

SECOND REGULAR SESSION

# HOUSE BILL NO. 1454

## 97TH GENERAL ASSEMBLY

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INTRODUCED BY REPRESENTATIVES SWAN (Sponsor), HICKS, CIERPIOT, JONES (110), WALKER,  
ENGLISH, LICHTENEGGER AND FUNDERBURK (Co-sponsors).

5079H.021

D. ADAM CRUMBLISS, Chief Clerk

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### AN ACT

To repeal sections 67.5090, 67.5092, 67.5094, 67.5096, 67.5098, 67.5100, 67.5102, and  
67.5103, RSMo, and to enact in lieu thereof eight new sections relating to wireless  
communications infrastructure deployment.

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

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2 and 67.5103, RSMo, are repealed and eight new sections enacted in lieu thereof, to be known  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

67.5090. Sections 67.5090 to [67.5102] **67.5103** 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 robust  
4 wireless communication services are available throughout Missouri.

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

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

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

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.

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

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

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

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

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

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

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

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

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

42 (12) "Replacement", includes constructing a new wireless support structure of equal  
43 proportions and of equal height or such other height that would not constitute a substantial

44 modification to an existing structure in order to support wireless facilities or to accommodate  
45 collocation and includes the associated removal of the preexisting wireless facilities or wireless  
46 support structure;

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

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

50 a. More than ten percent; or

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

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

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

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

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

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

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

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

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

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

- 3 (1) Require an applicant to submit information about, or evaluate an applicant's business  
4 decisions with respect to its designed service, customer demand for service, or quality of its  
5 service to or from a particular area or site;
- 6 (2) Evaluate an application based on the availability of other potential locations for the  
7 placement of wireless support structures or wireless facilities, including without limitation the  
8 option to collocate instead of construct a new wireless support structure or for substantial  
9 modifications of a support structure, or vice versa; provided, however, that solely with respect  
10 to an application for a new wireless support structure, an authority may require an applicant to  
11 state in [its] **such applicant's** application that it conducted an analysis of available collocation  
12 opportunities on existing wireless towers within the same search ring defined by the applicant,  
13 solely for the purpose of confirming that an applicant undertook such an analysis;
- 14 (3) Dictate the type of wireless facilities, infrastructure or technology to be used by the  
15 applicant, including, but not limited to, requiring an applicant to construct a distributed antenna  
16 system in lieu of constructing a new wireless support structure;
- 17 (4) Require the removal of existing wireless support structures or wireless facilities,  
18 wherever located, as a condition for approval of an application;
- 19 (5) With respect to radio frequency emissions, impose environmental testing, sampling,  
20 or monitoring requirements or other compliance measures on wireless facilities that are  
21 categorically excluded under the Federal Communication Commission's rules for radio frequency  
22 emissions under 47 CFR 1.1307(b)(1) or other applicable federal law, as the same may be  
23 amended or supplemented;
- 24 (6) Establish or enforce regulations or procedures for RF signal strength or the adequacy  
25 of service quality;
- 26 (7) In conformance with 47 U.S.C. Section 332(c)(7)(b)(4), reject an application, in  
27 whole or in part, based on perceived or alleged environmental effects of radio frequency  
28 emissions;
- 29 (8) Impose any restrictions with respect to objects in navigable airspace that are greater  
30 than or in conflict with the restrictions imposed by the Federal Aviation Administration;
- 31 (9) Prohibit the placement of emergency power systems that comply with federal and  
32 state environmental requirements;
- 33 (10) Charge an application fee, consulting fee, or other fee associated with the  
34 submission, review, processing, and approval of an application that is not required for similar  
35 types of commercial development within the authority's jurisdiction. Fees imposed by an  
36 authority for or directly by a third-party entity providing review or technical consultation to the  
37 authority must be based on actual, direct, and reasonable administrative costs incurred for the  
38 review, processing, and approval of an application. Except when mutually agreeable to the

39 applicant and the authority, total charges and fees shall not exceed five hundred dollars for a  
40 collocation application or one thousand five hundred dollars for an application for a new wireless  
41 support structure or for a substantial modification of a wireless support structure.  
42 Notwithstanding the foregoing, in no event shall an authority or any third-party entity include  
43 within its charges any travel expenses incurred in a third-party's review of an application and in  
44 no event shall an applicant be required to pay or reimburse an authority for consultation or other  
45 third-party fees based on a contingency or result-based arrangement;

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

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

54 (13) Limit the duration of the approval of an application;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

          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 substantial  
3 modifications of wireless support structures, subject to the provisions of sections 67.5090 to  
4 67.5103, including without limitation section 67.5094, and subject to federal law.

          2. Any applicant that applies for a substantial modification of a wireless support structure  
6 within 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 appropriate  
9 authority. Each application shall include a copy of a lease, letter of authorization or other  
10 agreement from the property owner evidencing applicant's right to pursue the application; and

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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



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

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

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

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, or  
4 issuance of approval of new wireless support structures, substantial modifications of wireless  
5 support structures, or collocations if such moratorium exceeds six months in length and if the  
6 legislative act establishing it fails to state reasonable grounds and good cause for such  
7 moratorium. No such moratorium shall affect an already pending application;

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

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

29 **of competent jurisdiction. The court shall rule on any such petition for review in an**  
30 **expedited manner.** Nothing in this paragraph shall bar an applicant and an authority from  
31 agreeing to reasonable, periodic reviews and adjustments of current market rates during the term  
32 of a lease or contract to use an authority's property; and

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

36 (3) Nothing in subdivision (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 applications  
38 for new wireless support structures on an authority's property under subsection 1 of section  
39 67.5096.

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

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

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

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