

HCS SS SCS SB 241 -- INFRASTRUCTURE FACILITIES DEPLOYMENT

SPONSOR: Lager (Cierpiot)

COMMITTEE ACTION: Voted "Do Pass" by the Committee on Utilities by a vote of 21 to 1.

This substitute changes the laws regarding infrastructure facilities deployment.

PUBLIC UTILITY RIGHT OF WAY PERMITS

The substitute allows public utilities to have permit denials by political subdivisions heard in court if they believe a violation of existing law has occurred. Courts must act within 45 days or a permit is deemed to be approved. If a political subdivision does not act on a permit application within 31 days, then the application will be deemed approved. If a public utility has legally been granted access to a political subdivision's right of way since August 28, 2001, they are not required to obtain a new permit.

UNIFORM WIRELESS COMMUNICATIONS INFRASTRUCTURE DEPLOYMENT ACT

The substitute establishes the Uniform Wireless Communications Infrastructure Deployment Act to encourage and streamline the deployment of broadband facilities and to help ensure that robust wireless communication services are available throughout Missouri. The substitute:

(1) Prohibits an authority as specified in the substitute with jurisdiction over wireless communications infrastructure from taking specified actions that could result in a non-uniform market for wireless service in Missouri. The prohibition does not include state courts having jurisdiction over land use, planning, or zoning decisions made by an authority. The prohibitions include:

(a) Requiring 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;

(b) Evaluating 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 add wireless infrastructure to existing facilities instead of constructing a new wireless support structure or for substantial modifications of a support structure or vice versa;

(c) Dictating the type of wireless facilities, infrastructure, or technology to be used by the applicant by requiring an applicant to construct a distributed antenna system in lieu of constructing a new wireless support structure;

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

(e) Imposing environmental testing, sampling, or monitoring requirements or other compliance measures for radio frequency emissions on wireless facilities that are categorically excluded under the Federal Communications Commission's rules for radio frequency emissions under 47 CFR 1.1307(b)(1) or other applicable federal law;

(f) Establishing or enforcing regulations or procedures for RF signal strength or the adequacy of service quality;

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

(h) Imposing 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;

(i) Prohibiting the placement of emergency power systems that comply with federal and state environmental requirements;

(j) Charging 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. In no case should total charges and fees exceed \$500 for a collocation application or \$1,500 for an application for a new wireless support structure or for a substantial modification of a wireless support structure. An entity with jurisdiction or any third-party entity cannot include within its charges any travel expenses incurred in a third-party's review of an application, and in no event can 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;

(k) Imposing 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;

(l) Conditioning 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 the services;

(m) Limiting the duration of the approval of an application;

(n) Discriminating or creating a preference on the basis of the ownership, including ownership by the authority, of any property, structure, or tower when establishing rules or procedures for siting wireless facilities or for evaluating applications;

(o) Imposing 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 the requirements are unreasonable;

(p) Imposing 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;

(q) Conditioning the approval of an application on, or otherwise requiring, the applicant's agreement to indemnify or insure the authority in connection with the authority's exercise of its police power-based regulations; or

(r) Conditioning or requiring 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 connected to the applicant's wireless support structure;

(2) Allows authorities to continue to exercise zoning, land use, planning, and permitting authority within their territorial boundaries with regard to the siting of new wireless support structures, requirements, and with regard to applications for substantial modifications of wireless support structures. The authority must review, within 120 days of receiving an application

to construct a new wireless support structure or within the additional time as may be mutually agreed to by an applicant and an authority, the application as to its conformity with applicable local zoning regulations and advise the applicant in writing of its final decision to approve or disapprove the application. Applications will include a copy of a lease or other agreement from the property owner evidencing a right to pursue the application. The authority must, within 120 days of receiving an application for a substantial modification of wireless support structures, review the application as to its conformity with applicable local zoning regulations and advise the applicant in writing of its final decision to approve or deny the application. Procedures for extending these deadlines and fixing deficiencies are also specified in the substitute. A party aggrieved by the final action of an authority or its inaction may bring an action for review in any court of competent jurisdiction;

(3) Requires an application for additions to or replacement of wireless facilities to be reviewed for compliance with applicable building permit requirements. Applications will include a copy of a lease or letter or agreement from the property owner evidencing the applicant's right to pursue the application. The authority must, within 45 days, review the application as to its conformity with application building permit requirements and consistency with the provisions of the act and advise the applicant in writing of its final decision to approve or deny the application. However, procedures for expediting or extending the deadline and for fixing deficiencies are also specified in the substitute;

(4) Specifies that the provisions of the substitute do not authorize an authority, except when acting solely in its capacity as a utility, to mandate, require, or regulate the placement, modification, or attachments of any new wireless facility on new, existing, or replacement poles owned or operated by a utility or expand the power of an authority to regulate any utility;

(5) Prohibits an authority from instituting a moratorium on the permitting, construction, or issuance of approval of new wireless support structures, substantial modifications of wireless support structures, or attachments to existing facilities of wireless communication infrastructure if the moratorium exceeds six months and if no good cause is shown. A moratorium must not affect pending applications;

(6) Prohibits an authority from charging a wireless service provider or wireless infrastructure provider any rental, license, or other fee to locate a wireless support structure on an authority's property in excess of the current market rates for rental or use of similarly situated property. 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 15 years in duration. A process for the resolution of any disputes over fair market value lease payments using appraisers appointed by both parties is also specified in the substitute; and

(7) Prohibits applicants for wireless facility permits from having the power of eminent domain or the right to compel any private or public property owner, the Department of Conservation, or the Department of Natural Resources to lease or sell property or locate wireless facilities on existing structures.

#### RAILROAD FACILITY UTILITY CROSSINGS

The substitute establishes procedures for utilities, regulated by the Missouri Public Service Commission or specified nonprofit electrical corporations in third classification counties, to construct a facility as specified in the bill through a railroad right-of-way.

The substitute specifies that a utility must be deemed to have authorization to commence a crossing activity 30 days from the mailing of the notice, completing the engineering specifications, and payment of the fee, absent a claim of special circumstances. The land management company and the utility must maintain and repair its own property within the railroad right-of-way and bear responsibility for its own acts and omissions, except that the utility must be responsible for any bodily injury or property damage that typically would be covered under a standard railroad protective liability insurance policy. A utility must have immediate access to a crossing for repair and maintenance of existing facilities in case of emergency. Applicable engineering standards must be complied with for utility facilities crossing railroad rights-of-way. The engineering specifications must address the applicable clearance requirements as established by the National Electrical Safety Code.

Unless otherwise agreed by the parties and subject to Section 389.588, RSMo, a utility that locates its facilities within the railroad right-of-way for a crossing, other than a crossing along a state highway, must pay the land management company a one-time standard crossing fee of \$1500 for each crossing plus the costs associated with modifications to existing insurance contracts of the utility and the land management company. The standard crossing fee must be in lieu of any license, permit, application, plan review, or any other fees or charges to reimburse the land management company for the direct expenses incurred by the land management company as a result of the crossing. The utility must also reimburse the land management company for any actual flagging

expenses associated with a crossing in addition to the standard crossing fee.

The provisions of the substitute cannot prevent a land management company and a utility from otherwise negotiating the terms and conditions applicable to a crossing or the resolution of any disputes relating to the crossing and cannot impair the authority of a utility to secure crossing rights by easement through the exercise of the power of eminent domain.

If a utility and land management company cannot agree that special circumstances exist regarding a particular crossing, the dispute must be submitted to non-binding arbitration. The procedure and required time frames for the informal arbitration are specified in the substitute. If the dispute is not resolved based on the arbitrator's recommendation, either party may give written notice to the other party of the commencement of a binding arbitration proceeding in accordance with the commercial rules of arbitration in the American Arbitration Association. If a dispute involves only compensation associated with a crossing, the utility may proceed with the installation of a crossing during the pendency of the arbitration.

The substitute does not modify any power of condemnation or grant the exercise of eminent domain power to any entity.

The provisions of the substitute apply to a crossing commenced prior to August 28, 2013, if an agreement concerning the crossing has expired or is terminated and to a crossing commenced on or after August 28, 2013.

**PROPOSERS:** Supporters say that the bill will help streamline the permitting process for wireless communication infrastructure. It will encourage certainty in the process and foster investment in wireless networks. There is intense customer demand for wireless expansion at a rapid pace. The bill will provide fair compensation to municipalities and not disturb basic zoning requirements, but will prevent the use of local regulations to extort huge sums for infrastructure placement. Reasonable time limits for permit application actions are provided.

Testifying for the bill were Senator Lager, AT&T, Missouri Cable Telecommunications Association, U.S. Cellular, CenturyLink, Missouri Telecommunications Industry Association, and Jeff Davis, BNSF Railway Company.

**OPPOSERS:** Those who oppose the bill say that many small cities cannot comply with the time and expense it takes to evaluate the permitting process required by the bill. Cities should retain the

ability to regulate tower placement for the health and safety of citizens. There is no current problem with cities extorting excessive fees for wireless infrastructure placement. Pole attachments often increase the cost and liability on cities above the minimum federal attachment fee standards.

Testifying against the bill were Missouri Municipal League, Missouri Association of Municipal Utilities, St. Louis County Municipal League, Missouri Association of Counties, and Missouri Park and Recreation Association.