

SENATE SUBSTITUTE
FOR
SENATE COMMITTEE SUBSTITUTE
FOR
SENATE BILL NO. 650

AN ACT

To repeal sections 67.5090, 67.5092, 67.5094, 67.5096, 67.5098, 67.5100, 67.5102, and 67.5103, RSMo, and to enact in lieu thereof eight new sections relating to wireless communications infrastructure deployment.

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

1 Section A. Sections 67.5090, 67.5092, 67.5094, 67.5096,
2 67.5098, 67.5100, 67.5102, and 67.5103, RSMo, are repealed and
3 eight new sections enacted in lieu thereof, to be known as
4 sections 67.5090, 67.5092, 67.5094, 67.5096, 67.5098, 67.5100,
5 67.5102, and 67.5103, to read as follows:

6 67.5090. Sections 67.5090 to [67.5102] 67.5103 shall be
7 known and may be cited as the "Uniform Wireless Communications
8 Infrastructure Deployment Act" and is intended to encourage and
9 streamline the deployment of broadcast and broadband facilities
10 and to help ensure that robust wireless radio based communication
11 services are available throughout Missouri.

12 67.5092. As used in sections 67.5090 to [67.5102] 67.5103,
13 the following terms mean:

14 (1) "Accessory equipment", any equipment serving or being
15 used in conjunction with a wireless communications facility or
16 wireless support structure. The term includes utility or

1 transmission equipment, power supplies, generators, batteries,
2 cables, equipment buildings, cabinets and storage sheds,
3 shelters, or similar structures;

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

7 (3) "Applicant", any person engaged in the business of
8 providing wireless communications services or the wireless
9 communications infrastructure required for wireless
10 communications services who submits an application;

11 (4) "Application", a request submitted by an applicant to
12 an authority to construct a new wireless support structure, for
13 the substantial modification of a wireless support structure, or
14 for collocation of a wireless facility or replacement of a
15 wireless facility on an existing structure;

16 (5) "Authority", each state, county, and municipal
17 governing body, board, agency, office, or commission authorized
18 by law and acting in its capacity to make legislative,
19 quasi-judicial, or administrative decisions relative to zoning or
20 building permit review of an application. The term shall not
21 include state courts having jurisdiction over land use, planning,
22 or zoning decisions made by an authority;

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

1 (7) "Building permit", a permit issued by an authority
2 prior to commencement of work on the collocation of wireless
3 facilities on an existing structure, the substantial modification
4 of a wireless support structure, or the commencement of
5 construction of any new wireless support structure, solely to
6 ensure that the work to be performed by the applicant satisfies
7 the applicable building code;

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

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

16 (10) "Equipment compound", an area surrounding or near a
17 wireless support structure within which are located wireless
18 facilities;

19 (11) "Existing structure", a structure that exists at the
20 time a request to place wireless facilities on a structure is
21 filed with an authority. The term includes any structure that is
22 capable of supporting the attachment of wireless facilities in
23 compliance with applicable building codes, National Electric
24 Safety Codes, and recognized industry standards for structural
25 safety, capacity, reliability, and engineering, including, but
26 not limited to, towers, buildings, and water towers. The term
27 shall not include any utility pole;

28 (12) "Replacement", includes constructing a new wireless

1 support structure of equal proportions and of equal height or
2 such other height that would not constitute a substantial
3 modification to an existing structure in order to support
4 wireless facilities or to accommodate collocation and includes
5 the associated removal of the preexisting wireless facilities or
6 wireless support structure;

7 (13) "Substantial modification", the mounting of a proposed
8 wireless facility on a wireless support structure which, as
9 applied to the structure as it was originally constructed:

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

12 a. More than ten percent; or

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

16 (b) Involves adding an appurtenance to the body of a
17 wireless support structure that protrudes horizontally from the
18 edge of the wireless support structure more than twenty feet or
19 more than the width of the wireless support structure at the
20 level of the appurtenance, whichever is greater (except where
21 necessary to shelter the antenna from inclement weather or to
22 connect the antenna to the tower via cable);

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

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

28 (14) "Utility", any person, corporation, county,

1 municipality acting in its capacity as a utility, municipal
2 utility board, or other entity, or department thereof or entity
3 related thereto, providing retail or wholesale electric, natural
4 gas, water, waste water, data, cable television, or
5 telecommunications or internet protocol-related services;

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

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

14 (17) "Wireless communications service", includes the
15 wireless facilities of all services licensed to use radio
16 communications pursuant to Section 301 of the Communications Act
17 of 1934, 47 U.S.C. § 301;

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

24 [(18)] (19) "Wireless support structure", a structure, such
25 as a monopole, tower, or building capable of supporting wireless
26 facilities. This definition does not include utility poles.

27 67.5094. In order to ensure uniformity across the state of
28 Missouri with respect to the consideration of every application,

1 an authority shall not:

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

6 (2) Evaluate an application based on the availability of
7 other potential locations for the placement of wireless support
8 structures or wireless facilities, including without limitation
9 the option to collocate instead of construct a new wireless
10 support structure or for substantial modifications of a support
11 structure, or vice versa; provided, however, that solely with
12 respect to an application for a new wireless support structure,
13 an authority may require an applicant to state in [its] such
14 applicant's application that it conducted an analysis of
15 available [collocation] collocation opportunities on existing
16 wireless towers within the same search ring defined by the
17 applicant, solely for the purpose of confirming that an applicant
18 undertook such an analysis;

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

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

27 (5) With respect to radio frequency emissions, impose
28 environmental testing, sampling, or monitoring requirements or

1 other compliance measures on wireless facilities that are
2 categorically excluded under the Federal Communication
3 Commission's rules for radio frequency emissions under 47 CFR
4 1.1307(b) (1) or other applicable federal law, as the same may be
5 amended or supplemented;

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

8 (7) Establish or enforce regulations or procedures for
9 environmental safety for any wireless communications facility
10 that is inconsistent with or in excess of those required by OET
11 Bulletin 65, entitled Evaluating Compliance with FCC Guidelines
12 for Human Exposure to Radio Frequency Electromagnetic Fields,
13 Edition 97-01, released August, 1997, and Supplement A:
14 Additional Information for Radio and Television Broadcast
15 Stations;

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

19 [(8)] (9) Impose any restrictions with respect to objects
20 in navigable airspace that are greater than or in conflict with
21 the restrictions imposed by the Federal Aviation Administration;

22 [(9)] (10) Prohibit the placement of emergency power
23 systems that comply with federal and state environmental
24 requirements;

25 [(10)] (11) Charge an application fee, consulting fee, or
26 other fee associated with the submission, review, processing, and
27 approval of an application that is not required for similar types
28 of commercial development within the authority's jurisdiction.

1 Fees imposed by an authority for or directly by a third-party
2 entity providing review or technical consultation to the
3 authority must be based on actual, direct, and reasonable
4 administrative costs incurred for the review, processing, and
5 approval of an application. Except when mutually agreeable to
6 the applicant and the authority, total charges and fees shall not
7 exceed five hundred dollars for a collocation application or one
8 thousand five hundred dollars for an application for a new
9 wireless support structure or for a substantial modification of a
10 wireless support structure. Notwithstanding the foregoing, in no
11 event shall an authority or any third-party entity include within
12 its charges any travel expenses incurred in a third-party's
13 review of an application and in no event shall an applicant be
14 required to pay or reimburse an authority for consultation or
15 other third-party fees based on a contingency or result-based
16 arrangement;

17 [(11)] (12) Impose surety requirements, including bonds,
18 escrow deposits, letters of credit, or any other type of
19 financial surety, to ensure that abandoned or unused facilities
20 can be removed unless the authority imposes similar requirements
21 on other permits for other types of commercial development or
22 land uses;

23 [(12)] (13) Condition the approval of an application on the
24 applicant's agreement to provide space on or near the wireless
25 support structure for authority or local governmental services at
26 less than the market rate for space or to provide other services
27 via the structure or facilities at less than the market rate for
28 such services;

1 [(13)] (14) Limit the duration of the approval of an
2 application;

3 [(14)] (15) Discriminate or create a preference on the
4 basis of the ownership, including ownership by the authority, of
5 any property, structure, or tower when promulgating rules or
6 procedures for siting wireless facilities or for evaluating
7 applications;

8 [(15)] (16) Impose any requirements or obligations
9 regarding the presentation or appearance of facilities,
10 including, but not limited to, those relating to the kind or type
11 of materials used and those relating to arranging, screening, or
12 landscaping of facilities if such regulations or obligations are
13 unreasonable;

14 [(16)] (17) Impose any requirements that an applicant
15 purchase, subscribe to, use, or employ facilities, networks, or
16 services owned, provided, or operated by an authority, in whole
17 or in part, or by any entity in which an authority has a
18 competitive, economic, financial, governance, or other interest;

19 [(17)] (18) Condition the approval of an application on, or
20 otherwise require, the applicant's agreement to indemnify or
21 insure the authority in connection with the authority's exercise
22 of its police power-based regulations; or

23 [(18)] (19) Condition or require the approval of an
24 application based on the applicant's agreement to permit any
25 wireless facilities provided or operated, in whole or in part, by
26 an authority or by any entity in which an authority has a
27 competitive, economic, financial, governance, or other interest,
28 to be placed at or collocated with the applicant's wireless

1 support structure.

2 67.5096. 1. Authorities may continue to exercise zoning,
3 land use, planning, and permitting authority within their
4 territorial boundaries with regard to the siting of new wireless
5 support structures, subject to the provisions of sections 67.5090
6 to 67.5103, including without limitation section 67.5094, and
7 subject to federal law.

8 2. Any applicant that proposes to construct a new wireless
9 support structure within the jurisdiction of any authority,
10 planning or otherwise, that has adopted planning and zoning
11 regulations in accordance with sections 67.5090 to 67.5103 shall:

12 (1) Submit the necessary copies and attachments of the
13 application to the appropriate authority. Each application shall
14 include a copy of a lease, letter of authorization or other
15 agreement from the property owner evidencing applicant's right to
16 pursue the application; and

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

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

22 4. The authority, within one hundred twenty calendar days
23 of receiving an application to construct a new wireless support
24 structure or within such additional time as may be mutually
25 agreed to by an applicant and an authority, shall:

26 (1) Review the application in light of its conformity with
27 applicable local zoning regulations. An application is deemed to
28 be complete unless the authority notifies the applicant in

1 writing, within thirty calendar days of submission of the
2 application, of the specific deficiencies in the application
3 which, if cured, would make the application complete. Upon
4 receipt of a timely written notice that an application is
5 deficient, an applicant may take thirty calendar days from
6 receiving such notice to cure the specific deficiencies. If the
7 applicant cures the deficiencies within thirty calendar days, the
8 application shall be reviewed and processed within one hundred
9 twenty calendar days from the initial date the application was
10 received. If the applicant requires a period of time beyond
11 thirty calendar days to cure the specific deficiencies, the one
12 hundred twenty calendar days' deadline for review shall be
13 extended by the same period of time;

14 (2) Make its final decision to approve or disapprove the
15 application; and

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

17 5. If the authority fails to act on an application to
18 construct a new wireless support structure within the one hundred
19 twenty calendar days' review period specified under subsection 4
20 of this section or within such additional time as may be mutually
21 agreed to by an applicant and an authority, the application shall
22 be deemed approved.

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

28 67.5098. 1. Authorities may continue to exercise zoning,

1 land use, planning, and permitting authority within their
2 territorial boundaries with regard to applications for
3 substantial modifications of wireless support structures, subject
4 to the provisions of sections 67.5090 to 67.5103, including
5 without limitation section 67.5094, and subject to federal law.

6 2. Any applicant that applies for a substantial
7 modification of a wireless support structure within the
8 jurisdiction of any authority, planning or otherwise, that has
9 adopted planning and zoning regulations in accordance with
10 sections 67.5090 to 67.5103 shall:

11 (1) Submit the necessary copies and attachments of the
12 application to the appropriate authority. Each application shall
13 include a copy of a lease, letter of authorization or other
14 agreement from the property owner evidencing applicant's right to
15 pursue the application; and

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

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

21 4. The authority, within ninety calendar days of receiving
22 an application for a substantial modification of wireless support
23 structures, shall:

24 (1) Review the application in light of its conformity with
25 applicable local zoning regulations. An application is deemed to
26 be complete unless the authority notifies the applicant in
27 writing, within thirty calendar days of submission of the
28 application, of the specific deficiencies in the application

1 which, if cured, would make the application complete. Upon
2 receipt of a timely written notice that an application is
3 deficient, an applicant may take thirty calendar days from
4 receiving such notice to cure the specific deficiencies. If the
5 applicant cures the deficiencies within thirty calendar days, the
6 application shall be reviewed and processed within ninety
7 calendar days from the initial date the application was received.
8 If the applicant requires a period of time beyond thirty calendar
9 days to cure the specific deficiencies, the ninety calendar days'
10 deadline for review shall be extended by the same period of time;

11 (2) Make its final decision to approve or disapprove the
12 application; and

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

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

20 6. A party aggrieved by the final action of an authority,
21 either by its affirmatively denying an application under the
22 provisions of this section or by its inaction, may bring an
23 action for review in any court of competent jurisdiction within
24 this state.

25 67.5100. 1. Subject to the provisions of sections 67.5090
26 to 67.5103, including section 67.5094, collocation applications
27 and applications for replacement of wireless facilities shall be
28 reviewed for conformance with applicable building permit

1 requirements, National Electric Safety Codes, and recognized
2 industry standards for structural safety, capacity, reliability,
3 and engineering, but shall not otherwise be subject to zoning or
4 land use requirements, including design or placement
5 requirements, or public hearing review.

6 2. The authority, within forty-five calendar days of
7 receiving a collocation application or application for
8 replacement of wireless facilities, shall:

9 (1) Review the collocation application or application to
10 replace wireless facilities in light of its conformity with
11 applicable building permit requirements and consistency with
12 sections 67.5090 to 67.5103. A collocation application or
13 application to replace wireless facilities is deemed to be
14 complete unless the authority notifies the applicant in writing,
15 within fifteen calendar days of submission of the application, of
16 the specific deficiencies in the application which, if cured,
17 would make the application complete. Each collocation
18 application or application to replace wireless facilities shall
19 include a copy of a lease, letter of authorization or other
20 agreement from the property owner evidencing applicant's right to
21 pursue the application. Upon receipt of a timely written notice
22 that a collocation application or application to replace wireless
23 facilities is deficient, an applicant may take fifteen calendar
24 days from receiving such notice to cure the specific
25 deficiencies. If the applicant cures the deficiencies within
26 fifteen calendar days, the application shall be reviewed and
27 processed within forty-five calendar days from the initial date
28 the application was received. If the applicant requires a period

1 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. The provisions of sections 67.5090 to 67.5103 shall not:

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

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

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

26 5. A party aggrieved by the final action of an authority,
27 either by its affirmatively denying an application under the
28 provisions of this section or by its inaction, may bring an

1 action for review in any court of competent jurisdiction within
2 this state.

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 if such moratorium exceeds six months
9 in length and if the legislative act establishing it fails to
10 state reasonable grounds and good cause for such moratorium. No
11 such moratorium shall affect an already pending application;

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

15 (a) An authority may not charge a wireless service provider
16 or wireless infrastructure provider any rental, license, or other
17 fee to locate a wireless facility or wireless support structure
18 on an authority's property in excess of the current market rates
19 for rental or use of similarly situated property. If the
20 applicant and the authority do not agree on the applicable market
21 rate for any such public land and cannot agree on a process by
22 which to derive the applicable market rate for any such public
23 land, then the market rate will be determined by a [panel of
24 three certified appraisers] state-certified general real estate
25 appraiser licensed under chapter 339[, using the following
26 process. Each party will appoint one certified appraiser to the
27 panel, and the two certified appraisers so appointed will appoint
28 a third certified appraiser. Each appraiser will independently

1 appraise the appropriate lease rate, and the market rate shall be
2 set at the mid-point between the highest and lowest market rates
3 among the three independent appraisals, provided the mid-point
4 between the highest and lowest appraisals is greater than or less
5 than ten percent of the appraisal of the third appraiser chosen
6 by the parties' appointed appraisers. In such case, the third
7 appraisal will determine the rate for the lease] mutually agreed
8 upon by the parties at the applicant's cost. The appraisal
9 process shall be concluded within ninety calendar days from the
10 date the applicant first tenders its proposed lease rate to the
11 authority. [Each party will bear the cost of its own appointed
12 appraiser, and the parties shall share equally the cost of the
13 third appraiser chosen by the two appointed appraisers.] In the
14 event either party is dissatisfied with the value determined by
15 the appraiser, such party may bring an action for review in any
16 court of competent jurisdiction. The court shall rule on any
17 such petition for review in an expedited manner. Nothing in this
18 paragraph shall bar an applicant and an authority from agreeing
19 to reasonable, periodic reviews and adjustments of current market
20 rates during the term of a lease or contract to use an
21 authority's property; and

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

27 (3) Nothing in subdivision (2) of this section is intended
28 to limit an authority's lawful exercise of zoning, land use, or

1 planning and permitting authority with respect to applications
2 for new wireless support structures on an authority's property
3 under subsection 1 of section 67.5096.

4 67.5103. Notwithstanding any provision of sections 67.5090
5 to ~~[67.5102]~~ 67.5103, nothing herein shall provide any applicant
6 the power of eminent domain or the right to compel any private or
7 public property owner, the department of conservation, the
8 department of natural resources, or the state highways and
9 transportation commission to:

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

12 (2) Locate or cause the collocation or expansion of a
13 wireless facility on any existing structure or wireless support
14 structure.