

FIRST REGULAR SESSION  
[ P E R F E C T E D ]  
SENATE SUBSTITUTE FOR  
SENATE COMMITTEE SUBSTITUTE FOR  
**SENATE BILL NO. 241**  
97TH GENERAL ASSEMBLY

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INTRODUCED BY SENATOR LAGER.

Offered March 13, 2013.

Senate Substitute adopted, March 13, 2013.

Taken up for Perfection March 13, 2013. Bill declared Perfected and Ordered Printed, as amended.

TERRY L. SPIELER, Secretary.

0957S.07P

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**AN ACT**

To repeal sections 67.1830, 67.1836, 67.1838, and 67.1842, RSMo, and to enact in lieu thereof nineteen 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:*

Section A. Sections 67.1830, 67.1836, 67.1838, and 67.1842, RSMo, are  
2 repealed and nineteen new sections enacted in lieu thereof, to be known as  
3 sections 67.1830, 67.1836, 67.1838, 67.1842, 67.5090, 67.5092, 67.5094, 67.5096,  
4 67.5098, 67.5100, 67.5102, 67.5103, 67.5104, 389.585, 389.586, 389.587, 389.588,  
5 389.589, and 389.591, 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

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

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  
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 (h) 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 permit or**  
62 **other applications or agreements,** or the political subdivision's fees and costs  
63 related to appeals taken pursuant to section 67.1838. In granting or renewing a  
64 franchise for a cable television system, a political subdivision may impose a  
65 franchise fee 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 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;

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

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

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

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

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

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

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

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

115 (9) "Public utility", every cable television service provider, every pipeline  
116 corporation, gas corporation, electrical corporation, rural electric cooperative,  
117 telecommunications company, water corporation, heating or refrigerating  
118 corporation or sewer corporation under the jurisdiction of the public service  
119 commission; every municipally owned or operated utility pursuant to chapter 91

120 or pursuant to a charter form of government or cooperatively owned or operated  
121 utility pursuant to chapter 394; every street light maintenance district; every  
122 privately owned utility; and every other entity, regardless of its form of  
123 organization or governance, whether for profit or not, which in providing a public  
124 utility type of service for members of the general public, utilizes pipes, cables,  
125 conduits, wires, optical cables, or other means of transmission, collection or  
126 exchange of communications, information, substances, data, or electronic or  
127 electrical current or impulses, in the collection, exchange or dissemination of its  
128 product or services through the public rights-of-way;

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

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

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

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

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

8 (3) The political subdivision has provided the public utility right-of-way  
9 user with a reasonable, competitively neutral, and nondiscriminatory justification  
10 for requiring an alternative method for performing the work identified in the  
11 permit application or a reasonable alternative route that will result in neither  
12 additional installation expense up to ten percent to the public utility right-of-way  
13 user nor a declination of service quality;

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

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

22 2. A political subdivision may, after reasonable notice and an opportunity  
23 to cure, revoke a right-of-way permit granted to a public utility right-of-way user,

24 with or without fee refund, and/or impose a penalty as established by the political  
25 subdivision until the breach is cured, but only in the event of a substantial breach  
26 of the terms and material conditions of the permit. A substantial breach by a  
27 permittee includes but is not limited to:

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

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

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

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

37 (5) A failure to correct, within the time specified by the political  
38 subdivision, work that does not conform to applicable national safety codes,  
39 industry construction standards, or local safety codes that are no more stringent  
40 than national safety codes, upon inspection and notification by the political  
41 subdivision of the faulty condition.

42 3. Any political subdivision that requires public utility right-of-way users  
43 to obtain a right-of-way permit, except in an emergency, prior to performing  
44 excavation work within a public right-of-way shall promptly, but not longer than  
45 thirty-one days, process all completed permit applications. **If a political**  
46 **subdivision fails to act on an application for a right-of-way permit**  
47 **within thirty-one days, the application shall be deemed approved.** In  
48 order to avoid excessive processing and accounting costs to either the political  
49 subdivision or the public utility right-of-way user, the political subdivision may  
50 establish procedures for bulk processing of permits and periodic payment of  
51 permit fees.

67.1838. [1.] A public utility right-of-way user that has been denied a  
2 right-of-way permit, has had its right-of-way permit revoked, believes that the  
3 fees imposed on the public right-of-way user by the political subdivision do not  
4 conform to the requirements of section 67.1840, **believes the political**  
5 **subdivision has violated any provision of sections 67.1830 to 67.1848,** or  
6 asserts any other issues related to the use of the public right-of-way, [shall have,  
7 upon written request, such denials, revocations, fee impositions, or other disputes  
8 reviewed by the governing body of the political subdivision or an entity assigned

9 by the governing body for this purpose. The governing body of the political  
10 subdivision or its delegated entity shall specify, in its permit processing  
11 schedules, the maximum number of days by which the review request shall be  
12 filed in order to be reviewed by the governing body of the political subdivision or  
13 its delegated entity. A decision affirming the denial, revocation, fee imposition  
14 or dispute resolution shall be in writing and supported by written findings  
15 establishing the reasonableness of the decision.

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

23 3. If the parties cannot agree on an arbitrator, the matter shall be  
24 resolved by a three-person arbitration panel consisting of one arbitrator selected  
25 by the political subdivision, one arbitrator selected by the public utility  
26 right-of-way user, and one person selected by the other two arbitrators. In the  
27 event that a three-person arbitrator panel is necessary, each party shall bear the  
28 expense of its own arbitrator and shall jointly and equally bear with the other  
29 party the expense of the third arbitrator and of the arbitration.

30 4. Each party to the arbitration shall pay its own costs, disbursements  
31 and attorney fees] **may bring an action for review in any court of**  
32 **competent jurisdiction. The court shall rule on any such petition for**  
33 **review within forty-five days of service. The petition for review shall**  
34 **be deemed granted if the court fails to rule within the forty-five day**  
35 **time period.**

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

- 3 (1) Unlawfully discriminate among public utility right-of-way users;
- 4 (2) Grant a preference to any public utility right-of-way user;
- 5 (3) Create or erect any unreasonable requirement for entry to the public  
6 right-of-way by public utility right-of-way users;
- 7 (4) Require a telecommunications company to obtain a franchise or require  
8 a public utility right-of-way user to pay for the use of the public right-of-way,  
9 except as provided in sections 67.1830 to 67.1846; [or]

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

12 (6) **Require any public utility that has legally been granted**  
13 **access to the political subdivision's right-of-way prior to August 28,**  
14 **2001, to enter into an agreement or obtain a permit for general access**  
15 **to or the right to remain in the right-of-way of the political subdivision.**

16 2. A public utility right-of-way user shall not be required to apply for or  
17 obtain right-of-way permits for projects commenced prior to August 28, 2001,  
18 requiring excavation within the public right-of-way, for which the user has  
19 obtained the required consent of the political subdivision, or that are otherwise  
20 lawfully occupying or performing work within the public right-of-way. The public  
21 utility right-of-way user may be required to obtain right-of-way permits prior to  
22 any excavation work performed within the public right-of-way after August 28,  
23 2001.

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

**67.5090. Sections 67.5090 to 67.5102 shall be known and may be**  
2 **cited as the "Uniform Wireless Communications Infrastructure**  
3 **Deployment Act" and is intended to encourage and streamline the**  
4 **deployment of broadband facilities and to help ensure that robust**  
5 **wireless communication services are available throughout Missouri.**

**67.5092. As used in sections 67.5090 to 67.5102, the following**  
2 **terms mean:**

3 (1) "Accessory equipment", any equipment serving or being used  
4 in conjunction with a wireless facility or wireless support  
5 structure. The term includes utility or transmission equipment, power  
6 supplies, generators, batteries, cables, equipment buildings, cabinets,  
7 and storage sheds, shelters, or similar structures;

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



11           **(3) "Applicant", any person engaged in the business of providing**  
12 **wireless communications services or the wireless communications**  
13 **infrastructure required for wireless communications services who**  
14 **submits an application;**

15           **(4) "Application", a request submitted by an applicant to an**  
16 **authority to construct a new wireless support structure, for the**  
17 **substantial modification of a wireless support structure, or for**  
18 **collocation of a wireless facility or replacement of a wireless facility on**  
19 **an existing structure;**

20           **(5) "Authority", each state, county, and municipal governing**  
21 **body, board, agency, office, or commission authorized by law to make**  
22 **legislative, quasi-judicial, or administrative decisions relative to**  
23 **wireless facilities and wireless support structures. The term shall not**  
24 **include state courts having jurisdiction over land use, planning, or**  
25 **zoning decisions made by an authority;**

26           **(6) "Base station", a station at a specific site authorized to**  
27 **communicate with mobile stations, generally consisting of radio**  
28 **transceivers, antennas, coaxial cables, power supplies, and other**  
29 **associated electronics, and includes a structure that currently supports**  
30 **or houses an antenna, a transceiver, coaxial cables, power supplies, or**  
31 **other associated equipment;**

32           **(7) "Building permit", a permit issued by an authority prior to**  
33 **commencement of work on the collocation of wireless facilities on an**  
34 **existing structure, the substantial modification of a wireless support**  
35 **structure, or the commencement of construction of any new wireless**  
36 **support structure, solely to ensure that the work to be performed by**  
37 **the applicant satisfies the applicable building code;**

38           **(8) "Collocation", the placement or installation of a new wireless**  
39 **facility on existing structure, including electrical transmission towers,**  
40 **water towers, buildings, and other structures capable of structurally**  
41 **supporting the attachment of wireless facilities in compliance with**  
42 **applicable codes;**

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

46           **(10) "Equipment compound", an area surrounding or near a**  
47 **wireless support structure within which are located wireless facilities;**

48           (11) "Existing structure", a structure that exists at the time a  
49 request to place wireless facilities on a structure is filed with an  
50 authority. The term includes any structure that is capable of  
51 supporting the attachment of wireless facilities in compliance with  
52 applicable building codes, National Electric Safety Codes, and  
53 recognized industry standards for structural safety, capacity,  
54 reliability, and engineering, including, but not limited to, towers,  
55 buildings, and water towers. The term shall not include any utility  
56 pole;

57           (12) "Replacement", includes constructing a new wireless support  
58 structure of equal proportions and of equal height or such other height  
59 that would not constitute a substantial modification to an existing  
60 structure in order to support wireless facilities or to accommodate  
61 collocation and includes the associated removal of the pre-existing  
62 wireless facilities or wireless support structure;

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

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

66           a. More than ten percent; or

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

70           (b) Involves adding an appurtenance to the body of a wireless  
71 support structure that protrudes horizontally from the edge of the  
72 wireless support structure more than twenty feet or more than the  
73 width of the wireless support structure at the level of the  
74 appurtenance, whichever is greater (except where necessary to shelter  
75 the antenna from inclement weather or to connect the antenna to the  
76 tower via cable);

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

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

82           (14) "Utility", any person, corporation, county, municipality,  
83 municipal utility board, or other entity, or department thereof or entity  
84 related thereto, providing retail or wholesale electric, natural gas,

85 water, waste water, data, cable television, or telecommunications  
86 services;

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

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

93 (17) "Wireless facility", the set of equipment and network  
94 components, exclusive of the underlying wireless support structure,  
95 including, but not limited to, antennas, accessory equipment,  
96 transmitters, receivers, power supplies, cabling and associated  
97 equipment necessary to provide wireless communications services;

98 (18) "Wireless support structure", a structure, such as a  
99 monopole, tower, or building capable of supporting wireless  
100 facilities. This definition does not include utility poles.

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

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

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

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

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

20 (5) With respect to radio frequency emissions, impose  
21 environmental testing, sampling, or monitoring requirements or other

22 compliance measures on wireless facilities that are categorically  
23 excluded under the Federal Communication Commission's rules for  
24 radio frequency emissions under 47 CFR 1.1307(b)(1) or other  
25 applicable federal law, as the same may be amended or supplemented;

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

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

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

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

36 (10) Charge an application fee, consulting fee, or other fee  
37 associated with the submission, review, processing, and approval of an  
38 application that is not required for similar types of commercial  
39 development within the authority's jurisdiction. Fees imposed by an  
40 authority for or directly by a third-party entity providing review or  
41 technical consultation to the authority must be based on actual, direct,  
42 and reasonable administrative costs incurred for the review,  
43 processing, and approval of an application. In no case should total  
44 charges and fees exceed five hundred dollars for a collocation  
45 application or one thousand five hundred dollars for an application for  
46 a new wireless support structure or for a substantial modification of a  
47 wireless support structure. Notwithstanding the foregoing, in no event  
48 shall an authority or any third party entity include within its charges  
49 any travel expenses incurred in a third-party's review of an application  
50 and in no event shall an applicant be required to pay or reimburse an  
51 authority for consultation or other third-party fees based on a  
52 contingency or result-based arrangement;

53 (11) Impose surety requirements, including bonds, escrow  
54 deposits, letters of credit, or any other type of financial surety, to  
55 ensure that abandoned or unused facilities can be removed unless the  
56 authority imposes similar requirements on other permits for other  
57 types of commercial development or land uses;

58 (12) Condition the approval of an application on the applicant's

59 agreement to provide space on or near the wireless support structure  
60 for authority or local governmental services at less than the market  
61 rate for space or to provide other services via the structure or facilities  
62 at less than the market rate for such services;

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

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

68 (15) Impose any requirements or obligations regarding the  
69 presentation or appearance of facilities, including, but not limited to,  
70 those relating to the kind or type of materials used and those relating  
71 to arranging, screening, or landscaping of facilities if such regulations  
72 or obligations are unreasonable;

73 (16) Impose any requirements that an applicant purchase,  
74 subscribe to, use, or employ facilities, networks, or services owned,  
75 provided, or operated by an authority, in whole or in part, or by any  
76 entity in which an authority has a competitive, economic, financial,  
77 governance, or other interest;

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

82 (18) Condition or require the approval of an application based  
83 on the applicant's agreement to permit any wireless facilities provided  
84 or operated, in whole or in part, by an authority or by any entity in  
85 which an authority has a competitive, economic, financial, governance,  
86 or other interest, to be placed at or collocated with the applicant's  
87 wireless support structure.

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

6 2. Any applicant that proposes to construct a new wireless  
7 support structure within the jurisdiction of any authority, planning or  
8 otherwise, that has adopted planning and zoning regulations in

9 accordance with sections 67.5090 to 67.5104 shall:

10 (1) Submit the necessary copies and attachments of the  
11 application to the appropriate authority; and

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

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

17 4. The authority, within ninety calendar days of receiving an  
18 application to construct a new wireless support structure or within  
19 such additional time as may be mutually agreed to by an applicant and  
20 an authority, shall:

21 (1) Review the application in light of its conformity with  
22 applicable local zoning regulations. An application is deemed to be  
23 complete unless the authority notifies the applicant in writing, within  
24 thirty calendar days of submission of the application, of the specific  
25 deficiencies in the application which, if cured, would make the  
26 application complete. Upon receipt of a timely written notice that an  
27 application is deficient, an applicant may take thirty calendar days  
28 from receiving such notice to cure the specific deficiencies. If the  
29 applicant cures the deficiencies within thirty calendar days, the  
30 application shall be reviewed and processed within ninety calendar  
31 days from the initial date the application was received. If the applicant  
32 requires a period of time beyond thirty calendar days to cure the  
33 specific deficiencies, the ninety calendar days deadline for review shall  
34 be extended by the same period of time;

35 (2) Make its final decision to approve or disapprove the  
36 application; and

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

38 5. If the authority fails to act on an application to construct a  
39 new wireless support structure within the ninety calendar days review  
40 period specified under subsection 4 of this section or within such  
41 additional time as may be mutually agreed to by an applicant and an  
42 authority, the application shall be deemed approved.

43 6. A party aggrieved by the final action of an authority, either by  
44 its affirmatively denying an application under the provisions of this  
45 section or by its inaction, may bring an action for review in any court

46 of competent jurisdiction.

67.5098. 1. Authorities may continue to exercise zoning, land use,  
2 planning, and permitting authority within their territorial boundaries  
3 with regard to applications for substantial modifications of wireless  
4 support structures, subject to the provisions of sections 67.5090 to  
5 67.5104, including without limitation section 67.5094, and subject to  
6 federal law.

7 2. Any applicant that applies for a substantial modification of a  
8 wireless support structure within the jurisdiction of any authority,  
9 planning or otherwise, that has adopted planning and zoning  
10 regulations in accordance with this title shall:

11 (1) Submit the necessary copies and attachments of the  
12 application to the appropriate authority; and

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

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

18 4. The authority, within ninety calendar days of receiving an  
19 application for a substantial modification of wireless support  
20 structures, shall:

21 (1) Review the application in light of its conformity with  
22 applicable local zoning regulations. An application is deemed to be  
23 complete unless the authority notifies the applicant in writing, within  
24 thirty calendar days of submission of the application, of the specific  
25 deficiencies in the application which, if cured, would make the  
26 application complete. Upon receipt of a timely written notice that an  
27 application is deficient, an applicant may take thirty calendar days  
28 from receiving such notice to cure the specific deficiencies. If the  
29 applicant cures the deficiencies within thirty calendar days, the  
30 application shall be reviewed and processed within ninety calendar  
31 days from the initial date the application was received. If the applicant  
32 requires a period of time beyond thirty calendar days to cure the  
33 specific deficiencies, the ninety calendar days deadline for review shall  
34 be extended by the same period of time;

35 (2) Make its final decision to approve or disapprove the  
36 application; and

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

38           **5. If the authority fails to act on an application for a substantial**  
39 **modification within the ninety calendar days review period specified**  
40 **under subsection 4 of this section, or within such additional time as**  
41 **may be mutually agreed to by an applicant and an authority, the**  
42 **application for a substantial modification shall be deemed approved.**

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

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

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

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



28 extended by the same period of time;

29 (2) Make its final decision to approve or disapprove the  
30 collocation application or application for replacement of wireless  
31 facilities; and

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

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

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

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

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

44 (3) Restrict any utility's rights or authority, or negate any  
45 utility's agreement, regarding requested access to, or the rates and  
46 terms applicable to placement of any wireless facility on new, existing,  
47 or replacement poles, structures, or existing structures owned or  
48 operated by a utility.

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

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

3 (1) An authority may not institute any moratorium on the  
4 permitting, construction, or issuance of approval of new wireless  
5 support structures, substantial modifications of wireless support  
6 structures, or collocations if such moratorium exceeds six months in  
7 length and if the legislative act establishing it fails to state reasonable  
8 grounds and good cause for such moratorium. No such moratorium  
9 shall affect an already pending application;

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

13           **(a) An authority may not charge a wireless service provider or**  
14 **wireless infrastructure provider any rental, license, or other fee to**  
15 **locate a wireless support structure on an authority's property in excess**  
16 **of the current market rates for rental or use of similarly situated**  
17 **property. If the applicant and the authority do not agree on the**  
18 **applicable market rate for any such public land and cannot agree on a**  
19 **process by which to derive the applicable market rate for any such**  
20 **public land, then the market rate will be determined by a panel of three**  
21 **certified appraisers licensed under chapter 339, using the following**  
22 **process. Each party will appoint one certified appraiser to the panel,**  
23 **and the two certified appraisers so appointed will appoint a third**  
24 **certified appraiser. Each appraiser will independently appraise the**  
25 **appropriate lease rate, and the market rate shall be set at the mid-point**  
26 **between the highest and lowest market rates among the three**  
27 **independent appraisals, provided the mid-point between the highest**  
28 **and lowest appraisals is greater than or less than ten percent of the**  
29 **appraisal of the third appraiser chosen by the parties' appointed**  
30 **appraisers. In such case, the third appraisal will determine the rate for**  
31 **the lease. The appraisal process shall be concluded within ninety**  
32 **calendar days from the date the applicant first tenders its proposed**  
33 **lease rate to the authority. Each party will bear the cost of its own**  
34 **appointed appraiser, and the parties shall share equally the cost of the**  
35 **third appraiser chosen by the two appointed appraisers. Nothing in**  
36 **this paragraph shall bar an applicant and an authority from agreeing**  
37 **to reasonable, periodic reviews and adjustments of current market**  
38 **rates during the term of a lease or contract to use an authority's**  
39 **property; and**

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

43           **(3) Nothing in subsection 2 of this section is intended to limit an**  
44 **authority's lawful exercise of zoning, land use, or planning and**  
45 **permitting authority with respect to applications for new wireless**  
46 **support structures on an authority's property under subsection 1 of**  
47 **section 67.5096.**

**67.5103. Notwithstanding any provision of sections 67.5090**  
2 **through 67.5102, nothing herein shall provide any applicant the power**

3 of eminent domain or the right to compel any private or public  
4 property owner to lease or sell property for the construction of a new  
5 wireless support structure or collocation of a wireless facility.

67.5104. Any pole attachment rates, terms, and conditions,  
2 including those related to the granting or denial of access, demanded  
3 by a municipal utility pole owner or controlling authority of a  
4 municipality shall be nondiscriminatory, just and reasonable and shall  
5 not be subject to any required franchise authority or government entity  
6 permitting. An annual pole attachment rental rate shall be calculated  
7 on a per pole basis and shall be considered just and reasonable if it  
8 does not exceed a rate calculated in accordance with the federal cable  
9 rate formula, found at 47 U.S.C. Section 224(d), as applied by the  
10 Federal Communications Commission. As used in this section, "pole  
11 attachment" means an attachment by a video service provider, or by a  
12 telecommunications, wireless communications or other  
13 communications-related service provider or municipal utility pole  
14 owner, to a pole. A service provider may seek review of any rate, term,  
15 or condition under this section at the appropriate circuit court if that  
16 entity believes the rates, terms, and conditions are not fair, just, and  
17 reasonable.

389.585. 1. As used in sections 389.585 to 389.591, the following  
2 terms mean:

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

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

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

10 (b) Administrative and engineering costs for review of  
11 specifications and for entering a crossing on the railroad's books, maps,  
12 and property records and other reasonable administrative and  
13 engineering costs incurred as a result of the crossing;

14 (c) Document and preparation fees associated with a crossing  
15 and any engineering specifications related to the crossing;

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

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

21           **(a) Communications, video, or information services;**

22           **(b) Electricity;**

23           **(c) Gas by piped system;**

24           **(d) Petroleum or petroleum products by piped system;**

25           **(e) Sanitary and storm sewer service;**

26           **(f) Water by piped system;**

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

30           **(5) "Railroad" or "railroad corporation", a railroad corporation**  
31 **organized and operating under chapter 388, or any other corporation,**  
32 **trustees of a railroad corporation, company, affiliate, association, joint**  
33 **stock association or company, firm, partnership, or individual, which**  
34 **is an owner, operator, occupant, lessee, manager, or railroad right-of-**  
35 **way agent, or the railroad or railroad corporation's successor in**  
36 **interest;**

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

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

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

44           **(7) "Special circumstances", includes either or both of the**  
45 **following:**

46           **(a) The characteristics of a segment of a railroad right-of-way**  
47 **not found in a typical segment of a railroad right-of-way that enhance**  
48 **the value or increase the damages or the engineering or construction**  
49 **expenses for the land management company associated with a proposed**  
50 **crossing, or to the current or reasonably anticipated use by a land**  
51 **management company of the railroad right-of-way, necessitating**  
52 **additional terms and conditions or compensation associated with a**  
53 **crossing;**

54           **(b) Variances from the standard specifications requested by the**

55 land management company;

56 "Special circumstances" may include, but is not limited to, the railroad  
57 right-of-way segment's relationship to other property, location in urban  
58 or other developed areas, the existence of unique topography or natural  
59 resources, or other characteristics or dangers inherent in the  
60 particular crossing or segment of the railroad right-of-way;

61 (8) "Telecommunications service", the transmission of  
62 information by wire, radio, optical cable, electronic impulses, or other  
63 similar means. As used in this definition, "information" means  
64 knowledge or intelligence represented by any form of writing, signs,  
65 signals, pictures, sounds, or any other symbols;

66 (9) "Utility", shall include:

67 (a) Any public utility subject to the jurisdiction of the public  
68 service commission;

69 (b) Providers of telecommunications service;

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

76 (d) Any rural electric cooperative, and

77 (e) Any municipally owned utility.

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

5 2. The land management company and the utility shall maintain  
6 and repair its own property within the railroad right-of-way and bear  
7 responsibility for its own acts and omissions, except that the utility  
8 shall be responsible for any bodily injury or property damage that  
9 typically would be covered under a standard railroad protective  
10 liability insurance policy.

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

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

15           **5. The utility shall be provided an expedited crossing, absent a**  
16 **claim of special circumstances, after payment by the utility of the**  
17 **standard crossing fee, if applicable, and submission of completed**  
18 **engineering specifications to the land management company. The**  
19 **engineering specifications shall address the applicable clearance**  
20 **requirements as established by the National Electrical Safety Code.**

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

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

**389.588. 1. Notwithstanding the provisions of section 389.586,**  
2 **nothing shall prevent a land management company and a utility from**  
3 **otherwise negotiating the terms and conditions applicable to a crossing**  
4 **or the resolution of any disputes relating to the crossing.**

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

**389.589. 1. If the parties cannot agree that special circumstances**  
2 **exist, the dispute shall be submitted to non-binding arbitration. Any**  
3 **party proposing informal arbitration shall serve an arbitration notice**  
4 **detailing a description of the dispute, including, without limitation, the**  
5 **position and proposed resolution of the party requesting arbitration**  
6 **and shall name one arbitrator chosen by that party. Within twenty**  
7 **days after receipt of an arbitration notice, the receiving party shall**

8 serve a written notice on the other party containing a detailed response  
9 to the claim giving the position and proposed resolution of the  
10 receiving party, and an acceptance of the arbitrator designated in the  
11 arbitration notice or rejection of same and suggestion of no less than  
12 two other alternatives. The informal arbitration shall be decided by a  
13 single arbitrator. In the event that the parties do not agree on the  
14 selection of an arbitrator within seven business days after service of  
15 the reply notice, either party may apply to the American Arbitration  
16 Association for the purpose of appointing an independent arbitrator. To  
17 the extent practicable, the arbitrator shall be a person with expertise  
18 in the principal areas of dispute.

19 2. A conference shall be commenced by the arbitrator within  
20 fifteen calendar days after the appointment of the arbitrator and a  
21 recommendation regarding the matter submitted shall be rendered  
22 within ten business days after the conference or as soon as practicable  
23 thereafter. During the thirty calendar days following the filing of the  
24 arbitration notice, the parties shall meet and confer to attempt to  
25 resolve the dispute. The decision of the arbitrator and the rationale for  
26 its decision shall be in writing and signed by the arbitrator; provided,  
27 however, that such written recommendation shall have no evidentiary  
28 value and shall not be deemed to set forth any findings of fact for  
29 purposes of any future proceedings. Except as otherwise provided in  
30 this section, the informal arbitration shall be held in accordance with  
31 the rules and procedures of the American Arbitration  
32 Association. Each party shall bear its own expenses, including, without  
33 limitation, legal and accounting fees, and the cost of the arbitrator  
34 shall be shared equally by each party. The parties may or may not elect  
35 to abide by the decision of the arbitrator.

36 3. If the parties cannot resolve their dispute based on the  
37 arbitrator's recommendation within thirty days, either party may, upon  
38 the expiration of the thirty day period, give written notice to the other  
39 party of the commencement of a binding arbitration proceeding in  
40 accordance with the commercial rules of Arbitration in the American  
41 Arbitration Association. Any decision by the board of arbitration shall  
42 be final, binding, and conclusive as to the parties. Nothing provided in  
43 this section shall prevent either party from submission of disputes to  
44 the court, limited to requests for injunctive or equitable relief in

45 advance of a breach or threatened breach of this agreement, if  
46 necessary to prevent serious and irreparable injury to such party or  
47 the public and if such injury cannot be appropriately addressed by  
48 informal or formal arbitration.

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

389.591. 1. Notwithstanding any provision of law to the contrary,  
2 sections 389.585 to 389.591 shall apply in all crossings of railroad  
3 rights-of-way involving a land management company and a utility and  
4 shall govern in the event of any conflict with any other provision of  
5 law.

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

Bill ✓

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