

SENATE SUBSTITUTE

FOR

SENATE COMMITTEE SUBSTITUTE

FOR

HOUSE COMMITTEE SUBSTITUTE

FOR

HOUSE BILL NO. 345

AN ACT

To repeal section 67.5103 as truly agreed to and finally passed by senate substitute for house bill no. 331, ninety-seventh general assembly, first regular session, and to enact in lieu thereof three new sections relating to telecommunications.

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

1 Section A. Section 67.5103 as truly agreed to and finally  
2 passed by senate substitute for house bill no. 331, ninety-  
3 seventh general assembly, first regular session, is repealed and  
4 three new section enacted in lieu thereof, to be known as  
5 sections 67.5102, 67.5103, and 67.5104, to read as follows:

6 67.5102. In accordance with the policies of this state to  
7 further the deployment of wireless communications infrastructure:

8 (1) An authority may not institute any moratorium on the  
9 permitting, construction, or issuance of approval of new wireless  
10 support structures, substantial modifications of wireless support  
11 structures, or collocations if such moratorium exceeds six months  
12 in length and if the legislative act establishing it fails to  
13 state reasonable grounds and good cause for such moratorium. No

1 such moratorium shall affect an already pending application;

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

5 (a) An authority may not charge a wireless service provider  
6 or wireless infrastructure provider any rental, license, or other  
7 fee to locate a wireless support structure on an authority's  
8 property in excess of the current market rates for rental or use  
9 of similarly situated property. If the applicant and the  
10 authority do not agree on the applicable market rate for any such  
11 public land and cannot agree on a process by which to derive the  
12 applicable market rate for any such public land, then the market  
13 rate will be determined by a panel of three certified appraisers  
14 licensed under chapter 339, using the following process. Each  
15 party will appoint one certified appraiser to the panel, and the  
16 two certified appraisers so appointed will appoint a third  
17 certified appraiser. Each appraiser will independently appraise  
18 the appropriate lease rate, and the market rate shall be set at  
19 the mid-point between the highest and lowest market rates among  
20 the three independent appraisals, provided the mid-point between  
21 the highest and lowest appraisals is greater than or less than  
22 ten percent of the appraisal of the third appraiser chosen by the  
23 parties' appointed appraisers. In such case, the third appraisal  
24 will determine the rate for the lease. The appraisal process  
25 shall be concluded within ninety calendar days from the date the  
26 applicant first tenders its proposed lease rate to the authority.  
27 Each party will bear the cost of its own appointed appraiser, and  
28 the parties shall share equally the cost of the third appraiser

1 chosen by the two appointed appraisers. Nothing in this  
2 paragraph shall bar an applicant and an authority from agreeing  
3 to reasonable, periodic reviews and adjustments of current market  
4 rates during the term of a lease or contract to use an  
5 authority's property; and

6 (b) An authority may not offer a lease or contract to use  
7 public lands to locate a wireless support structure on an  
8 authority's property that is less than fifteen years in duration  
9 unless the applicant agrees to accept a lease or contract of less  
10 than fifteen years in duration;

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

16 67.5103. Notwithstanding any provision of sections 67.5090  
17 to 67.5102, nothing herein shall provide any applicant the power  
18 of eminent domain or the right to compel any private or public  
19 property owner, the department of conservation, the department of  
20 natural resources, or the state highways and transportation  
21 commission to:

22 (1) Lease or sell property for the construction of a new  
23 wireless support structure; or

24 (2) Locate or cause the collocation or expansion of a  
25 wireless facility on any existing structure or wireless support  
26 structure.

27 67.5104. 1. As used in this section, "pole attachment"  
28 means an attachment by a video service provider, a

1 telecommunications or other communications-related service  
2 provider to a pole owned by a municipal utility, but not a  
3 wireless antenna attachment or an attachment by a wireless  
4 communications provider to a pole.

5 2. Notwithstanding sections 67.1830 to 67.1846, any pole  
6 attachment fees, terms, and conditions, including those related  
7 to the granting or denial of access, demanded by a municipal  
8 utility pole owner or controlling authority of a municipality  
9 shall be nondiscriminatory, just, and reasonable and shall not be  
10 subject to any required franchise authority or government entity  
11 permitting, except as provided in this section. A pole  
12 attachment rental fee shall be calculated on an annual, per pole  
13 basis. Such rental fee shall be considered nondiscriminatory,  
14 just, and reasonable if it is agreed upon by the parties or, in  
15 the absence of such an agreement, based on cost but in no such  
16 case shall such fee so calculated be greater than the fee which  
17 would apply if it were calculated in accordance with the cable  
18 service rate formula referenced in 47 U.S.C. Sec. 224(d) as  
19 applied by the Federal Communications Commission, except as  
20 permitted by subsection 3 of this section.

21 3. Either party may seek review of any fee, term, or  
22 condition by means of binding arbitration conducted by a single  
23 arbitrator mutually agreeable to the parties or, in the absence  
24 of such an agreement, by means of binding arbitration conducted  
25 by the American Arbitration Association. An arbitrator's award  
26 regarding fees shall be confined to ensuring that the municipal  
27 utility pole owner recovers its direct costs and a reasonable  
28 share of the fully allocated costs attributable to the pole

1 attachment, and that the fee may exceed the fee resulting from  
2 the application of the cable service rate formula referenced in  
3 this section only if based on an express written finding stated  
4 in the award that such award is based on competent and  
5 substantial evidence that the revenues produced under the cable  
6 service rate formula and other payments made by the service  
7 provider do not sufficiently recover the direct costs and a  
8 reasonable share of the fully allocated costs attributable to the  
9 pole attachment. In addition, a municipal pole owner may be  
10 authorized to exceed the rate of return cost components of the  
11 Federal Communications Commission formula referenced in this  
12 section if necessary to comply with article X of the Missouri  
13 Constitution. Pending the arbitrator's rendering of such an  
14 award, the last existent rental fee applicable to the pole  
15 attachment shall remain in place and binding upon both parties.

16 4. Where no prior contract exists between an attaching  
17 entity and the municipal utility pole owner, and a dispute  
18 between a municipal utility pole owner and an attaching entity  
19 exclusively concerns the per pole fee, then the attaching entity  
20 may proceed with its attachments during the pendency of the  
21 arbitration under the agreed upon terms and conditions.

22 5. The provisions of this section shall not supersede  
23 existing pole attachment agreements established prior to August  
24 28, 2013.

25 6. Nothing in this section shall be construed as conferring  
26 any jurisdiction or authority to the public service commission to  
27 regulate either the fees, terms, or conditions for pole  
28 attachments, or for any state agency to assert any jurisdiction

1 over pole attachments regulated by 47 U.S.C. Sec. 224.

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6 owner, or the department of conservation or department  
7 of natural resources to:

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9 of a new wireless support structure; or

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