

SENATE SUBSTITUTE  
FOR  
SENATE COMMITTEE SUBSTITUTE  
FOR  
SENATE BILL NO. 241

AN ACT

To repeal sections 67.1830, 67.1836, 67.1838, and 67.1842, RSMo, and to enact in lieu thereof eighteen new sections relating to infrastructure facilities deployment.

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BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF MISSOURI,  
AS FOLLOWS:

1           Section A. Sections 67.1830, 67.1836, 67.1838, and 67.1842,  
2 RSMo, are repealed and eighteen new sections enacted in lieu  
3 thereof, to be known as sections 67.1830, 67.1836, 67.1838,  
4 67.1842, 67.5090, 67.5092, 67.5094, 67.5096, 67.5098, 67.5100,  
5 67.5102, 67.5104, 389.585, 389.586, 389.587, 389.588, 389.589,  
6 and 389.591, to read as follows:

7           67.1830. As used in sections 67.1830 to 67.1846, the  
8 following terms shall mean:

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

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

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

1 facilities were installed; or

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

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

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

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

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

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

25 (4) "Excavation", any act by which earth, asphalt,  
26 concrete, sand, gravel, rock or any other material in or on the  
27 ground is cut into, dug, uncovered, removed, or otherwise  
28 displaced, by means of any tools, equipment or explosives, except

1 that the following shall not be deemed excavation:

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

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

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

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

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

16 (b) Inspecting job sites and restoration projects;

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

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

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

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

25  
26 Right-of-way management costs shall be the same for all entities  
27 doing similar work. Management costs or rights-of-way management  
28 costs shall not include payment by a public utility right-of-way

1 user for the use or rent of the public right-of-way, degradation  
2 of the public right-of-way or any costs as outlined in paragraphs  
3 (a) to (h) of this subdivision which are incurred by the  
4 political subdivision as a result of use by users other than  
5 public utilities, the attorneys' fees and cost of litigation  
6 relating to the interpretation of this section or section  
7 67.1832, or litigation, interpretation or development of any  
8 ordinance enacted pursuant to this section or section 67.1832, or  
9 attorneys' fees and costs in connection with issuing, processing,  
10 or verifying right-of-way permit or other applications or  
11 agreements, or the political subdivision's fees and costs related  
12 to appeals taken pursuant to section 67.1838. In granting or  
13 renewing a franchise for a cable television system, a political  
14 subdivision may impose a franchise fee and other terms and  
15 conditions permitted by federal law;

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

27 (a) Require construction performance bonds or insurance  
28 coverage or demonstration of self-insurance at the option of the

1 political subdivision or if the public utility right-of-way user  
2 has twenty-five million dollars in net assets and does not have a  
3 history of permitting noncompliance within the political  
4 subdivision as defined by the political subdivision, then the  
5 public utility right-of-way user shall not be required to provide  
6 such bonds or insurance;

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

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

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

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

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

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

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

1           (7) "Political subdivision", a city, town, village, county  
2 of the first classification or county of the second  
3 classification;

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

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

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

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

15           (d) [Poles,] Pipes, cables, conduits, wires, optical  
16 cables, or other means of transmission, collection or exchange of  
17 communications, information, substances, data, or electronic or  
18 electrical current or impulses utilized by a municipally owned or  
19 operated utility pursuant to chapter 91 or pursuant to a charter  
20 form of government;

21           (9) "Public utility", every cable television service  
22 provider, every pipeline corporation, gas corporation, electrical  
23 corporation, rural electric cooperative, telecommunications  
24 company, water corporation, heating or refrigerating corporation  
25 or sewer corporation under the jurisdiction of the public service  
26 commission; every municipally owned or operated utility pursuant  
27 to chapter 91 or pursuant to a charter form of government or  
28 cooperatively owned or operated utility pursuant to chapter 394;

1 every street light maintenance district; every privately owned  
2 utility; and every other entity, regardless of its form of  
3 organization or governance, whether for profit or not, which in  
4 providing a public utility type of service for members of the  
5 general public, utilizes pipes, cables, conduits, wires, optical  
6 cables, or other means of transmission, collection or exchange of  
7 communications, information, substances, data, or electronic or  
8 electrical current or impulses, in the collection, exchange or  
9 dissemination of its product or services through the public  
10 rights-of-way;

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

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

16 67.1836. 1. A political subdivision may deny an  
17 application for a right-of-way permit if:

18 (1) The public utility right-of-way user fails to provide  
19 all the necessary information requested by the political  
20 subdivision for managing the public right-of-way;

21 (2) The public utility right-of-way user has failed to  
22 return the public right-of-way to its previous condition under a  
23 previous permit;

24 (3) The political subdivision has provided the public  
25 utility right-of-way user with a reasonable, competitively  
26 neutral, and nondiscriminatory justification for requiring an  
27 alternative method for performing the work identified in the  
28 permit application or a reasonable alternative route that will

1 result in neither additional installation expense up to ten  
2 percent to the public utility right-of-way user nor a declination  
3 of service quality;

4 (4) The political subdivision determines that the denial is  
5 necessary to protect the public health and safety, provided that  
6 the authority of the political subdivision does not extend to  
7 those items under the jurisdiction of the public service  
8 commission, such denial shall not interfere with a public  
9 utility's right of eminent domain of private property, and such  
10 denials shall only be imposed on a competitively neutral and  
11 nondiscriminatory basis; or

12 (5) The area is environmentally sensitive as defined by  
13 state statute or federal law or is a historic district as defined  
14 by local ordinance.

15 2. A political subdivision may, after reasonable notice and  
16 an opportunity to cure, revoke a right-of-way permit granted to a  
17 public utility right-of-way user, with or without fee refund,  
18 and/or impose a penalty as established by the political  
19 subdivision until the breach is cured, but only in the event of a  
20 substantial breach of the terms and material conditions of the  
21 permit. A substantial breach by a permittee includes but is not  
22 limited to:

23 (1) A material violation of a provision of the right-of-way  
24 permit;

25 (2) An evasion or attempt to evade any material provision  
26 of the right-of-way permit, or the perpetration or attempt to  
27 perpetrate any fraud or deceit upon the political subdivision or  
28 its citizens;



1 (3) A material misrepresentation of fact in the  
2 right-of-way permit application;

3 (4) A failure to complete work by the date specified in the  
4 right-of-way permit, unless a permit extension is obtained or  
5 unless the failure to complete the work is due to reasons beyond  
6 the permittee's control; and

7 (5) A failure to correct, within the time specified by the  
8 political subdivision, work that does not conform to applicable  
9 national safety codes, industry construction standards, or local  
10 safety codes that are no more stringent than national safety  
11 codes, upon inspection and notification by the political  
12 subdivision of the faulty condition.

13 3. Any political subdivision that requires public utility  
14 right-of-way users to obtain a right-of-way permit, except in an  
15 emergency, prior to performing excavation work within a public  
16 right-of-way shall promptly, but not longer than thirty-one days,  
17 process all completed permit applications. If a political  
18 subdivision fails to act on an application for a right-of-way  
19 permit within thirty-one days, the application shall be deemed  
20 approved. In order to avoid excessive processing and accounting  
21 costs to either the political subdivision or the public utility  
22 right-of-way user, the political subdivision may establish  
23 procedures for bulk processing of permits and periodic payment of  
24 permit fees.

25 67.1838. [1.] A public utility right-of-way user that has  
26 been denied a right-of-way permit, has had its right-of-way  
27 permit revoked, believes that the fees imposed on the public  
28 right-of-way user by the political subdivision do not conform to

1 the requirements of section 67.1840, believes the political  
2 subdivision has violated any provision of sections 67.1830 to  
3 67.1848, or asserts any other issues related to the use of the  
4 public right-of-way, [shall have, upon written request, such  
5 denials, revocations, fee impositions, or other disputes reviewed  
6 by the governing body of the political subdivision or an entity  
7 assigned by the governing body for this purpose. The governing  
8 body of the political subdivision or its delegated entity shall  
9 specify, in its permit processing schedules, the maximum number  
10 of days by which the review request shall be filed in order to be  
11 reviewed by the governing body of the political subdivision or  
12 its delegated entity. A decision affirming the denial,  
13 revocation, fee imposition or dispute resolution shall be in  
14 writing and supported by written findings establishing the  
15 reasonableness of the decision.

16 2. Upon affirmation by the governing body of the denial,  
17 revocation, fee imposition or dispute resolution, the public  
18 utility right-of-way user may, in addition to all other remedies  
19 and if both parties agree, have the right to have the matter  
20 resolved by mediation or binding arbitration. Binding  
21 arbitration shall be before an arbitrator agreed to by both the  
22 political subdivision and the public utility right-of-way user.  
23 The costs and fees of a single arbitrator shall be borne equally  
24 by the political subdivision and the public utility right-of-way  
25 user.

26 3. If the parties cannot agree on an arbitrator, the matter  
27 shall be resolved by a three-person arbitration panel consisting  
28 of one arbitrator selected by the political subdivision, one

1 arbitrator selected by the public utility right-of-way user, and  
2 one person selected by the other two arbitrators. In the event  
3 that a three-person arbitrator panel is necessary, each party  
4 shall bear the expense of its own arbitrator and shall jointly  
5 and equally bear with the other party the expense of the third  
6 arbitrator and of the arbitration.

7 4. Each party to the arbitration shall pay its own costs,  
8 disbursements and attorney fees] may bring an action for review  
9 in any court of competent jurisdiction. The court shall rule on  
10 any such petition for review within forty-five days of service.  
11 The petition for review shall be deemed granted if the court  
12 fails to rule within the forty-five day time period. In any such  
13 action, the party filing such action, if it should substantially  
14 prevail in the action, shall be permitted to recover its  
15 reasonable costs and attorneys' fees in connection with the  
16 action.

17 67.1842. 1. In managing the public right-of-way and in  
18 imposing fees pursuant to sections 67.1830 to 67.1846, no  
19 political subdivision shall:

20 (1) Unlawfully discriminate among public utility  
21 right-of-way users;

22 (2) Grant a preference to any public utility right-of-way  
23 user;

24 (3) Create or erect any unreasonable requirement for entry  
25 to the public right-of-way by public utility right-of-way users;

26 (4) Require a telecommunications company to obtain a  
27 franchise or require a public utility right-of-way user to pay  
28 for the use of the public right-of-way, except as provided in

1 sections 67.1830 to 67.1846; [or]

2 (5) Enter into a contract or any other agreement for  
3 providing for an exclusive use, occupancy or access to any public  
4 right-of-way; or

5 (6) Require any public utility that has legally been  
6 granted access to the political subdivision's right-of-way prior  
7 to August 28, 2001, to enter into an agreement or obtain a permit  
8 for general access to or the right to remain in the right-of-way  
9 of the political subdivision.

10 2. A public utility right-of-way user shall not be required  
11 to apply for or obtain right-of-way permits for projects  
12 commenced prior to August 28, 2001, requiring excavation within  
13 the public right-of-way, for which the user has obtained the  
14 required consent of the political subdivision, or that are  
15 otherwise lawfully occupying or performing work within the public  
16 right-of-way. The public utility right-of-way user may be  
17 required to obtain right-of-way permits prior to any excavation  
18 work performed within the public right-of-way after August 28,  
19 2001.

20 3. A political subdivision shall not collect a fee imposed  
21 pursuant to section 67.1840 through the provision of in-kind  
22 services by a public utility right-of-way user, nor require the  
23 provision of in-kind services as a condition of consent to use  
24 the political subdivision's public right-of-way; however, nothing  
25 in this subsection shall preclude requiring services of a cable  
26 television operator, open video system provider or other video  
27 programming provider as permitted by federal law.

28 67.5090. Sections 67.5090 to 67.5102 shall be known and may

1 be cited as the "Uniform Wireless Communications Infrastructure  
2 Deployment Act" and is intended to encourage and streamline the  
3 deployment of broadband facilities and to help ensure that robust  
4 wireless communication services are available throughout  
5 Missouri.

6 67.5092. As used in sections 67.5090 to 67.5102, the  
7 following terms mean:

8 (1) "Accessory equipment", any equipment serving or being  
9 used in conjunction with a wireless facility or wireless support  
10 structure. The term includes utility or transmission equipment,  
11 power supplies, generators, batteries, cables, equipment  
12 buildings, cabinets, and storage sheds, shelters, or similar  
13 structures;

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

17 (3) "Applicant", any person engaged in the business of  
18 providing wireless communications services or the wireless  
19 communications infrastructure required for wireless  
20 communications services who submits an application;

21 (4) "Application", a request submitted by an applicant to  
22 an authority to construct a new wireless support structure, for  
23 the substantial modification of a wireless support structure, or  
24 for collocation of a wireless facility or replacement of a  
25 wireless facility on an existing structure;

26 (5) "Authority", each state, county, and municipal  
27 governing body, board, agency, office, or commission authorized  
28 by law to make legislative, quasi-judicial, or administrative

1 decisions relative to wireless facilities and wireless support  
2 structures. The term shall not include state courts having  
3 jurisdiction over land use, planning, or zoning decisions made by  
4 an authority;

5 (6) "Base station", a station at a specific site authorized  
6 to communicate with mobile stations, generally consisting of  
7 radio transceivers, antennas, coaxial cables, power supplies, and  
8 other associated electronics, and includes a structure that  
9 currently supports or houses an antenna, a transceiver, coaxial  
10 cables, power supplies, or other associated equipment;

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

18 (8) "Collocation", the placement or installation of a new  
19 wireless facility on existing structure, including electrical  
20 transmission towers, water towers, buildings, and other  
21 structures capable of structurally supporting the attachment of  
22 wireless facilities in compliance with applicable codes;

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

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

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

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

17       (13) "Substantial modification", the mounting of a proposed  
18 wireless facility on a wireless support structure which:

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

21       a. More than ten percent; or

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

25       (b) Involves adding an appurtenance to the body of a  
26 wireless support structure that protrudes horizontally from the  
27 edge of the wireless support structure more than twenty feet or  
28 more than the width of the wireless support structure at the

1 level of the appurtenance, whichever is greater (except where  
2 necessary to shelter the antenna from inclement weather or to  
3 connect the antenna to the tower via cable);

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

7 (d) Increases the square footage of the existing equipment  
8 compound by more than two thousand five hundred square feet;

9 (14) "Utility", any person, corporation, county,  
10 municipality, municipal utility board, or other entity, or  
11 department thereof or entity related thereto, providing retail or  
12 wholesale electric, natural gas, water, waste water, data, cable  
13 television, or telecommunications services;

14 (15) "Utility pole", a structure owned or operated by a  
15 utility that is designed specifically for and used to carry  
16 lines, cables, or wires for telephony, cable television, or  
17 electricity, or to provide lighting;

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

22 (17) "Wireless facility", the set of equipment and network  
23 components, exclusive of the underlying wireless support  
24 structure, including, but not limited to, antennas, accessory  
25 equipment, transmitters, receivers, power supplies, cabling and  
26 associated equipment necessary to provide wireless communications  
27 services;

28 (18) "Wireless support structure", a structure, such as a



1 monopole, tower, or building capable of supporting wireless  
2 facilities. This definition does not include utility poles.

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

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

10 (2) Evaluate an application based on the availability of  
11 other potential locations for the placement of wireless support  
12 structures or wireless facilities, including without limitation  
13 the option to collocate instead of construct a new wireless  
14 support structure or for substantial modifications of a support  
15 structure, or vice versa;

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

21 (4) Require the removal of existing wireless support  
22 structures or wireless facilities, wherever located, as a  
23 condition for approval of an application;

24 (5) With respect to radio frequency emissions, impose  
25 environmental testing, sampling, or monitoring requirements or  
26 other compliance measures on wireless facilities that are  
27 categorically excluded under the Federal Communication  
28 Commission's rules for radio frequency emissions under 47 CFR

1 1.1307(b) (1) or other applicable federal law, as the same may be  
2 amended or supplemented;

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

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

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

11 (9) Prohibit the placement of emergency power systems that  
12 comply with federal and state environmental requirements;

13 (10) Charge an application fee, consulting fee, or other  
14 fee associated with the submission, review, processing, and  
15 approval of an application that is not required for similar types  
16 of commercial development within the authority's jurisdiction.  
17 Fees imposed by an authority for or directly by a third-party  
18 entity providing review or technical consultation to the  
19 authority must be based on actual, direct, and reasonable  
20 administrative costs incurred for the review, processing, and  
21 approval of an application. In no case should total charges and  
22 fees exceed five hundred dollars for a collocation application or  
23 one thousand five hundred dollars for an application for a new  
24 wireless support structure or for a substantial modification of a  
25 wireless support structure. Notwithstanding the foregoing, in no  
26 event shall an authority or any third party entity include within  
27 its charges any travel expenses incurred in a third-party's  
28 review of an application and in no event shall an applicant be

1 required to pay or reimburse an authority for consultation or  
2 other third-party fees based on a contingency or result-based  
3 arrangement;

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

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

16 (13) Limit the duration of the approval of an application;

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

21 (15) Impose any unreasonable requirements or obligations  
22 regarding the presentation or appearance of facilities,  
23 including, but not limited to, those relating to the kind or type  
24 of materials used and those relating to arranging, screening, or  
25 landscaping of facilities;

26 (16) Impose any requirements that an applicant purchase,  
27 subscribe to, use, or employ facilities, networks, or services  
28 owned, provided, or operated by an authority, in whole or in

1 part, or by any entity in which an authority has a competitive,  
2 economic, financial, governance, or other interest;

3 (17) Condition the approval of an application on, or  
4 otherwise require, the applicant's agreement to indemnify or  
5 insure the authority in connection with the authority's exercise  
6 of its police power-based regulations; or

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

14 67.5096. 1. Authorities may continue to exercise zoning,  
15 land use, planning, and permitting authority within their  
16 territorial boundaries with regard to the siting of new wireless  
17 support structures, subject to the provisions of sections 67.5090  
18 to 67.5104, including without limitation section 67.5094, and  
19 subject to federal law.

20 2. Any applicant that proposes to construct a new wireless  
21 support structure within the jurisdiction of any authority,  
22 planning or otherwise, that has adopted planning and zoning  
23 regulations in accordance with sections 67.5090 to 67.5104 shall:

24 (1) Submit the necessary copies and attachments of the  
25 application to the appropriate authority; and

26 (2) Comply with applicable local ordinances concerning land  
27 use and the appropriate permitting processes.

28 3. Disclosure of records in the possession or custody of

1 authority personnel, including but not limited to documents and  
2 electronic data, shall be subject to chapter 610.

3 4. The authority, within one hundred fifty calendar days of  
4 receiving an application to construct a new wireless support  
5 structure or within such additional time as may be mutually  
6 agreed to by an applicant and an authority, shall:

7 (1) Review the application in light of its conformity with  
8 applicable local zoning regulations. An application is deemed to  
9 be complete unless the authority notifies the applicant in  
10 writing, within thirty calendar days of submission of the  
11 application, of the specific deficiencies in the application  
12 which, if cured, would make the application complete. Upon  
13 receipt of a timely written notice that an application is  
14 deficient, an applicant may take thirty calendar days from  
15 receiving such notice to cure the specific deficiencies. If the  
16 applicant cures the deficiencies within thirty calendar days, the  
17 application shall be reviewed and processed within one hundred  
18 fifty calendar days from the initial date the application was  
19 received. If the applicant requires a period of time beyond  
20 thirty calendar days to cure the specific deficiencies, the one  
21 hundred fifty calendar days deadline for review shall be extended  
22 by the same period of time;

23 (2) Make its final decision to approve or disapprove the  
24 application; and

25 (3) Advise the applicant in writing of its final decision.

26 5. If the authority fails to act on an application to  
27 construct a new wireless support structure within the one hundred  
28 fifty calendar days review period specified under subsection 4 of

1 this section or within such additional time as may be mutually  
2 agreed to by an applicant and an authority, the application shall  
3 be deemed approved.

4 6. A party aggrieved by the final action of an authority,  
5 either by its affirmatively denying an application under the  
6 provisions of this section or by its inaction, may bring an  
7 action for review in any court of competent jurisdiction.

8 67.5098. 1. Authorities may continue to exercise zoning,  
9 land use, planning, and permitting authority within their  
10 territorial boundaries with regard to applications for  
11 substantial modifications of wireless support structures, subject  
12 to the provisions of sections 67.5090 to 67.5104, including  
13 without limitation section 67.5094, and subject to federal law.

14 2. Any applicant that applies for a substantial  
15 modification of a wireless support structure within the  
16 jurisdiction of any authority, planning or otherwise, that has  
17 adopted planning and zoning regulations in accordance with this  
18 title shall:

19 (1) Submit the necessary copies and attachments of the  
20 application to the appropriate authority; and

21 (2) Comply with applicable local ordinances concerning land  
22 use and the appropriate permitting processes.

23 3. Disclosure of records in the possession or custody of  
24 authority personnel, including but not limited to documents and  
25 electronic data, shall be subject to chapter 610.

26 4. The authority, within ninety calendar days of receiving  
27 an application for a substantial modification of wireless support  
28 structures, shall:

1       (1) Review the application in light of its conformity with  
2 applicable local zoning regulations. An application is deemed to  
3 be complete unless the authority notifies the applicant in  
4 writing, within thirty calendar days of submission of the  
5 application, of the specific deficiencies in the application  
6 which, if cured, would make the application complete. Upon  
7 receipt of a timely written notice that an application is  
8 deficient, an applicant may take thirty calendar days from  
9 receiving such notice to cure the specific deficiencies. If the  
10 applicant cures the deficiencies within thirty calendar days, the  
11 application shall be reviewed and processed within ninety  
12 calendar days from the initial date the application was received.  
13 If the applicant requires a period of time beyond thirty calendar  
14 days to cure the specific deficiencies, the ninety calendar days  
15 deadline for review shall be extended by the same period of time;

16       (2) Make its final decision to approve or disapprove the  
17 application; and

18       (3) Advise the applicant in writing of its final decision.

19       5. If the authority fails to act on an application for a  
20 substantial modification within the ninety calendar days review  
21 period specified under subsection 4 of this section, or within  
22 such additional time as may be mutually agreed to by an applicant  
23 and an authority, the application for a substantial modification  
24 shall be deemed approved.

25       6. A party aggrieved by the final action of an authority,  
26 either by its affirmatively denying an application under the  
27 provisions of this section or by its inaction, may bring an  
28 action for review in any court of competent jurisdiction.

1           67.5100. 1. Subject to the provisions of sections 67.5090  
2 to 67.5104 and sections 389.585 to 389.591, including section  
3 67.5094, collocation applications and applications for  
4 replacement of wireless facilities shall be reviewed for  
5 conformance with applicable building permit requirements,  
6 National Electric Safety Codes, and recognized industry standards  
7 for structural safety, capacity, reliability, and engineering,  
8 but shall not otherwise be subject to zoning or land use  
9 requirements, including design or placement requirements, or  
10 public hearing review.

11           2. The authority, within forty-five calendar days of  
12 receiving a collocation application, shall:

13           (1) Review the collocation application or application to  
14 replace wireless facilities in light of its conformity with  
15 applicable building permit requirements and consistency with  
16 sections 67.5090 to 67.5104. A collocation application or  
17 application to replace wireless facilities is deemed to be  
18 complete unless the authority notifies the applicant in writing,  
19 within fifteen calendar days of submission of the application, of  
20 the specific deficiencies in the application which, if cured,  
21 would make the application complete. Upon receipt of a timely  
22 written notice that a collocation application or application to  
23 replace wireless facilities is deficient, an applicant may take  
24 fifteen calendar days from receiving such notice to cure the  
25 specific deficiencies. If the applicant cures the deficiencies  
26 within fifteen calendar days, the application shall be reviewed  
27 and processed within forty-five calendar days from the initial  
28 date the application was received. If the applicant requires a



1 period of time beyond fifteen calendar days to cure the specific  
2 deficiencies, the forty-five calendar days deadline for review  
3 shall be extended by the same period of time;

4 (2) Make its final decision to approve or disapprove the  
5 collocation application or application for replacement of  
6 wireless facilities; and

7 (3) Advise the applicant in writing of its final decision.

8 3. If the authority fails to act on a collocation  
9 application or application to replace wireless facilities within  
10 the forty-five calendar days review period specified in  
11 subsection 2 of this section, the application shall be deemed  
12 approved.

13 4. Except as provided in section 67.5104, the provisions of  
14 sections 67.5090 to 67.5104 shall not:

15 (1) Authorize an authority, except when acting solely in  
16 its capacity as a utility, to mandate, require, or regulate the  
17 placement, modification, or collocation of any new wireless  
18 facility on new, existing, or replacement poles owned or operated  
19 by a utility;

20 (2) Expand the power of an authority to regulate any  
21 utility; or

22 (3) Restrict any utility's rights or authority, or negate  
23 any utility's agreement, regarding requested access to, or the  
24 rates and terms applicable to placement of any wireless facility  
25 on new, existing, or replacement poles, structures, or existing  
26 structures owned or operated by a utility.

27 5. A party aggrieved by the final action of an authority,  
28 either by its affirmatively denying an application under the

1 provisions of this section or by its inaction, may bring an  
2 action for review in any court of competent jurisdiction.

3 67.5102. In accordance with the policies of this state to  
4 further the deployment of wireless communications infrastructure:

5 (1) An authority may not institute any moratorium on the  
6 permitting, construction, or issuance of approval of new wireless  
7 support structures, substantial modifications of wireless support  
8 structures, or collocations;

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

12 (a) An authority may not charge a wireless service provider  
13 or wireless infrastructure provider any rental, license, or other  
14 fee to locate a wireless support structure on an authority's  
15 property in excess of the current market rates for rental or use  
16 of similarly situated property. If the applicant and the  
17 authority do not agree on the applicable market rate for any such  
18 public land and cannot agree on a process by which to derive the  
19 applicable market rate for any such public land, then the market  
20 rate will be determined by a panel of three certified appraisers  
21 licensed under chapter 339, using the following process. Each  
22 party will appoint one certified appraiser to the panel, and the  
23 two certified appraisers so appointed will appoint a third  
24 certified appraiser. Each appraiser will independently appraise  
25 the appropriate lease rate, and the market rate shall be set at  
26 the mid-point between the highest and lowest market rates among  
27 the three independent appraisals, provided the mid-point between  
28 the highest and lowest appraisals is greater than or less than

1 ten percent of the appraisal of the third appraiser chosen by the  
2 parties' appointed appraisers. In such case, the third appraisal  
3 will determine the rate for the lease. The appraisal process  
4 shall be concluded within one hundred fifty calendar days from  
5 the date the applicant first tenders its proposed lease rate to  
6 the authority. Each party will bear the cost of its own  
7 appointed appraiser, and the parties shall share equally the cost  
8 of the third appraiser chosen by the two appointed appraisers.  
9 Nothing in this paragraph shall bar an applicant and an authority  
10 from agreeing to reasonable, periodic reviews and adjustments of  
11 current market rates during the term of a lease or contract to  
12 use an authority's property; and

13 (b) An authority may not offer a lease or contract to use  
14 public lands to locate a wireless support structure on an  
15 authority's property that is less than fifteen years in duration;

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

21 67.5104. Any pole attachment rates, terms, and conditions,  
22 including those related to the granting or denial of access,  
23 demanding by a municipal utility pole owner or controlling  
24 authority of a municipality shall be nondiscriminatory, just and  
25 reasonable and shall not be subject to any required franchise  
26 authority or government entity permitting. An annual pole  
27 attachment rental rate shall be calculated on a per pole basis  
28 and shall be considered just and reasonable if it does not exceed

1 a rate calculated in accordance with the federal cable rate  
2 formula, found at 47 U.S.C. Section 224(d), as applied by the  
3 Federal Communications Commission. As used in this section,  
4 "pole attachment" means an attachment by a video service  
5 provider, or by a telecommunications, wireless communications or  
6 other communications-related service provider, to a pole. A  
7 service provider may seek review of any rate, term, or condition  
8 under this section at the appropriate circuit court.

9 389.585. 1. As used in this section, the following terms  
10 mean:

11 (1) "Crossing", the construction, operation, repair, or  
12 maintenance of a facility over, under, or across a railroad  
13 right-of-way by a utility when the right-of-way is owned by a  
14 land management company and not a registered rail carrier;

15 (2) "Direct expenses", includes, but is not limited to, any  
16 or all of the following:

17 (a) The cost of inspecting and monitoring the crossing  
18 site;

19 (b) Administrative and engineering costs for review of  
20 specifications and for entering a crossing on the railroad's  
21 books, maps, and property records and other reasonable  
22 administrative and engineering costs incurred as a result of the  
23 crossing;

24 (c) Document and preparation fees associated with a  
25 crossing and any engineering specifications related to the  
26 crossing;

27 (d) Damages assessed in connection with the rights granted  
28 to a utility with respect to a crossing;

1       (3) "Facility", any cable, conduit, wire, pipe, casing  
2 pipe, supporting poles and guys, manhole, or other material or  
3 equipment that is used by a utility to furnish any of the  
4 following:

5       (a) Communications, video, or information services;

6       (b) Electricity;

7       (c) Gas by piped system;

8       (d) Petroleum or petroleum products by piped system;

9       (e) Sanitary and storm sewer service;

10       (f) Water by piped system;

11       (4) "Land management company", an entity that is the owner,  
12 manager, or agent of a railroad right-of-way and is not a  
13 registered rail carrier;

14       (5) "Railroad" or "railroad corporation", a railroad  
15 corporation organized and operating under chapter 388, or any  
16 other corporation, trustees of a railroad corporation, company,  
17 affiliate, association, joint stock association or company, firm,  
18 partnership, or individual, which is an owner, operator,  
19 occupant, lessee, manager, or railroad right-of-way agent, or the  
20 railroad or railroad corporation's successor in interest;

21       (6) "Railroad right-of-way", includes one or more of the  
22 following:

23       (a) A right-of-way or other interest in real estate that is  
24 owned or operated by a land management company and not a  
25 registered rail carrier;

26       (b) Any other interest in a former railroad right-of-way  
27 that has been acquired or is operated by a land management  
28 company or similar entity;

1       (7) "Special circumstances", includes either or both of the  
2 following:

3       (a) The characteristics of a segment of a railroad  
4 right-of-way not found in a typical segment of a railroad  
5 right-of-way that enhance the value or increase the damages or  
6 the engineering or construction expenses for the land management  
7 company associated with a proposed crossing, or to the current or  
8 reasonably anticipated use by a land management company of the  
9 railroad right-of-way, necessitating additional terms and  
10 conditions or compensation associated with a crossing;

11       (b) Variances from the standard specifications requested by  
12 the land management company;

13  
14 "Special circumstances" may include, but is not limited to, the  
15 railroad right-of-way segment's relationship to other property,  
16 location in urban or other developed areas, the existence of  
17 unique topography or natural resources, or other characteristics  
18 or dangers inherent in the particular crossing or segment of the  
19 railroad right-of-way;

20       (8) "Telecommunications service", the transmission of  
21 information by wire, radio, optical cable, electronic impulses,  
22 or other similar means. As used in this definition,  
23 "information" means knowledge or intelligence represented by any  
24 form of writing, signs, signals, pictures, sounds, or any other  
25 symbols;

26       (9) "Utility", shall include:

27       (a) Any public utility subject to the jurisdiction of the  
28 public service commission;

1           (b) Providers of telecommunications service;

2           (c) Any electrical corporation which is required by its  
3 bylaws to operate on the not-for-profit cooperative business  
4 plan, with its consumers who receive service as the stockholders  
5 of such corporation, and which holds a certificate of public  
6 convenience and necessity to serve a majority of its customer-  
7 owners in counties of the third classification as of August 28,  
8 2003;

9           (d) Any rural electric cooperative, and

10          (e) Any municipally owned utility.

11          389.586. 1. After thirty days from the mailing of the  
12 notice, completing the engineering specifications, and payment of  
13 the fee, the utility, absent a claim of special circumstances,  
14 shall be deemed to have authorization to commence the crossing  
15 activity.

16          2. The land management company and the utility shall  
17 maintain and repair its own property within the railroad  
18 right-of-way and bear responsibility for its own acts and  
19 omissions, except that the utility shall be responsible for any  
20 bodily injury or property damage that typically would be covered  
21 under a standard railroad protective liability insurance policy.

22          3. A utility shall have immediate access to a crossing for  
23 repair and maintenance of existing facilities in case of  
24 emergency.

25          4. Applicable engineering standards shall be complied with  
26 for utility facilities crossing railroad rights-of-way.

27          5. The utility shall be provided an expedited crossing,  
28 absent a claim of special circumstances, after payment by the

1 utility of the standard crossing fee, if applicable, and  
2 submission of completed engineering specifications to the land  
3 management company. The engineering specifications shall address  
4 the applicable clearance requirements as established by the  
5 National Electrical Safety Code.

6 6. The utility and the land management company may agree to  
7 other terms and conditions necessary to provide for reasonable  
8 use of a railroad right-of-way by a utility.

9 389.587. Unless otherwise agreed by the parties and subject  
10 to section 389.588, a utility that locates its facilities within  
11 the railroad right-of-way for a crossing, other than a crossing  
12 along a state highway, shall pay the land management company a  
13 one-time standard crossing fee of one thousand five hundred  
14 dollars for each crossing plus the costs associated with  
15 modifications to existing insurance contracts of the utility and  
16 the land management company. The standard crossing fee shall be  
17 in lieu of any license, permit, application, plan review, or any  
18 other fees or charges to reimburse the land management company  
19 for the direct expenses incurred by the land management company  
20 as a result of the crossing. The utility shall also reimburse  
21 the land management company for any actual flagging expenses  
22 associated with a crossing in addition to the standard crossing  
23 fee.

24 389.588. 1. Notwithstanding the provisions of section  
25 389.586, nothing shall prevent a land management company and a  
26 utility from otherwise negotiating the terms and conditions  
27 applicable to a crossing or the resolution of any disputes  
28 relating to the crossing.



1           2. Notwithstanding subsection 1 of this section, the  
2 provisions of this section shall not impair the authority of a  
3 utility to secure crossing rights by easement pursuant to the  
4 exercise of the power of eminent domain.

5           389.589. 1. If the parties cannot agree that special  
6 circumstances exist, the dispute shall be submitted to  
7 non-binding arbitration. Any party proposing informal  
8 arbitration shall serve an arbitration notice detailing a  
9 description of the dispute, including, without limitation, the  
10 position and proposed resolution of the party requesting  
11 arbitration and shall name one arbitrator chosen by that party.  
12 Within twenty days after receipt of an arbitration notice, the  
13 receiving party shall serve a written notice on the other party  
14 containing a detailed response to the claim giving the position  
15 and proposed resolution of the receiving party, and an acceptance  
16 of the arbitrator designated in the arbitration notice or  
17 rejection of same and suggestion of no less than two other  
18 alternatives. The informal arbitration shall be decided by a  
19 single arbitrator. In the event that the parties do not agree on  
20 the selection of an arbitrator within seven business days after  
21 service of the reply notice, either party may apply to the  
22 American Arbitration Association for the purpose of appointing an  
23 independent arbitrator. To the extent practicable, the  
24 arbitrator shall be a person with expertise in the principal  
25 areas of dispute.

26           2. A conference shall be commenced by the arbitrator within  
27 fifteen calendar days after the appointment of the arbitrator and  
28 a recommendation regarding the matter submitted shall be rendered

1 within ten business days after the conference or as soon as  
2 practicable thereafter. During the thirty calendar days  
3 following the filing of the arbitration notice, the parties shall  
4 meet and confer to attempt to resolve the dispute. The decision  
5 of the arbitrator and the rationale for its decision shall be in  
6 writing and signed by the arbitrator; provided, however, that  
7 such written recommendation shall have no evidentiary value and  
8 shall not be deemed to set forth any findings of fact for  
9 purposes of any future proceedings. Except as otherwise provided  
10 in this section, the informal arbitration shall be held in  
11 accordance with the rules and procedures of the American  
12 Arbitration Association. Each party shall bear its own expenses,  
13 including, without limitation, legal and accounting fees, and the  
14 cost of the arbitrator shall be shared equally by each party.  
15 The parties may or may not elect to abide by the decision of the  
16 arbitrator.

17 3. If the parties cannot resolve their dispute based on the  
18 arbitrator's recommendation within thirty days, either party may,  
19 upon the expiration of the thirty day period, give written notice  
20 to the other party of the commencement of a binding arbitration  
21 proceeding in accordance with the commercial rules of Arbitration  
22 in the American Arbitration Association. Any decision by the  
23 board of arbitration shall be final, binding, and conclusive as  
24 to the parties. Nothing provided in this section shall prevent  
25 either party from submission of disputes to the court, limited to  
26 requests for injunctive or equitable relief in advance of a  
27 breach or threatened breach of this agreement, if necessary to  
28 prevent serious and irreparable injury to such party or the

1 public and if such injury cannot be appropriately addressed by  
2 informal or formal arbitration.

3 4. If the dispute over special circumstances concerns only  
4 the compensation associated with a crossing, then the utility may  
5 proceed with installation of the crossing during the pendency of  
6 the arbitration.

7 389.591. 1. Notwithstanding any provision of law to the  
8 contrary, sections 389.585 to 389.591 shall apply in all  
9 crossings of railroad rights-of-way involving a land management  
10 company and a utility and shall govern in the event of any  
11 conflict with any other provision of law.

12 2. The provisions of sections 389.585 to 389.591 shall  
13 apply to a crossing commenced prior to August 28, 2013, if an  
14 agreement concerning the crossing has expired or is terminated  
15 and to a crossing commenced on or after August 28, 2013.