

FIRST REGULAR SESSION
HOUSE COMMITTEE SUBSTITUTE FOR
SENATE SUBSTITUTE FOR
SENATE COMMITTEE SUBSTITUTE FOR
SENATE BILL NO. 241
97TH GENERAL ASSEMBLY

0957H.16C

D. ADAM CRUMBLISS, Chief Clerk

AN ACT

To repeal sections 67.1830, 67.1836, 67.1838, and 67.1842, RSMo, and to enact in lieu thereof eighteen new sections relating to infrastructure facilities deployment.

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Section A. Sections 67.1830, 67.1836, 67.1838, and 67.1842, RSMo, are repealed and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

67.1830. As used in sections 67.1830 to 67.1846, the following terms shall mean:

- 2 (1) "Abandoned equipment or facilities", any equipment materials, apparatuses, devices
3 or facilities that are:
4 (a) Declared abandoned by the owner of such equipment or facilities;
5 (b) No longer in active use, physically disconnected from a portion of the operating
6 facility or any other facility that is in use or in service, and no longer capable of being used for
7 the same or similar purpose for which the equipment, apparatuses or facilities were installed; or
8 (c) No longer in active use and the owner of such equipment or facilities fails to respond
9 within thirty days to a written notice sent by a political subdivision;
10 (2) "Degradation", the actual or deemed reduction in the useful life of the public
11 right-of-way resulting from the cutting, excavation or restoration of the public right-of-way;
12 (3) "Emergency", includes but is not limited to the following:

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.

13 (a) An unexpected or unplanned outage, cut, rupture, leak or any other failure of a public
14 utility facility that prevents or significantly jeopardizes the ability of a public utility to provide
15 service to customers;

16 (b) An unexpected or unplanned outage, cut, rupture, leak or any other failure of a public
17 utility facility that results or could result in danger to the public or a material delay or hindrance
18 to the provision of service to the public if the outage, cut, rupture, leak or any other such failure
19 of public utility facilities is not immediately repaired, controlled, stabilized or rectified; or

20 (c) Any occurrence involving a public utility facility that a reasonable person could
21 conclude under the circumstances that immediate and undelayed action by the public utility is
22 necessary and warranted;

23 (4) "Excavation", any act by which earth, asphalt, concrete, sand, gravel, rock or any
24 other material in or on the ground is cut into, dug, uncovered, removed, or otherwise displaced,
25 by means of any tools, equipment or explosives, except that the following shall not be deemed
26 excavation:

27 (a) Any de minimis displacement or movement of ground caused by pedestrian or
28 vehicular traffic;

29 (b) The replacement of utility poles and related equipment at the existing general
30 location that does not involve either a street or sidewalk cut; or

31 (c) Any other activity which does not disturb or displace surface conditions of the earth,
32 asphalt, concrete, sand, gravel, rock or any other material in or on the ground;

33 (5) "Management costs" or "rights-of-way management costs", the actual costs a political
34 subdivision reasonably incurs in managing its public rights-of-way, including such costs, if
35 incurred, as those associated with the following:

36 (a) Issuing, processing and verifying right-of-way permit applications;

37 (b) Inspecting job sites and restoration projects;

38 (c) Protecting or moving public utility right-of-way user construction equipment after
39 reasonable notification to the public utility right-of-way user during public right-of-way work;

40 (d) Determining the adequacy of public right-of-way restoration;

41 (e) Restoring work inadequately performed after providing notice and the opportunity
42 to correct the work; and

43 (f) Revoking right-of-way permits.

44

45 Right-of-way management costs shall be the same for all entities doing similar work.
46 Management costs or rights-of-way management costs shall not include payment by a public
47 utility right-of-way user for the use or rent of the public right-of-way, degradation of the public
48 right-of-way or any costs as outlined in paragraphs (a) to (h) of this subdivision which are

49 incurred by the political subdivision as a result of use by users other than public utilities, the
50 **attorneys'** fees and cost of litigation relating to the interpretation of this section or section
51 67.1832, or litigation, interpretation or development of any ordinance enacted pursuant to this
52 section or section 67.1832, **or attorneys' fees and costs in connection with issuing,**
53 **processing, or verifying right-of-way permit or other applications or agreements,** or the
54 political subdivision's fees and costs related to appeals taken pursuant to section 67.1838. In
55 granting or renewing a franchise for a cable television system, a political subdivision may impose
56 a franchise fee and other terms and conditions permitted by federal law;

57 (6) "Managing the public right-of-way", the actions a political subdivision takes, through
58 reasonable exercise of its police powers, to impose rights, duties and obligations on all users of
59 the right-of-way, including the political subdivision, in a reasonable, competitively neutral and
60 nondiscriminatory and uniform manner, reflecting the distinct engineering, construction,
61 operation, maintenance and public work and safety requirements applicable to the various users
62 of the public right-of-way, provided that such rights, duties and obligations shall not conflict
63 with any federal law or regulation. In managing the public right-of-way, a political subdivision
64 may:

65 (a) Require construction performance bonds or insurance coverage or demonstration of
66 self-insurance at the option of the political subdivision or if the public utility right-of-way user
67 has twenty-five million dollars in net assets and does not have a history of permitting
68 noncompliance within the political subdivision as defined by the political subdivision, then the
69 public utility right-of-way user shall not be required to provide such bonds or insurance;

70 (b) Establish coordination and timing requirements that do not impose a barrier to entry;

71 (c) Require public utility right-of-way users to submit, for right-of-way projects
72 commenced after August 28, 2001, requiring excavation within the public right-of-way, whether
73 initiated by a political subdivision or any public utility right-of-way user, project data in the form
74 maintained by the user and in a reasonable time after receipt of the request based on the amount
75 of data requested;

76 (d) Establish right-of-way permitting requirements for street excavation;

77 (e) Establish removal requirements for abandoned equipment or facilities, if the
78 existence of such facilities prevents or significantly impairs right-of-way use, repair, excavation
79 or construction;

80 (f) Establish permitting requirements for towers and other structures or equipment for
81 wireless communications facilities in the public right-of-way, notwithstanding the provisions of
82 section 67.1832;

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

- 85 (h) Impose permit conditions to protect public safety;
- 86 (7) "Political subdivision", a city, town, village, county of the first classification or
87 county of the second classification;
- 88 (8) "Public right-of-way", the area on, below or above a public roadway, highway, street
89 or alleyway in which the political subdivision has an ownership interest, but not including:
- 90 (a) The airwaves above a public right-of-way with regard to cellular or other nonwire
91 telecommunications or broadcast service;
- 92 (b) Easements obtained by utilities or private easements in platted subdivisions or tracts;
- 93 (c) Railroad rights-of-way and ground utilized or acquired for railroad facilities; or
- 94 (d) [Poles,] Pipes, cables, conduits, wires, optical cables, or other means of transmission,
95 collection or exchange of communications, information, substances, data, or electronic or
96 electrical current or impulses utilized by a municipally owned or operated utility pursuant to
97 chapter 91 or pursuant to a charter form of government;
- 98 (9) "Public utility", every cable television service provider, every pipeline corporation,
99 gas corporation, electrical corporation, rural electric cooperative, telecommunications company,
100 water corporation, heating or refrigerating corporation or sewer corporation under the jurisdiction
101 of the public service commission; every municipally owned or operated utility pursuant to
102 chapter 91 or pursuant to a charter form of government or cooperatively owned or operated
103 utility pursuant to chapter 394; every street light maintenance district; every privately owned
104 utility; and every other entity, regardless of its form of organization or governance, whether for
105 profit or not, which in providing a public utility type of service for members of the general
106 public, utilizes pipes, cables, conduits, wires, optical cables, or other means of transmission,
107 collection or exchange of communications, information, substances, data, or electronic or
108 electrical current or impulses, in the collection, exchange or dissemination of its product or
109 services through the public rights-of-way;
- 110 (10) "Public utility right-of-way user", a public utility owning or controlling a facility
111 in the public right-of-way; and
- 112 (11) "Right-of-way permit", a permit issued by a political subdivision authorizing the
113 performance of excavation work in a public right-of-way.

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

- 3 (1) The public utility right-of-way user fails to provide all the necessary information
4 requested by the political subdivision for managing the public right-of-way;
- 5 (2) The public utility right-of-way user has failed to return the public right-of-way to its
6 previous condition under a previous permit;

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

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

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

19 2. A political subdivision may, after reasonable notice and an opportunity to cure, revoke
20 a right-of-way permit granted to a public utility right-of-way user, with or without fee refund,
21 and/or impose a penalty as established by the political subdivision until the breach is cured, but
22 only in the event of a substantial breach of the terms and material conditions of the permit. A
23 substantial breach by a permittee includes but is not limited to:

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

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

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

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

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

36 3. Any political subdivision that requires public utility right-of-way users to obtain a
37 right-of-way permit, except in an emergency, prior to performing excavation work within a
38 public right-of-way shall promptly, but not longer than thirty-one days, process all completed
39 permit applications. **If a political subdivision fails to act on an application for a right-of-way**
40 **permit within thirty-one days, the application shall be deemed approved.** In order to avoid
41 excessive processing and accounting costs to either the political subdivision or the public utility

42 right-of-way user, the political subdivision may establish procedures for bulk processing of
43 permits and periodic payment of permit fees.

67.1838. [1.] A public utility right-of-way user that has been denied a right-of-way
2 permit, has had its right-of-way permit revoked, believes that the fees imposed on the public
3 right-of-way user by the political subdivision do not conform to the requirements of section
4 67.1840, **believes the political subdivision has violated any provision of sections 67.1830 to**
5 **67.1848**, or asserts any other issues related to the use of the public right-of-way, [shall have,
6 upon written request, such denials, revocations, fee impositions, or other disputes reviewed by
7 the governing body of the political subdivision or an entity assigned by the governing body for
8 this purpose. The governing body of the political subdivision or its delegated entity shall specify,
9 in its permit processing schedules, the maximum number of days by which the review request
10 shall be filed in order to be reviewed by the governing body of the political subdivision or its
11 delegated entity. A decision affirming the denial, revocation, fee imposition or dispute resolution
12 shall be in writing and supported by written findings establishing the reasonableness of the
13 decision.

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

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

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

67.1842. 1. In managing the public right-of-way and in imposing fees pursuant to
2 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 right-of-way by
6 public utility right-of-way users;

7 (4) Require a telecommunications company to obtain a franchise or require a public
8 utility right-of-way user to pay for the use of the public right-of-way, except as provided in
9 sections 67.1830 to 67.1846; [or]

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

45 **(12) "Replacement", includes constructing a new wireless support structure of**
46 **equal proportions and of equal height or such other height that would not constitute a**
47 **substantial modification to an existing structure in order to support wireless facilities or**
48 **to accommodate collocation and includes the associated removal of the pre-existing wireless**
49 **facilities or wireless support structure;**

50 **(13) "Substantial modification", the mounting of a proposed wireless facility on a**
51 **wireless support structure which, as applied to the structure as it was originally**
52 **constructed:**

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

54 **a. More than ten percent; or**

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

57 **(b) Involves adding an appurtenance to the body of a wireless support structure**
58 **that protrudes horizontally from the edge of the wireless support structure more than**
59 **twenty feet or more than the width of the wireless support structure at the level of the**
60 **appurtenance, whichever is greater (except where necessary to shelter the antenna from**
61 **inclement weather or to connect the antenna to the tower via cable);**

62 **(c) Involves the installation of more than the standard number of new outdoor**
63 **equipment cabinets for the technology involved, not to exceed four new equipment**
64 **cabinets; or**

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

67 **(14) "Utility", any person, corporation, county, municipality acting in its capacity**
68 **as a utility, municipal utility board, or other entity, or department thereof or entity related**
69 **thereto, providing retail or wholesale electric, natural gas, water, waste water, data, cable**
70 **television, or telecommunications or internet protocol-related services;**

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

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

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

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

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

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

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

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

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

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

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

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

25 **(8) Impose any restrictions with respect to objects in navigable airspace that are**
26 **greater than or in conflict with the restrictions imposed by the Federal Aviation**
27 **Administration;**

28 **(9) Prohibit the placement of emergency power systems that comply with federal**
29 **and state environmental requirements;**

30 **(10) Charge an application fee, consulting fee, or other fee associated with the**
31 **submission, review, processing, and approval of an application that is not required for**
32 **similar types of commercial development within the authority's jurisdiction. Fees imposed**
33 **by an authority for or directly by a third-party entity providing review or technical**

34 **consultation to the authority must be based on actual, direct, and reasonable**
35 **administrative costs incurred for the review, processing, and approval of an application.**
36 **In no case should total charges and fees exceed five hundred dollars for a collocation**
37 **application or one thousand five hundred dollars for an application for a new wireless**
38 **support structure or for a substantial modification of a wireless support structure.**
39 **Notwithstanding the foregoing, in no event shall an authority or any third party entity**
40 **include within its charges any travel expenses incurred in a third-party's review of an**
41 **application and in no event shall an applicant be required to pay or reimburse an authority**
42 **for consultation or other third-party fees based on a contingency or result-based**
43 **arrangement;**

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

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

52 **(13) Limit the duration of the approval of an application;**

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

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

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

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

67 **(18) Condition or require the approval of an application based on the applicant's**
68 **agreement to permit any wireless facilities provided or operated, in whole or in part, by an**
69 **authority or by any entity in which an authority has a competitive, economic, financial,**

70 governance, or other interest, to be placed at or collocated with the applicant's wireless
71 support structure.

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

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

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

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

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

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

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

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

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

32 5. If the authority fails to act on an application to construct a new wireless support
33 structure within the one hundred twenty calendar days review period specified under

34 subsection 4 of this section or within such additional time as may be mutually agreed to by
35 an applicant and an authority, the application shall be deemed approved.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

28 **3. If the authority fails to act on a collocation application or application to replace**
29 **wireless facilities within the forty-five calendar days review period specified in subsection**
30 **2 of this section, the application shall be deemed approved.**

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

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

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

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

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

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:**

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 through 67.5102,
2 nothing herein shall provide any applicant the power of eminent domain or the right to
3 compel any private or public property owner, department of conservation, department of
4 natural resources, or the department of transportation to lease or sell property for the
5 construction of a new wireless support structure or to locate or cause the collocation or
6 expansion of a wireless facility on any existing structure or wireless support structure.

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

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

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

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

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

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

12 **(d) Damages assessed in connection with the rights granted to a utility with respect**
13 **to a crossing;**

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

17 **(a) Communications, communications-related, wireless communications, video, or**
18 **information services;**

19 **(b) Electricity;**

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

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

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

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

24 **(4) "Land management company", an entity that owns, leases, holds by easement,**
25 **holds by adverse possession or otherwise possesses a corridor which is used for rail**
26 **transportation purposes and is not a railroad or railroad corporation;**

27 **(5) "Land management corridor", includes one or more of the following:**

28 **(a) A right-of-way or other interest in real estate that is owned, leased, held by**
29 **easement, held by adverse possession or otherwise possessed by a land management**
30 **company and not a railroad or railroad corporation; and which is used for rail**
31 **transportation purposes. "Land management corridor" does not include yards, terminals**
32 **or stations. "Land management corridor" also does not include railroad tracks or lines**
33 **which have been legally abandoned;**

34 **(b) Any other interest in a right-of-way formerly owned by a railroad or railroad**
35 **corporation that has been acquired by a land management company or similar entity and**
36 **which is used for rail transportation purposes;**

37 **(6) "Notice", a written description of the proposed project. Such notice shall**
38 **include, at a minimum: a description of the proposed crossing including blueprints or**
39 **plats, print copies of the engineering specifications for the crossing, a proposed time line**
40 **for the commencement and completion of work at the crossing, a narrative description of**
41 **the work to be performed at the crossing, proof of insurance for the work to be done and**
42 **other reasonable requirements necessary for the processing of an application;**

43 **(7) "Railroad" or "railroad corporation", a railroad corporation organized and**
44 **operating under chapter 388, or any other corporation, trustees of a railroad corporation,**
45 **company, affiliate, association, joint stock association or company, firm, partnership, or**
46 **individual, which is an owner, operator, occupant, lessee, manager, or railroad right-of-**
47 **way agent acting on behalf of a railroad or railroad corporation;**

- 48 **(7) "Railroad right-of-way", includes one or more of the following:**
49 **(a) A right-of-way or other interest in real estate that is owned or operated by a**
50 **land management company and not a railroad or railroad corporation;**
51 **(b) Any other interest in a former railroad right-of-way that has been acquired or**
52 **is operated by a land management company or similar entity;**
53 **(8) "Special circumstances", includes either or both of the following:**
54 **(a) The characteristics of a segment of a railroad right-of-way not found in a typical**
55 **segment of a railroad right-of-way that enhance the value or increase the damages or the**
56 **engineering or construction expenses for the land management company associated with**
57 **a proposed crossing, or to the current or reasonably anticipated use by a land management**
58 **company of the railroad right-of-way, necessitating additional terms and conditions or**
59 **compensation associated with a crossing;**
60 **(b) Variances from the standard specifications requested by the land management**
61 **company;**
62 **"Special circumstances" may include, but is not limited to, the railroad right-of-way**
63 **segment's relationship to other property, location in urban or other developed areas, the**
64 **existence of unique topography or natural resources, or other characteristics or dangers**
65 **inherent in the particular crossing or segment of the railroad right-of-way;**
66 **(9) "Telecommunications service", the transmission of information by wire, radio,**
67 **optical cable, electronic impulses, or other similar means. As used in this definition,**
68 **"information" means knowledge or intelligence represented by any form of writing, signs,**
69 **signals, pictures, sounds, or any other symbols;**
70 **(10) "Utility", shall include:**
71 **(a) Any public utility subject to the jurisdiction of the public service commission;**
72 **(b) Providers of telecommunications service, wireless communications, or other**
73 **communications-related service;**
74 **(c) Any electrical corporation which is required by its bylaws to operate on the not-**
75 **for-profit cooperative business plan, with its consumers who receive service as the**
76 **stockholders of such corporation, and which holds a certificate of public convenience and**
77 **necessity to serve a majority of its customer-owners in counties of the third classification**
78 **as of August 28, 2003;**
79 **(d) Any rural electric cooperative, and**
80 **(e) Any municipally owned utility.**

389.586. 1. After the land management company receives a copy of the notice from
2 the utility, the land management company shall send a complete copy of that notice, by
3 certified mail or by private delivery service which requires a return receipt, to the railroad

4 or railroad corporation within two business days. No utility may commence a crossing
5 until the railroad or railroad corporation has approved the crossing. The railroad or
6 railroad corporation shall have thirty days from the receipt of the notice, to review and
7 approve or reject the proposed crossing. The railroad or railroad corporation shall reject
8 a proposed crossing only if special circumstances exist. If the railroad or railroad
9 corporation rejects a proposed crossing, the utility may submit an amended proposal for
10 a crossing. The railroad or railroad corporation shall have an additional thirty days from
11 receipt of the amended proposal to review and approve or reject the amended crossing
12 proposal. The railroad or railroad corporation shall not unreasonably withhold approval.
13 Once the railroad or railroad corporation grants such approval, and upon payment of the
14 fee and any other payments authorized pursuant to sections 389.586 or 389.587, the utility
15 shall be deemed to have authorization to commence the crossing activity. The utility shall
16 provide the railroad or railroad corporation with written notification of the
17 commencement of the crossing activity before beginning such activity.

18 2. The land management company and the utility shall maintain and repair its own
19 property within the land management corridor and each shall bear responsibility for its
20 own acts and omissions, except that the utility shall be responsible for any bodily injury
21 or property damage arising from the installation, maintenance, repair and its use of the
22 crossing. The railroad or railroad corporation may require the utility and the land
23 management company to obtain reasonable amounts of comprehensive general liability
24 insurance and railroad protective liability insurance coverage for a crossing, and that this
25 insurance coverage name the railroad or railroad corporation as an insured. Further, the
26 land management company and the utility shall provide the railroad or railroad
27 corporation with proof that they have liability insurance coverage which meets such
28 requirements, if any.

29 3. A utility shall have immediate access to a crossing for repair and maintenance
30 of existing facilities in case of an immediate threat to life and upon notification to the
31 applicable railroad or railroad corporation. Before commencing any such work, the utility
32 must first contact the railroad or railroad corporation's dispatch center, command center
33 or other facility which is designated to receive emergency communications.

34 4. The utility shall be provided a crossing, absent a claim of special circumstances,
35 after payment by the utility of the standard crossing fee, submission of completed
36 engineering specifications to the land management company, and approval of the crossing
37 by the railroad or railroad corporation. The engineering specifications shall comply with
38 the clearance requirements as established by the National Electrical Safety Code, the
39 American Railway Engineering and Maintenance of Way Association and the standards

40 of the applicable railroad or railroad corporation which are in effect and which apply to
41 conditions at a particular crossing. The land management company and utility shall
42 further be responsible for any modifications, upgrades or other changes which may be
43 needed to comply with changes in said standards.

44 5. The utility, the railroad or railroad corporation, and the land management
45 company shall agree to such other terms and conditions as may be necessary to provide for
46 reasonable use of a land management corridor by a utility.

389.587. Unless otherwise agreed by the parties and subject to section 389.588, a
2 utility that locates its facilities within the railroad right-of-way for a crossing, other than
3 a crossing along a state highway or other public road, shall pay the land management
4 company a one-time standard crossing fee of one thousand five hundred dollars for each
5 crossing plus the costs associated with modifications to existing insurance contracts of the
6 land management company. The standard crossing fee shall be in lieu of any license,
7 permit, application, plan review, or any other fees or charges to reimburse the land
8 management company for the direct expenses incurred by the land management company
9 as a result of the crossing. The utility shall also reimburse the land management company
10 for any actual flagging expenses associated with a crossing in addition to the standard
11 crossing fee. The railroad or railroad corporation has the right to halt work at the crossing
12 if the flagging does not meet the standards of the railroad or railroad corporation. Nothing
13 in this section is intended to otherwise restrict or limit any authority or right a utility may
14 have to locate facilities at a crossing along a state highway or any other public road or to
15 otherwise enter upon lands where authorized by law.

389.588. 1. Notwithstanding the provisions of section 389.586, nothing shall prevent
2 a land management company and a utility from otherwise negotiating the terms and
3 conditions applicable to a crossing or the resolution of any disputes relating to the crossing
4 so long as they do not interfere with the rights of a railroad or railroad corporation. No
5 agreement between a land management company and a utility shall affect the rights,
6 interests or operations of a railroad or railroad corporation.

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

389.589. 1. If the parties cannot agree that special circumstances exist, the dispute
2 shall be submitted to binding arbitration.

3 2. Either party may give written notice to the other party of the commencement of
4 a binding arbitration proceeding in accordance with the commercial rules of arbitration
5 in the American Arbitration Association. Any decision by the board of arbitration shall

6 be final, binding and conclusive as to the parties. Nothing provided in this section shall
7 prevent either party from submission of disputes to the courts. Land management
8 companies and utilities may seek enforcement of sections 389.586 through 389.591 in a
9 court of proper jurisdiction and shall be entitled to reasonable attorney fees if they prevail.

10 3. If the dispute over special circumstances concerns only the compensation
11 associated with a crossing, then the utility may proceed with installation of the crossing
12 during the pendency of the arbitration.

389.591. 1. Notwithstanding any provision of law to the contrary, sections 389.585
2 to 389.591 shall apply in all crossings of land management corridors involving a land
3 management company and a utility and shall govern in the event of any conflict with any
4 other provision of law, except that sections 389.585 to 389.591 shall not override or nullify
5 the condemnation laws of this state nor confer the power of eminent domain on any entity
6 not granted such power prior to August 28, 2013.

7 2. The provisions of sections 389.585 to 389.591 shall apply to a crossing
8 commenced prior to August 28, 2013. These provisions shall also apply to a crossing
9 commenced before August 28, 2013, but only upon the expiration or termination of the
10 agreement for such crossing.

✓