

FIRST REGULAR SESSION  
[TRULY AGREED TO AND FINALLY PASSED]  
SENATE SUBSTITUTE FOR  
SENATE COMMITTEE SUBSTITUTE FOR  
HOUSE COMMITTEE SUBSTITUTE FOR

# HOUSE BILL NO. 345

## 97TH GENERAL ASSEMBLY

1193S.10T

2013

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### AN ACT

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

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*Be it enacted by the General Assembly of the state of Missouri, as follows:*

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2 house bill no. 331, ninety-seventh general assembly, first regular session, is repealed and three  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

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

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

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

EXPLANATION — Matter enclosed in bold-faced brackets [thus] in the above bill is not enacted and is intended to be omitted from the law. Matter in **bold-face** type in the above bill is proposed language.

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

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

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

**67.5103. Notwithstanding any provision of sections 67.5090 to 67.5102, nothing**  
2 **herein shall provide any applicant the power of eminent domain or the right to compel any**  
3 **private or public property owner, the department of conservation, the department of**  
4 **natural resources, or the state highways and transportation commission to:**

5           **(1) Lease or sell property for the construction of a new wireless support structure;**  
6 **or**

7           **(2) Locate or cause the collocation or expansion of a wireless facility on any existing**  
8 **structure or wireless support structure.**

**67.5104. 1. As used in this section, "pole attachment" means an attachment by a**  
2 **video service provider, a telecommunications or other communications-related service**  
3 **provider to a pole owned by a municipal utility, but not a wireless antenna attachment or**  
4 **an attachment by a wireless communications provider to a pole.**

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

16           **3. Either party may seek review of any fee, term, or condition by means of binding**  
17 **arbitration conducted by a single arbitrator mutually agreeable to the parties or, in the**  
18 **absence of such an agreement, by means of binding arbitration conducted by the American**  
19 **Arbitration Association. An arbitrator's award regarding fees shall be confined to**  
20 **ensuring that the municipal utility pole owner recovers its direct costs and a reasonable**  
21 **share of the fully allocated costs attributable to the pole attachment, and that the fee may**  
22 **exceed the fee resulting from the application of the cable service rate formula referenced**  
23 **in this section only if based on an express written finding stated in the award that such**  
24 **award is based on competent and substantial evidence that the revenues produced under**  
25 **the cable service rate formula and other payments made by the service provider do not**  
26 **sufficiently recover the direct costs and a reasonable share of the fully allocated costs**  
27 **attributable to the pole attachment. In addition, a municipal pole owner may be**  
28 **authorized to exceed the rate of return cost components of the Federal Communications**  
29 **Commission formula referenced in this section if necessary to comply with article X of the**  
30 **Missouri Constitution. Pending the arbitrator's rendering of such an award, the last**  
31 **existent rental fee applicable to the pole attachment shall remain in place and binding upon**  
32 **both parties.**

33           **4. Where no prior contract exists between an attaching entity and the municipal**  
34 **utility pole owner, and a dispute between a municipal utility pole owner and an attaching**

35 entity exclusively concerns the per pole fee, then the attaching entity may proceed with its  
36 attachments during the pendency of the arbitration under the agreed upon terms and  
37 conditions.

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

40 6. Nothing in this section shall be construed as conferring any jurisdiction or  
41 authority to the public service commission to regulate either the fees, terms, or conditions  
42 for pole attachments, or for any state agency to assert any jurisdiction over pole  
43 attachments regulated by 47 U.S.C. Sec. 224.

2 [67.5103. Notwithstanding any provision of sections 67.5090 to  
3 67.5102, nothing herein shall provide any applicant the power of eminent  
4 domain or the right to compel any private or public property owner, or the  
5 department of conservation or department of natural resources to:

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

8 (2) Locate or cause the collocation or expansion of a wireless facility  
on any existing structure or wireless support structure.]

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