

SENATE SUBSTITUTE
FOR
SENATE COMMITTEE SUBSTITUTE
FOR
HOUSE COMMITTEE SUBSTITUTE
FOR
HOUSE BILL NO. 345

AN ACT

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

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

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3 seventh general assembly, first regular session, is repealed and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

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

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

1 such moratorium shall affect an already pending application;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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