes of the size restrictions**
49 **in the definition of small wireless facility.**

50 **7. The authority, in the exercise of its administration and**
51 **regulation related to the management of the right-of-way, shall be**
52 **competitively neutral with regard to other users of the right-of-way,**
53 **including that terms shall not be unreasonable or discriminatory, and**
54 **shall not violate any applicable law. Nothing in this section shall in**
55 **any way be construed to modify or otherwise affect the rights,**
56 **privileges, obligations, or duties, existing prior to August 28, 2018, of**
57 **an electrical corporation, as defined in 386.020, or of a rural electric**
58 **cooperative established under chapter 394, except to the extent that the**
59 **corporation or cooperative deploys small wireless facilities that are**
60 **used to provide services unrelated to the provision of their electric and**
61 **gas utility service.**

62 **8. Small wireless facility collocations completed on or after**
63 **August 28, 2018, shall not interfere with or impair the operation of**
64 **existing utility facilities or third-party attachments. The authority may**
65 **require a wireless provider to repair all damage to the right-of-way**
66 **directly caused by the activities of the wireless provider in the right-of-**

67 way, and to return the right-of-way to its functional equivalence before
68 the damage pursuant to the competitively neutral, reasonable
69 requirements and specifications of the authority. If the wireless
70 provider fails to make the repairs required by the authority within a
71 reasonable time after written notice, the authority may affect those
72 repairs and charge the applicable party the reasonable, documented
73 cost of such repairs.

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

6 2. Except as provided in sections 67.5110 to 67.5121, an authority
7 shall not prohibit, regulate, or charge for the collocation of small
8 wireless facilities.

9 3. Small wireless facilities shall be classified as permitted and
10 not subject to zoning review or approval if they are collocated:

11 (1) In the right-of-way in any zone; or

12 (2) Outside the right-of-way in property not zoned exclusively for
13 single-family residential use.

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

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

25 (2) An applicant shall not be required to provide more
26 information to obtain a permit than communications service providers
27 that are not wireless providers, provided that an applicant may be
28 required to include construction and engineering drawings and
29 information demonstrating compliance with the criteria in subdivision
30 (9) of this subsection;

31 **(3) An authority shall not require the placement of small wireless**
32 **facilities on any specific utility pole or category of poles, or require**
33 **multiple antenna systems on a single utility pole;**

34 **(4) An authority shall not limit the placement of small wireless**
35 **facilities by minimum separation distances;**

36 **(5) An authority may require a small wireless facility to comply**
37 **with reasonable, objective, and cost-effective concealment requirements**
38 **adopted by the authority;**

39 **(6) The authority may require an applicant to include an**
40 **attestation that the small wireless facilities be operational for use by**
41 **a wireless services provider within one year after the permit issuance**
42 **date, unless the authority and the applicant agree to extend this period**
43 **or delay is caused by lack of commercial power or communications**
44 **transport facilities to the site;**

45 **(7) Within ten days of receiving an application, an authority**
46 **shall determine and notify the applicant in writing whether the**
47 **application is complete. If an application is incomplete, an authority**
48 **shall specifically identify the missing information in writing. The**
49 **processing deadline in subdivision (8) of this subsection is tolled from**
50 **the time the authority sends the notice of incompleteness to the time**
51 **the applicant provides the missing information. That processing**
52 **deadline also may be tolled by agreement of the applicant and the**
53 **authority;**

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

57 **(9) An authority may deny a proposed collocation of a small**
58 **wireless facility or installation, modification, or replacement of a**
59 **utility pole that meets the requirements in subsection 4 of section**
60 **67.5112 only if the proposed application:**

61 **(a) Materially interferes with the safe operation of traffic control**
62 **equipment;**

63 **(b) Materially interferes with sight lines or clear zones for**
64 **transportation or pedestrians;**

65 **(c) Materially interferes with compliance with the Americans**
66 **with Disabilities Act or similar federal or state standards regarding**
67 **pedestrian access or movement;**

68 **(d) Fails to comply with reasonable and nondiscriminatory**
69 **spacing requirements of general application adopted by ordinance that**
70 **concern the location of ground-mounted equipment and new utility**
71 **poles. Such spacing requirements shall not prevent a wireless provider**
72 **from serving any location and shall include a waiver, zoning, or other**
73 **process that addresses wireless provider requests for exception or**
74 **variance and do not prohibit granting of such exceptions or variances;**
75 **or**

76 **(e) Fails to comply with applicable codes or does not match the**
77 **reasonably objective and documented aesthetics of a utility pole and**
78 **the attaching entity will not pay to match the decorative elements.**
79 **The authority shall document the basis for a denial, including the**
80 **specific code provisions on which the denial was based, and send the**
81 **documentation to the applicant on or before the day the authority**
82 **denies an application. The applicant may cure the deficiencies**
83 **identified by the authority and resubmit the application within thirty**
84 **days of the denial without paying an additional application fee. The**
85 **authority shall approve or deny the revised application within thirty**
86 **days. Any subsequent review shall be limited to the deficiencies cited**
87 **in the denial;**

88 **(10) (a) An applicant seeking to collocate small wireless facilities**
89 **within the jurisdiction of a single authority shall be allowed, at the**
90 **applicant's discretion, to file a consolidated application and receive a**
91 **single permit for the collocation of multiple small wireless facilities;**
92 **provided, however, the denial of one or more small wireless facilities**
93 **in a consolidated application shall not delay processing of any other**
94 **small wireless facilities in the same batch;**

95 **(b) An application may include up to twenty-five separate small**
96 **wireless facilities, provided that they are for the same or materially**
97 **same design of small wireless facility being collocated on the same or**
98 **materially the same type of utility pole or wireless support structure.**
99 **If an authority receives applications for approval of more than seventy-**
100 **five small wireless facilities within a fourteen-day period, whether from**
101 **a single applicant or multiple applicants, the authority may, upon its**
102 **own request, obtain an automatic thirty-day extension for any**
103 **additional collocation or replacement or installation application**
104 **submitted during that fourteen-day period or in the fourteen-day**

105 period immediately following the prior fourteen-day period. An
106 authority shall promptly communicate its request to each and any
107 affected applicant. In rendering a decision on an application for
108 multiple small wireless facilities, the authority may approve the
109 application as to certain individual small wireless facilities while
110 denying it as to others based on applicable requirements and standards
111 including those identified in this section. The authority's denial of any
112 individual small wireless facility or subset of small wireless facilities
113 within an application shall not be a basis to deny the application as a
114 whole;

115 (11) Installation or collocation for which a permit is granted
116 under this section shall be completed within one year after the permit
117 issuance date unless the authority and the applicant agree to extend
118 this period, or a delay is caused by the lack of commercial power or
119 communications facilities at the site. Approval of an application
120 authorizes the applicant to:

121 (a) Undertake the installation or collocation; and

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

130 (12) An authority shall not institute, either expressly or de facto,
131 a moratorium on filing, receiving, or processing applications or issuing
132 permits or other approvals, if any, for the collocation of small wireless
133 facilities, or the installation, modification, or replacement of utility
134 poles to support small wireless facilities. Notwithstanding the
135 foregoing, an authority may impose a temporary moratorium on
136 applications for small wireless facilities and the collocation thereof for
137 the duration of a federal or state-declared natural disaster or for no
138 more than thirty days in the event of a major and protracted staffing
139 shortage that reduces the number of personnel necessary to receive,
140 review, process, and approve or deny applications for the collocation
141 of small wireless facilities by more than fifty percent;

142 **(13) Nothing in this section precludes an authority from adopting**
143 **reasonable rules with respect to the removal of abandoned small**
144 **wireless facilities; and**

145 **(14) In determining whether sufficient capacity exists to**
146 **accommodate the attachment of a new small wireless facility, an**
147 **authority may grant access subject to a reservation to reclaim such**
148 **space, when and if needed to meet the pole owner's core utility purpose**
149 **that was projected at the time of the application pursuant to a bona**
150 **fide development plan.**

151 **5. An authority shall not require an application for:**

152 **(1) Routine maintenance on previously permitted small wireless**
153 **facilities;**

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

157 **(3) The installation, placement, maintenance, operation, or**
158 **replacement of micro wireless facilities that are strung on cables**
159 **between existing utility poles, in compliance with the National**
160 **Electrical Safety Code. Nothing in this subsection shall prevent an**
161 **authority from requiring a permit for work in a right-of-way that will**
162 **involve excavation, affect traffic patterns, or obstruct vehicular traffic**
163 **in the right-of-way, or for work described in subdivision (2) of this**
164 **subsection, that involves different equipment than that being replaced,**
165 **a description of such new equipment so that the authority may**
166 **maintain an accurate inventory of the small wireless facilities at that**
167 **location.**

168 **6. No approval for the installation, placement, maintenance, or**
169 **operation of a small wireless facility under this section shall be**
170 **construed to confer authorization for the provision of cable television**
171 **service, or installation, placement, maintenance, or operation of a**
172 **wireline backhaul facility or communications facility, other than a**
173 **small wireless facility, in the right-of-way.**

67.5114. 1. This section only applies to collocations on authority
2 **poles and authority wireless support structures that are located on**
3 **authority property outside the right-of-way.**

4 **2. Subject to subsection 3 of this section, an authority shall**
5 **authorize the collocation of small wireless facilities on authority**

6 wireless support structures and authority poles to the same extent, if
7 any, that the authority permits access to such structures for other
8 commercial projects or uses. Such collocations shall be subject to
9 reasonable and nondiscriminatory rates, fees, and terms as provided in
10 an agreement between the authority, or its agent, and the wireless
11 provider.

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

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

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

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

67.5115. 1. The provisions of this section shall apply to activities
2 of a wireless provider within the right-of-way.

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

8 3. An authority shall allow the collocation of small wireless
9 facilities on authority poles using the process set forth in section
10 67.5113.

11 4. The rates to collocate on authority poles shall be
12 nondiscriminatory regardless of the services provided by the
13 collocating person.

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

16 **(1) The rates, fees, and terms and conditions for the make-ready**
17 **work to collocate on an authority pole shall be nondiscriminatory,**
18 **competitively neutral, commercially reasonable, and shall comply with**
19 **sections 67.5110 to 67.5121;**

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

30 **(3) The person owning, managing, or controlling the authority**
31 **pole shall not require more make-ready work than required to meet**
32 **applicable codes or industry standards. Fees for make-ready work shall**
33 **not include costs related to pre-existing or prior damage or**
34 **noncompliance. Fees for make-ready work, including any pole**
35 **replacement, shall not exceed actual costs or the amount charged to**
36 **other communications service providers for similar work, and shall not**
37 **include third-party fees, charges, or expenses, except for amounts**
38 **charged by licensed contractors actually performing the make-ready**
39 **work.**

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

4 **2. An authority shall not require a wireless provider to pay any**
5 **rates, fees, or compensation to the authority or other person other than**
6 **what is expressly authorized by sections 67.5110 to 67.5121 for the right**
7 **to use or occupy a right-of-way, for collocation of small wireless**
8 **facilities on utility poles in the right-of-way, or for the installation,**
9 **maintenance, modification, operation, and replacement of utility poles**
10 **in the right-of-way.**

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

12 **(1) An authority may charge an application fee only if such fee**
13 **is required for similar types of commercial development or**
14 **construction within the authority's jurisdiction;**

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

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

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

29 **(5) Application fees for the installation, modification, or**
30 **replacement of a nonauthority utility pole and the collocation of an**
31 **associated small wireless facility that are permitted uses in accordance**
32 **with the specifications in subsection 3 of section 67.5112 shall not**
33 **exceed two hundred fifty dollars per pole for access to the right-of-way.**

34 **4. The rate for collocation of a small wireless facility to an**
35 **authority pole shall not exceed twenty dollars per authority pole per**
36 **year.**

37 **5. An authority may not charge a wireless provider any fee, tax**
38 **other than a tax authorized by subsection 6 of this section, or other**
39 **charge, or require any other form of payment or compensation, to**
40 **locate a wireless facility or wireless support structure on privately-**
41 **owned property, or on a wireless support structure not owned by the**
42 **authority.**

43 **6. No authority shall demand any fees, rentals, licenses, charges,**
44 **payments, or assessments from any applicant or wireless provider for,**
45 **or in any way relating to or arising from, the construction, deployment,**
46 **installation, mounting, modification, operation, use, replacement,**
47 **maintenance, or repair of small wireless facilities, except:**

48 **(1) As otherwise expressly provided in sections 67.5110 to**

49 67.5121; and

50 (2) Right-of-way permit fees established under 67.1840 for the
51 recovery of actual, substantiated right-of-way management costs.

52 7. Right-of-way permit fees imposed on applicants and wireless
53 providers shall be competitively neutral with regard to all other users
54 of the right-of-way, shall not be in the form of a franchise fee or tax, or
55 other fee based on noncost related factors such as revenue, sales,
56 profits, lines, subscriptions or customer counts, and shall not result in
57 double recovery where existing charges already recover the direct and
58 actual costs of managing the right-of-way. This subsection precludes
59 the imposition of business license taxes, business license fees, or gross
60 receipts taxes on wireless providers, whether based on gross receipts
61 or other factors, except that this subsection allows the imposition of
62 such taxes and fees that are also imposed on wireline
63 telecommunications businesses operating within the jurisdiction of the
64 authority, or as mutually agreed to by the authority and the wireless
65 provider.

67.5117. Nothing in sections 67.5110 to 67.5121 shall be
2 interpreted to allow any entity to provide services regulated under 47
3 U.S.C. Sections 521 to 573, without compliance with all laws applicable
4 to such providers, nor shall sections 67.5110 to 67.5121 be interpreted
5 to impose any new requirements on cable providers for the provision
6 of such service in this state.

67.5118. Subject to the provisions of sections 67.5110 to 67.5121
2 and applicable federal law, an authority may continue to exercise
3 zoning, land use, planning, and permitting authority within its
4 territorial boundaries, including with respect to wireless support
5 structures and utility poles; except that no authority shall have or
6 exercise any jurisdiction or authority over the design, engineering,
7 construction, installation, or operation of any small wireless facility
8 located in an interior structure or upon the site of any campus,
9 stadium, or athletic facility not owned or controlled by the authority,
10 other than to comply with applicable codes, and an authority shall
11 evaluate the structure classification for wireless support structures
12 under the latest version of ANSI/TIA-222. Nothing in sections 67.5110
13 to 67.5121 authorizes the state or any political subdivision, including
14 an authority, to require wireless facility deployment or to regulate

15 wireless services.

67.5119. 1. An authority may adopt an ordinance that makes
2 available to wireless providers rates, fees, and other terms that comply
3 with sections 67.5110 to 67.5121. Subject to subsections 2 to 4 of this
4 section, in the absence of an ordinance that fully complies with sections
5 67.5110 to 67.5121 and until such a compliant ordinance is adopted, if
6 at all, wireless providers may install and operate small wireless
7 facilities and utility poles under the requirements of sections 67.5110
8 to 67.5121. An authority and a wireless provider may enter into an
9 agreement implementing sections 67.5110 to 67.5121, but an authority
10 may not require a wireless provider to enter into such an agreement.

11 2. Notwithstanding subsection 1 of this section, a municipal
12 electric utility may require an attaching entity to enter into a pole
13 attachment agreement consistent with this section; except that,
14 wireless providers may collocate small wireless facilities on municipal
15 electric utility-owned utility poles located within public roads or right-
16 of-ways without being required to apply for, or enter into, any
17 individual license or franchise with the municipal electric utility,
18 municipality, or other entity, but subject to nondiscriminatory,
19 competitively neutral, and commercially reasonable terms and
20 conditions as may be set forth in a pole attachment agreement with the
21 municipal electric utility, which terms and conditions complying with
22 the provisions of this section and federal pole attachment requirements
23 under 47 U.S.C. Section 224 and corresponding regulations in effect as
24 of August 28, 2018. Within the later of three months after August 28,
25 2018, or three months after receiving a request by a wireless provider,
26 each municipal electric utility shall, acting in good faith, prepare and
27 make available a standard wireless pole attachment agreement that
28 complies with the requirements of sections 67.5110 to 67.5121. A
29 standard wireless pole attachment agreement shall be in a form that is
30 substantially complete so that a wireless provider, acting in good faith,
31 may accept it with little substantive negotiation. Notwithstanding any
32 provision of law to the contrary, nothing shall preclude the contractual
33 parties to a standard pole attachment agreement, if mutually agreeable,
34 from negotiating terms beyond those contemplated by the standard pole
35 attachment agreement. In the absence of a standard pole attachment
36 agreement that complies with the requirements of sections 67.5110 to

37 67.5121 by the dates set forth in this subsection, wireless providers may
38 install and operate small wireless facilities and utility poles under the
39 requirements of sections 67.5110 to 67.5121. All pole attachment
40 agreements with wireless providers shall be considered a public record
41 as defined in section 610.010.

42 3. Agreements between an authority and a wireless provider for
43 the deployment of small wireless facilities in the right-of-way under the
44 terms of sections 67.5110 to 67.5121 are public-private
45 agreements. Such agreements, and any ordinances implementing
46 sections 67.5110 to 67.5121, are matters of legitimate and significant
47 statewide concern. Sections 67.5110 to 67.5121 are fair and reasonable
48 and necessary to protect the health, safety, and welfare of the public
49 throughout the state by facilitating the deployment and operation of
50 robust and dependable wireless networks.

51 4. An agreement or ordinance that does not fully comply with
52 sections 67.5110 to 67.5121 may apply only to small wireless facilities
53 and utility poles that became operational or were installed before
54 August 28, 2018, which shall not nullify, modify, amend, or prohibit a
55 mutual agreement made prior to August 28, 2018, between an authority
56 and any wireless provider for the placement of small wireless facilities
57 that were installed or approved for installation prior to such
58 date. Such an agreement or ordinance may not be renewed, or
59 extended, or made to apply to any other small wireless facility, unless
60 it is modified to fully comply with sections 67.5110 to 67.5121. If an
61 agreement or ordinance is invalid in accordance with this subsection,
62 in the absence of an agreement or ordinance that fully complies with
63 sections 67.5110 to 67.5121 and until such a compliant agreement or
64 ordinance is entered or adopted, small wireless facilities and utility
65 poles that become operational or were constructed before August 28,
66 2018, may remain installed and be operated under the requirements of
67 such sections.

67.5120. A court of competent jurisdiction shall have jurisdiction
2 to determine all disputes arising under sections 67.5110 to
3 67.5121. Pending resolution of a dispute concerning rates for
4 collocation of small wireless facilities on authority poles, the person
5 owning or controlling the pole shall allow the collocating person to
6 collocate on its poles at annual rates of no more than twenty dollars,

7 with rates to be trued up upon final resolution of the dispute.

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

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

11 3. An authority may require a wireless provider to have in effect
12 insurance coverage consistent with subsection 2 of this section, so long
13 as the authority imposes similar requirements on other right-of-way
14 users, and such requirements are reasonable and nondiscriminatory,
15 including that:

16 (1) An authority shall not require a wireless provider to obtain
17 insurance naming the authority or its officers and employees as
18 additional insured; and

19 (2) An authority may require a wireless provider to furnish proof
20 of insurance, if required, prior to the effective date of any permit
21 issued for a small wireless facility.

22 4. An authority may adopt bonding requirements for small
23 wireless facilities if the authority imposes similar requirements in
24 connection with permits issued for other right-of-way users. The
25 purpose of such bonds shall be to:

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

30 (2) Restoration of the right-of-way in connection with removals
31 under subdivision (1) of this subsection; or

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

36 Bonding requirements shall not exceed two hundred dollars per small

37 wireless facility. For wireless providers with multiple small wireless
38 facilities within the jurisdiction of a single authority, the total bond
39 amount across all facilities shall not exceed ten thousand dollars, which
40 amount may be combined into one bond instrument.

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