SECOND REGULAR SESSION
SENATE COMMITTEE SUBSTITUTE FOR

SENATE BILL NO. 650
97TH GENERAL ASSEMBLY

Reported from the Committee on Commerce, Consumer Protections, Energy and the Environment, January 30, 2014, with recommendation that the Senate Committee Substitute do pass.

TERRY L. SPIELER, Secretary.

5012S.02C

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:

Section A. Sections 67.5090, 67.5092, 67.5094, 67.5096, 67.5098, 67.5100, 67.5102, and 67.5103, RSMo, are repealed and eight new sections enacted in lieu thereof, to be known as sections 67.5090, 67.5092, 67.5094, 67.5096, 67.5098, 67.5100, 67.5102, and 67.5103, to read as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

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

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

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

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

EXPLANATION–Matter enclosed in bold-faced brackets [thus] in this bill is not enacted and is intended to be omitted in the law.
(3) "Applicant", any person engaged in the business of providing wireless communications services or the wireless communications infrastructure required for wireless communications services who submits an application;

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

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

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

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

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

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

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

(11) "Existing structure", a structure that exists at the time a request to place wireless facilities on a structure is filed with an authority. The term includes any structure that is capable of supporting the attachment of wireless
facilities in compliance with applicable building codes, National Electric Safety
Codes, and recognized industry standards for structural safety, capacity,
reliability, and engineering, including, but not limited to, towers, buildings, and
water towers. The term shall not include any utility pole;
(12) "Replacement", includes constructing a new wireless support
structure of equal proportions and of equal height or such other height that would
not constitute a substantial modification to an existing structure in order to
support wireless facilities or to accommodate collocation and includes the
associated removal of the preexisting wireless facilities or wireless support
structure;
(13) "Substantial modification", the mounting of a proposed wireless
facility on a wireless support structure which, as applied to the structure as it
was originally constructed:
(a) Increases the existing vertical height of the structure by:
   a. More than ten percent; or
   b. The height of one additional antenna array with separation from the
nearest existing antenna not to exceed twenty feet, whichever is greater; or
   (b) Involves adding an appurtenance to the body of a wireless support
structure that protrudes horizontally from the edge of the wireless support
structure more than twenty feet or more than the width of the wireless support
structure at the level of the appurtenance, whichever is greater (except where
necessary to shelter the antenna from inclement weather or to connect the
antenna to the tower via cable);
(c) Involves the installation of more than the standard number of new
outdoor equipment cabinets for the technology involved, not to exceed four new
equipment cabinets; or
(d) Increases the square footage of the existing equipment compound by
more than two thousand five hundred square feet;
(14) "Utility", any person, corporation, county, municipality acting in its
capacity as a utility, municipal utility board, or other entity, or department
thereof or entity related thereto, providing retail or wholesale electric, natural
gas, water, waste water, data, cable television, or telecommunications or internet
protocol-related services;
(15) "Utility pole", a structure owned or operated by a utility that is
designed specifically for and used to carry lines, cables, or wires for telephony,
cable television, or electricity, or to provide lighting;
(16) "Water tower", a water storage tank, or a standpipe or an elevated tank situated on a support structure, originally constructed for use as a reservoir or facility to store or deliver water;

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

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

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

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

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

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

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

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

(5) With respect to radio frequency emissions, impose environmental
testing, sampling, or monitoring requirements or other compliance measures on
wireless facilities that are categorically excluded under the Federal
Communication Commission's rules for radio frequency emissions under 47 CFR
1.1307(b)(1) or other applicable federal law, as the same may be amended or
supplemented;

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

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

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

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

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

[(10)] (11) Charge an application fee, consulting fee, or other fee
associated with the submission, review, processing, and approval of an application
that is not required for similar types of commercial development within the
authority's jurisdiction. Fees imposed by an authority for or directly by a
third-party entity providing review or technical consultation to the authority
must be based on actual, direct, and reasonable administrative costs incurred for
the review, processing, and approval of an application. Except when mutually
agreeable to the applicant and the authority, total charges and fees shall not
exceed five hundred dollars for a collocation application or one thousand five
hundred dollars for an application for a new wireless support structure or for a
substantial modification of a wireless support structure. Notwithstanding the
foregoing, in no event shall an authority or any third-party entity include within
its charges any travel expenses incurred in a third-party's review of an
application and in no event shall an applicant be required to pay or reimburse an
authority for consultation or other third-party fees based on a contingency or result-based arrangement;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

67.5098. 1. Authorities may continue to exercise zoning, land use,
planning, and permitting authority within their territorial boundaries with
regard to applications for substantial modifications of wireless support structures,
subject to the provisions of sections 67.5090 to 67.5103, including without
limitation section 67.5094, and subject to federal law.

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

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

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

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

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

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

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

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

67.5100. 1. Subject to the provisions of sections 67.5090 to 67.5103, including section 67.5094, collocation applications and applications for replacement of wireless facilities shall be reviewed for conformance with applicable building permit requirements, National Electric Safety Codes, and recognized industry standards for structural safety, capacity, reliability, and engineering, but shall not otherwise be subject to zoning or land use requirements, including design or placement requirements, or public hearing review.

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

(1) Review the collocation application or application to replace wireless facilities in light of its conformity with applicable building permit requirements and consistency with sections 67.5090 to 67.5103. A collocation application or application to replace wireless facilities is deemed to be complete unless the authority notifies the applicant in writing, within fifteen calendar days of submission of the application, of the specific deficiencies in the application which, if cured, would make the application complete. Each collocation application or application to replace wireless facilities shall include a copy of a lease, letter of authorization or other agreement from the property owner evidencing applicant's right to pursue the application. Upon receipt of a timely written notice that a collocation application or application to replace wireless facilities is deficient, an applicant may take fifteen calendar days from receiving such notice to cure the
specific deficiencies. If the applicant cures the deficiencies within fifteen calendar
days, the application shall be reviewed and processed within forty-five calendar
days from the initial date the application was received. If the applicant requires
a period of time beyond fifteen calendar days to cure the specific deficiencies, the
forty-five calendar days' deadline for review shall be extended by the same period
of time;

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

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

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

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

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

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

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

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

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

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

(2) To encourage applicants to request construction of new wireless
support structures on public lands and to increase local revenues:
(a) An authority may not charge a wireless service provider or wireless infrastructure provider any rental, license, or other fee to locate a wireless facility or wireless support structure on an authority's property in excess of the current market rates for rental or use of similarly situated property. If the applicant and the authority do not agree on the applicable market rate for any such public land and cannot agree on a process by which to derive the applicable market rate for any such public land, then the market rate will be determined by a [panel of three] certified [appraisers] appraiser licensed under chapter 339, using the following process. Each party will appoint one certified appraiser to the panel, and the two certified appraisers so appointed will appoint a third certified appraiser. Each appraiser will independently appraise the appropriate lease rate, and the market rate shall be set at the mid-point between the highest and lowest market rates among the three independent appraisals, provided the mid-point between the highest and lowest appraisals is greater than or less than ten percent of the appraisal of the third appraiser chosen by the parties' appointed appraisers. In such case, the third appraisal will determine the rate for the lease mutually agreed upon by the parties at the applicant's cost. The appraisal process shall be concluded within ninety calendar days from the date the applicant first tenders its proposed lease rate to the authority. [Each party will bear the cost of its own appointed appraiser, and the parties shall share equally the cost of the third appraiser chosen by the two appointed appraisers.] In the event either party is dissatisfied with the value determined by the appraiser, such party may bring an action for review in any court of competent jurisdiction. The court shall rule on any such petition for review in an expedited manner. Nothing in this paragraph shall bar an applicant and an authority from agreeing to reasonable, periodic reviews and adjustments of current market rates during the term of a lease or contract to use an authority's property; and

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

(3) Nothing in subdivision (2) of this section is intended to limit an authority's lawful exercise of zoning, land use, or planning and permitting authority with respect to applications for new wireless support structures on an authority's property under subsection 1 of section 67.5096.
67.5103. Notwithstanding any provision of sections 67.5090 to [67.5102]
2 67.5103, nothing herein shall provide any applicant the power of eminent domain
3 or the right to compel any private or public property owner, the department of
4 conservation, the department of natural resources, or the state highways and
5 transportation commission to:
6   (1) Lease or sell property for the construction of a new wireless support
7   structure; or
8   (2) Locate or cause the collocation or expansion of a wireless facility on
9   any existing structure or wireless support structure.