

SECOND REGULAR SESSION

[PERFECTED]

HOUSE COMMITTEE SUBSTITUTE FOR

HOUSE BILL NO. 1991

99TH GENERAL ASSEMBLY

5710H.03P

D. ADAM CRUMBLISS, Chief Clerk

AN ACT

To repeal sections 67.1830 and 67.1846, RSMo, and to enact in lieu thereof fourteen new sections relating to the deployment of utilities infrastructure.

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

Section A. Sections 67.1830 and 67.1846, RSMo, are repealed and fourteen new sections enacted in lieu thereof, to be known as sections 67.1830, 67.1846, 67.5110, 67.5111, 67.5112, 67.5113, 67.5114, 67.5115, 67.5116, 67.5117, 67.5118, 67.5119, 67.5120, and 67.5121, to read as follows:

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

(1) "Abandoned equipment or facilities", any equipment materials, apparatuses, devices or facilities that are:

(a) Declared abandoned by the owner of such equipment or facilities;

(b) No longer in active use, physically disconnected from a portion of the operating facility or any other facility that is in use or in service, and no longer capable of being used for the same or similar purpose for which the equipment, apparatuses or facilities were installed; or

(c) No longer in active use and the owner of such equipment or facilities fails to respond within thirty days to a written notice sent by a political subdivision;

(2) "Degradation", the actual or deemed reduction in the useful life of the public right-of-way resulting from the cutting, excavation or restoration of the public right-of-way;

(3) "Emergency", includes but is not limited to the following:

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

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.

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 (f) 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, processing,
53 or verifying right-of-way permits or other applications or agreements, or the political
54 subdivision's fees and costs related to appeals taken pursuant to section 67.1838. In granting or
55 renewing a franchise for a cable television system, a political subdivision may impose a franchise
56 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]~~ **in** the political subdivision as defined by the political subdivision, then
69 the 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]~~ **under** the
82 provisions of section 67.1832, **provided that such permitting requirements shall also be**
83 **consistent with sections 67.5090 to 67.5103 and sections 67.5110 to 67.5121;**

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

86 (h) Impose permit conditions to protect public safety;

87 (7) "Political subdivision", a city, town, village, county of the first classification or
88 county of the second classification;

89 (8) "Public right-of-way", the area on, below or above a public roadway, highway, street
90 or alleyway in which the political subdivision has an ownership interest, but not including:

91 (a) The airwaves above a public right-of-way with regard to cellular or other nonwire
92 telecommunications or broadcast service;

93 (b) Easements obtained by utilities or private easements in platted subdivisions or tracts;

94 (c) Railroad rights-of-way and ground utilized or acquired for railroad facilities; or

95 (d) Poles, pipes, cables, conduits, wires, optical cables, or other means of transmission,
96 collection or exchange of communications, information, substances, data, or electronic or
97 electrical current or impulses utilized by a municipally owned or operated utility pursuant to
98 chapter 91 or pursuant to a charter form of government;

99 (9) "Public utility", every cable television service provider, every pipeline corporation,
100 gas corporation, electrical corporation, rural electric cooperative, telecommunications company,
101 water corporation, heating or refrigerating corporation or sewer corporation under the jurisdiction
102 of the public service commission; every municipally owned or operated utility pursuant to
103 chapter 91 or pursuant to a charter form of government or cooperatively owned or operated
104 utility pursuant to chapter 394; every street light maintenance district; every privately owned
105 utility; and every other entity, regardless of its form of organization or governance, whether for
106 profit or not, which in providing a public utility type of service for members of the general
107 public, utilizes pipes, cables, conduits, wires, optical cables, or other means of transmission,
108 collection or exchange of communications, information, substances, data, or electronic or
109 electrical current or impulses, in the collection, exchange or dissemination of its product or
110 services through the public rights-of-way;

111 (10) "Public utility right-of-way user", a public utility owning or controlling a facility
112 in the public right-of-way; and

113 (11) "Right-of-way permit", a permit issued by a political subdivision authorizing the
114 performance of excavation work in a public right-of-way.

67.1846. 1. Nothing in sections 67.1830 to 67.1846 relieves the political subdivision
2 of any obligations under an existing franchise agreement in effect on May 1, 2001. Nothing in
3 sections 67.1830 to 67.1846 will apply to that portion of any ordinance passed prior to May 1,
4 2001, which establishes a street degradation fee. Nothing in sections 67.1830 to 67.1846 shall
5 be construed as limiting the authority of county highway engineers or relieving public utility
6 right-of-way users from any obligations set forth in chapters 229 to 231. Nothing in sections
7 67.1830 to 67.1846 shall be deemed to relieve a public utility right-of-way user of the provisions
8 of an existing franchise, franchise fees, license or other agreement or permit in effect on May 1,

9 2001. Nothing in sections 67.1830 to 67.1846 shall prohibit a political subdivision or public
10 utility right-of-way user from renewing or entering into a new or existing franchise, as long as
11 all other public utility right-of-way users have use of the public right-of-way on a
12 nondiscriminatory basis. Nothing in sections 67.1830 to 67.1846 shall prevent a grandfathered
13 political subdivision from enacting new ordinances, including amendments of existing
14 ordinances, charging a public utility right-of-way user a fair and reasonable linear foot fee or
15 antenna fee or from enforcing or renewing existing linear foot ordinances for use of the
16 right-of-way, provided that the public utility right-of-way user either:

17 (1) Is entitled under the ordinance to a credit for any amounts paid as business license
18 taxes or gross receipts taxes; or

19 (2) Is not required by the political subdivision to pay the linear foot fee **or antenna fee**
20 if the public utility right-of-way user is paying gross receipts taxes, **business license fees, or**
21 **business license taxes that are not nominal and that are imposed specifically on**
22 **communications-related revenue, services, or equipment.**

23

24 For purposes of this section, a "grandfathered political subdivision" is any political subdivision
25 which has, prior to May 1, 2001, enacted one or more ordinances reflecting a policy of imposing
26 any linear foot fees on any public utility right-of-way user, including ordinances which were
27 specific to particular public right-of-way users. Any existing ordinance or new ordinance passed
28 by a grandfathered political subdivision providing for payment of the greater of a linear foot fee
29 or a gross receipts [fee] tax shall be enforceable only with respect to the linear foot fee.

30 2. Nothing in sections 67.1830 to 67.1846 shall prohibit a political subdivision from
31 enacting, renewing or enforcing provisions of an ordinance to require a business license tax, sales
32 tax, occupation tax, franchise tax or franchise fee, property tax or other similar tax, to the extent
33 consistent with federal law. Nothing in sections 67.1830 to 67.1846 shall prohibit a political
34 subdivision from enacting, enforcing or renewing provisions of an ordinance to require a gross
35 receipts tax pursuant to chapter 66, chapter 92, or chapter 94. For purposes of this subsection,
36 the term "franchise fee" shall mean "franchise tax".

67.5110. Sections 67.5110 to 67.5121 shall be known and may be cited as the
2 **"Uniform Small Wireless Facility Deployment Act", which is intended to encourage and**
3 **streamline the deployment of small wireless facilities and to help ensure that robust and**
4 **dependable wireless radio-based communication services and networks are available**
5 **throughout Missouri, which is a matter of legitimate statewide concern, by adopting a**
6 **uniform statewide framework for the deployment of small wireless facilities and the utility**
7 **poles to which they are attached consistent with sections 67.5110 to 67.5121 and sections**
8 **67.1830 to 67.1846.**

67.5111. As used in sections 67.5110 to 67.5121, the following terms shall mean:

- 2 **(1) "Antenna", communications equipment that transmits or receives**
3 **electromagnetic radio frequency signals used in the provision of wireless services;**
- 4 **(2) "Applicable codes", uniform building, fire, electrical, plumbing, or mechanical**
5 **codes adopted by a recognized national code organization or local amendments to those**
6 **codes enacted to prevent physical property damage or reasonably foreseeable injury to**
7 **persons to the extent not inconsistent with sections 67.5110 to 67.5121;**
- 8 **(3) "Applicant", any person who submits an application and is a wireless provider;**
- 9 **(4) "Application", a request submitted by an applicant to an authority for a permit**
10 **to collocate small wireless facilities on a utility pole or wireless support structure, or to**
11 **approve the installation, modification, or replacement of a utility pole;**
- 12 **(5) "Authority", the state or any agency, county, municipality, district, or**
13 **subdivision thereof or any instrumentality of the same including, but not limited to,**
14 **municipal electric utilities. The term shall not include state courts having jurisdiction over**
15 **an authority;**
- 16 **(6) "Authority pole", a utility pole owned, managed, or operated by or on behalf**
17 **of an authority;**
- 18 **(7) "Authority wireless support structure", a wireless support structure owned,**
19 **managed, or operated by or on behalf of an authority;**
- 20 **(8) "Collocate", to install, mount, maintain, modify, operate, or replace small**
21 **wireless facilities on or immediately adjacent to a wireless support structure or utility pole,**
22 **provided that the small wireless facility antenna is located on the wireless support**
23 **structure or utility pole. "Collocation" has a corresponding meaning;**
- 24 **(9) "Communications facility", the set of equipment and network components,**
25 **including wires, cables, and associated facilities used by a cable operator, as defined in 47**
26 **U.S.C. Section 522(5); a telecommunications carrier, as defined in 47 U.S.C. Section**
27 **153(51); a provider of information service, as defined in 47 U.S.C. Section 153(24); or a**
28 **wireless services provider; to provide communications services, including cable service, as**
29 **defined in 47 U.S.C. Section 522(6); telecommunications service, as defined in 47 U.S.C.**
30 **Section 153(53); an information service, as defined in 47 U.S.C. Section 153(24); wireless**
31 **communications service; or other one-way or two-way communications service;**
- 32 **(10) "Communications service provider", a cable operator, as defined in 47 U.S.C.**
33 **Section 522(5); a provider of information service, as defined in 47 U.S.C. Section 153(24);**
34 **a telecommunications carrier, as defined in 47 U.S.C. Section 153(51); or a wireless**
35 **provider;**

36 (11) "Decorative pole", an authority pole that is specially designed and placed for
37 aesthetic purposes;

38 (12) "Fee", a one-time, nonrecurring charge;

39 (13) "Historic district", a group of buildings, properties, or sites that are either
40 listed in the National Register of Historic Places or formally determined eligible for listing
41 by the Keeper of the National Register, the individual who has been delegated the authority
42 by the federal agency to list properties and determine their eligibility for the National
43 Register, in accordance with Section VI.D.1.a.i-v of the Nationwide Programmatic
44 Agreement codified at 47 C.F.R. Part 1, Appendix C, or are otherwise located in a district
45 made subject to special design standards adopted by a local ordinance or under state law
46 as of January 1, 2018, or subsequently enacted for new developments;

47 (14) "Micro wireless facility", a small wireless facility that meets the following
48 qualifications:

49 (a) Is not larger in dimension than twenty-four inches in length, fifteen inches in
50 width, and twelve inches in height; and

51 (b) Any exterior antenna no longer than eleven inches;

52 (15) "Permit", a written authorization required by an authority to perform an
53 action or initiate, continue, or complete a project;

54 (16) "Person", an individual, corporation, limited liability company, partnership,
55 association, trust, or other entity or organization, including an authority;

56 (17) "Rate", a recurring charge;

57 (18) "Right-of-way" or "ROW", the area on, below, or above a public roadway,
58 highway, street, sidewalk, alley, or similar property used for public travel, but not
59 including a federal interstate highway, railroad ROW, or private easement;

60 (19) "Small wireless facility", a wireless facility that meets both of the following
61 qualifications:

62 (a) Each wireless provider's antenna could fit within an enclosure of no more than
63 six cubic feet in volume; and

64 (b) All other equipment associated with the wireless facility, whether ground- or
65 pole-mounted, is cumulatively no more than twenty-eight cubic feet in volume, provided
66 that no single piece of equipment on the utility pole shall exceed nine cubic feet in volume
67 and no single piece of ground-mounted equipment shall exceed fifteen cubic feet in volume;
68 exclusive of equipment required by an electric utility or municipal electric utility to power
69 the small wireless facility.

70

71 **The following types of associated ancillary equipment are not included in the calculation**
72 **of equipment volume: electric meter, concealment elements, telecommunications**
73 **demarcation box, grounding equipment, power transfer switch, cut-off switch, and vertical**
74 **cable runs and related conduit for the connection of power and other services;**

75 **(20) "Technically feasible", that by virtue of engineering or spectrum usage, the**
76 **proposed placement for a small wireless facility or its design or site location can be**
77 **implemented without a reduction in the functionality of the small wireless facility;**

78 **(21) "Utility pole", a pole or similar structure that is or may be used in whole or**
79 **in part by or for wireline communications, electric distribution, lighting, traffic control,**
80 **signage, or a similar function, or for the collocation of small wireless facilities; provided,**
81 **however, such term shall not include wireless support structures or electric transmission**
82 **structures;**

83 **(22) "Wireless facility", equipment at a fixed location that enables wireless**
84 **communications between user equipment and a communications network, including**
85 **equipment associated with wireless communications and radio transceivers, antennas,**
86 **coaxial or fiber-optic cable, regular and backup power supplies, and comparable**
87 **equipment, regardless of technological configuration. The term includes small wireless**
88 **facilities. The term does not include:**

89 **(a) The structure or improvements on, under, or within which the equipment is**
90 **collocated;**

91 **(b) Coaxial or fiber-optic cable between wireless support structures or utility poles;**

92 **(c) Coaxial or fiber-optic cable not directly associated with a particular small**
93 **wireless facility; or**

94 **(d) A wireline backhaul facility;**

95 **(23) "Wireless infrastructure provider", any person, including a person authorized**
96 **to provide telecommunications service in the state, that builds or installs wireless**
97 **communication transmission equipment or wireless facilities but that is not a wireless**
98 **services provider;**

99 **(24) "Wireless provider", a wireless infrastructure provider or a wireless services**
100 **provider;**

101 **(25) "Wireless services", any services using licensed or unlicensed spectrum,**
102 **including the use of Wi-Fi, whether at a fixed location or mobile, provided to the public**
103 **using wireless facilities;**

104 **(26) "Wireless services provider", a person who provides wireless services;**

105 **(27) "Wireless support structure", an existing structure, such as a monopole or**
106 **tower, whether guyed or self-supporting, designed to support or capable of supporting**

107 wireless facilities; an existing or proposed billboard; an existing or proposed building; or
108 other existing or proposed structure capable of supporting wireless facilities, other than
109 a structure designed solely for the collocation of small wireless facilities. Such term shall
110 not include a utility pole;

111 (28) "Wireline backhaul facility", a physical transmission path, all or part of which
112 is within the ROW, used for the transport of communication data by wire from a wireless
113 facility to a network.

67.5112. 1. The provisions of this section shall only apply to activities of a wireless
2 provider within the ROW to deploy small wireless facilities and associated utility poles.

3 2. An authority shall not enter into an exclusive arrangement with any person for
4 use or management of the ROW for the collocation of small wireless facilities or the
5 installation, operation, marketing, modification, maintenance, management, or
6 replacement of utility poles.

7 3. Subject to the provisions of sections 67.5110 to 67.5121, an authority shall permit
8 a wireless provider, as a permitted use not subject to zoning review or approval, to
9 collocate small wireless facilities and install, maintain, modify, operate, and replace utility
10 poles along, across, upon, and under the ROW, except that the placement in the ROW of
11 new or modified utility poles in single-family residential or areas zoned as historic as of
12 August 28, 2018, remains subject to any applicable zoning requirements that are consistent
13 with sections 67.5090 to 67.5103. Small wireless facilities collocated outside the ROW in
14 property not zoned primarily for single-family residential use shall be classified as
15 permitted uses and not subject to zoning review or approval. Such small wireless facilities
16 and utility poles shall be installed and maintained as not to obstruct or hinder the usual
17 travel or public safety on such ROW or obstruct the legal use of such ROW by authorities
18 or by other authorized ROW users. Nothing in this section grants any wireless provider
19 the power of eminent domain.

20 4. Nothing in sections 67.5110 to 67.5121 shall prevent an authority, on a
21 nondiscriminatory basis, from requiring a permit, with reasonable conditions, for work
22 in a ROW that will involve excavation, affect traffic patterns, obstruct traffic in the ROW,
23 or materially impede the use of a sidewalk.

24 5. Each new, replacement, or modified utility pole installed in the ROW shall not
25 exceed the greater of ten feet in height above the tallest existing utility pole in place as of
26 the effective date of sections 67.5110 to 67.5121 located within five hundred feet of the new
27 pole in the same ROW, or fifty feet above ground level. New small wireless facilities in the
28 ROW shall not extend more than ten feet above an existing utility pole in place as of
29 August 28, 2018, or for small wireless facilities on a new utility pole, above the height

30 permitted for a new utility pole under this section. A new, modified, or replacement utility
31 pole that exceeds these height limits shall be subject to any applicable zoning requirements
32 that apply to other utility poles and are consistent with sections 67.5090 to 67.5103.

33 6. A wireless provider shall be permitted to replace decorative poles when necessary
34 to collocate a small wireless facility, but any replacement pole shall reasonably conform to
35 the design aesthetics of the decorative pole or poles being replaced.

36 7. Subject to subsection 4 of section 67.5113, and except for facilities excluded from
37 evaluation for effects on historic properties under 47 C.F.R. Section 1.1307(a)(4) of the
38 Federal Communications Commission rules, an authority may require reasonable,
39 technically feasible, nondiscriminatory, and technologically neutral design or concealment
40 measures in a historic district. Any such design or concealment measures shall not have
41 the effect of prohibiting any provider's technology, nor shall any such measures be
42 considered a part of the small wireless facility for purposes of the size restrictions in the
43 definition of small wireless facility.

44 8. The authority, in the exercise of its administration and regulation related to the
45 management of the ROW, shall be competitively neutral with regard to other users of the
46 ROW, including that terms shall not be unreasonable or discriminatory and shall not
47 violate any applicable law. Nothing in sections 67.5110 to 67.5121 shall in any way be
48 construed to modify or otherwise affect the rights, privileges, obligations, or duties, existing
49 prior to August 28, 2018, of an electrical corporation, as defined in section 386.020, or of
50 a rural electric cooperative under chapter 394, except to the extent that the corporation or
51 cooperative deploys small wireless facilities that are used to provide services unrelated to
52 the provision of their electric and gas utility service.

53 9. Small wireless facility collocations completed on or after August 28, 2018, shall
54 not interfere with or impair the operation of existing utility facilities, or authority or third-
55 party attachments. The authority may require a wireless provider to repair all damage to
56 the ROW directly caused by the activities of the wireless provider in the ROW and to
57 return the ROW to its functional equivalence before the damage under the competitively
58 neutral, reasonable requirements and specifications of the authority. If the wireless
59 provider fails to make the repairs required by the authority within a reasonable time after
60 written notice, the authority may make those repairs and charge the applicable party the
61 reasonable, documented cost of such repairs.

67.5113. 1. The provisions of this section shall apply to the permitting of small
2 wireless facilities by a wireless provider in or outside the ROW and to the permitting of the
3 installation, modification, and replacement of utility poles by a wireless provider inside the
4 ROW.

5 **2. An authority shall not prohibit, regulate, or charge for the collocation of small**
6 **wireless facilities, except as provided under sections 67.5110 to 67.5121.**

7 **3. An authority may require an applicant to obtain one or more permits to collocate**
8 **a small wireless facility or install a new, modified, or replacement utility pole associated**
9 **with a small wireless facility as provided in subsection 3 of section 67.5112, provided such**
10 **permits are of general applicability and do not apply exclusively to wireless facilities. An**
11 **authority shall receive applications for, process, and issue such permits subject to the**
12 **following requirements:**

13 **(1) An authority shall not directly or indirectly require an applicant to perform**
14 **services or provide goods unrelated to the permit, such as in-kind contributions to the**
15 **authority, including reserving fiber, conduit, or pole space for the authority;**

16 **(2) An applicant shall not be required to provide more information to obtain a**
17 **permit than communications service providers that are not wireless providers, provided**
18 **that an applicant may be required to include construction and engineering drawings and**
19 **information demonstrating compliance with the criteria in subdivision (9) of this**
20 **subsection and an attestation that the small wireless facility complies with the volumetric**
21 **limitations in subdivision (19) of section 67.5111;**

22 **(3) An authority shall not require the placement of small wireless facilities on any**
23 **specific utility pole or category of poles or require multiple antenna systems on a single**
24 **utility pole;**

25 **(4) An authority shall not limit the placement of small wireless facilities by**
26 **minimum separation distances;**

27 **(5) An authority may require a small wireless facility to comply with reasonable,**
28 **objective, and cost-effective concealment requirements adopted by the authority;**

29 **(6) The authority may require an applicant that is not a wireless services provider**
30 **to provide evidence of agreements or plans demonstrating that the small wireless facilities**
31 **will be operational for use by a wireless services provider within one year after the permit**
32 **issuance date, unless the authority and the applicant agree to extend this period or if delay**
33 **is caused by lack of commercial power or communications transport facilities to the site**
34 **and the applicant notifies the authority thereof. An authority may require an applicant**
35 **that is a wireless services provider to provide the information required by this subdivision**
36 **by attestation;**

37 **(7) Within fifteen days of receiving an application, an authority shall determine and**
38 **notify the applicant in writing whether the application is complete. If an application is**
39 **incomplete, an authority shall specifically identify the missing information in writing. The**
40 **processing deadline in subdivision (8) of this subsection is tolled from the time the**

41 authority sends the notice of incompleteness to the time the applicant provides the missing
42 information. That processing deadline may also be tolled by agreement of the applicant
43 and the authority;

44 (8) An application for collocation shall be processed on a nondiscriminatory basis
45 and deemed approved if the authority fails to approve or deny the application within forty-
46 five days of receipt of the application. An application for installation of a new, modified,
47 or replacement utility pole associated with a small wireless facility shall be processed on
48 a nondiscriminatory basis and deemed approved if the authority fails to approve or deny
49 the application within sixty days of receipt of the application;

50 (9) An authority may deny a proposed collocation of a small wireless facility or
51 installation, modification, or replacement of a utility pole that meets the requirements in
52 subsection 3 of section 67.5112 only if the action proposed in the application could
53 reasonably be expected to:

54 (a) Materially interfere with the operation of traffic control equipment or
55 authority-owned communications equipment;

56 (b) Materially interfere with sight lines or clear zones for transportation,
57 pedestrians, or nonmotorized vehicles;

58 (c) Materially interfere with compliance with the Americans with Disabilities Act,
59 42 U.S.C. Section 12101 to 12213, or similar federal or state standards regarding
60 pedestrian access or movement;

61 (d) Materially obstruct or hinder the usual travel or public safety on the ROW;

62 (e) Materially obstruct the legal use of the ROW by an authority, utility, or other
63 third-party;

64 (f) Fail to comply with reasonable and nondiscriminatory spacing requirements of
65 general application adopted by ordinance that concern the location of ground-mounted
66 equipment and new utility poles. Such spacing requirements shall not prevent a wireless
67 provider from serving any location and shall include a waiver, zoning, or other process that
68 addresses wireless provider requests for exception or variance and does not prohibit
69 granting of such exceptions or variances;

70 (g) Fail to comply with applicable codes, including nationally recognized
71 engineering standards for utility poles or wireless support structures;

72 (h) Fail to comply with the reasonably objective and documented aesthetics of a
73 decorative pole and the applicant does not agree to pay to match the applicable decorative
74 elements; or

75 (i) Fail to comply with reasonable and nondiscriminatory undergrounding
76 requirements contained in local ordinances as of January 1, 2018, or subsequently enacted

77 for new developments, that require all utility facilities in the area to be placed
78 underground and prohibit the installation of new or the modification of existing utility
79 poles in a ROW without prior approval, provided that such requirements include a waiver
80 or other process of addressing requests to install such utility poles and do not prohibit the
81 replacement or modification of existing utility poles consistent with this section or the
82 provision of wireless services;

83 (10) The authority shall document the complete basis for a denial in writing, and
84 send the documentation to the applicant on or before the day the authority denies an
85 application. The applicant may cure the deficiencies identified by the authority and
86 resubmit the application within thirty days of the denial without paying an additional
87 application fee. The authority shall approve or deny the revised application within thirty
88 days. Any subsequent review shall be limited to the deficiencies cited in the denial;

89 (11) (a) An applicant seeking to collocate small wireless facilities within the
90 jurisdiction of a single authority shall be allowed, at the applicant's discretion, to file a
91 consolidated application and receive a single permit for the collocation of multiple small
92 wireless facilities; provided, however, the denial of one or more small wireless facilities in
93 a consolidated application shall not delay processing of any other small wireless facilities
94 in the same batch; and

95 (b) An application may include up to twenty separate small wireless facilities,
96 provided that they are for the same or materially same design of small wireless facility
97 being collocated on the same or materially the same type of utility pole or wireless support
98 structure, and geographically proximate. If an authority receives individual applications
99 for approval of more than fifty small wireless facilities or batched applications for
100 approval of more than seventy-five small wireless facilities within a fourteen-day period,
101 whether from a single or multiple applicants, the authority may, upon its own request,
102 obtain an automatic thirty-day extension for any additional collocation or replacement or
103 installation application submitted during that fourteen-day period or in the fourteen-day
104 period immediately following the prior fourteen-day period. An authority shall promptly
105 communicate its request to each and any affected applicant. In rendering a decision on an
106 application for multiple small wireless facilities, the authority may approve the application
107 as to certain individual small wireless facilities while denying it as to others based on
108 applicable requirements and standards, including those identified in this section. The
109 authority's denial of any individual small wireless facility or subset of small wireless
110 facilities within an application is not a basis to deny the application as a whole;

111 (12) Installation or collocation for which a permit is granted under this section shall
112 be completed within one year of the permit issuance date unless the authority and the

113 applicant agree to extend this period, or the applicant notifies the authority that the delay
114 is caused by a lack of commercial power or communications transport facilities to the site.

115 Approval of an application authorizes the applicant to:

116 (a) Undertake the installation or collocation; and

117 (b) Operate and maintain the small wireless facilities and any associated utility pole
118 covered by the permit for a period of not less than ten years, which shall be renewed for
119 equivalent durations so long as they are in compliance with the criteria set forth in
120 subdivision (9) of this subsection, unless the applicant and the authority agree to an
121 extension term of less than ten years. The provisions of this paragraph shall be subject to
122 the right of the authority to require, upon adequate notice, relocation of facilities as may
123 be needed in the interests of public safety and convenience, and the applicant's right to
124 terminate at any time;

125 (13) An authority shall not institute, either expressly or de facto, a moratorium on
126 filing, receiving, or processing applications or issuing permits or other approvals, if any,
127 for the collocation of small wireless facilities or the installation, modification, or
128 replacement of utility poles to support small wireless facilities. Notwithstanding the
129 foregoing, an authority may impose a temporary moratorium on applications for small
130 wireless facilities and the collocation thereof for the duration of a federal or state-declared
131 natural disaster plus a reasonable recovery period, or for no more than thirty days in the
132 event of a major and protracted staffing shortage that reduces the number of personnel
133 necessary to the receipt, review, processing, and approval or denial of applications for the
134 collocation of small wireless facilities by more than fifty percent;

135 (14) Nothing in this section precludes the authority from adopting reasonable rules
136 with respect to the removal of abandoned small wireless facilities; and

137 (15) In determining whether sufficient capacity exists to accommodate the
138 attachment of a new small wireless facility, an authority shall grant access subject to a
139 reservation to reclaim such space, when and if needed, to meet the pole owner's core utility
140 purpose or documented authority plan projected at the time of the application pursuant
141 to a bona fide development plan.

142 4. An authority shall not require an application for the following:

143 (1) Routine maintenance on previously permitted small wireless facilities;

144 (2) The replacement of small wireless facilities with small wireless facilities that are
145 the same or smaller in size, weight, and height; or

146 (3) The installation, placement, maintenance, operation, or replacement of micro
147 wireless facilities that are strung on cables between utility poles, in compliance with
148 applicable codes.

149 For work described in subdivisions (1) and (2) of this subsection that involves different
150 equipment than that being replaced, an authority may require a description of such new
151 equipment so that the authority may maintain an accurate inventory of the small wireless
152 facilities at that location.

153 **5. No approval for the installation, placement, maintenance, or operation of a small**
154 **wireless facility under this section shall be construed to confer authorization for the**
155 **provision of cable television service or installation, placement, maintenance, or operation**
156 **of a wireline backhaul facility or communications facility, other than a small wireless**
157 **facility, in the ROW.**

158 **6. Except as provided in sections 67.5110 to 67.5121, no authority may adopt or**
159 **enforce any ordinances or requirements that require the holder of a franchise or video**
160 **service authorization as defined under section 67.2677 to obtain additional authorization**
161 **or to pay additional fees for the provision of communications service over such holder's**
162 **communications facilities in the ROW.**

67.5114. 1. This section only applies to collocations on authority poles and
2 **authority wireless support structures that are located on authority property outside the**
3 **ROW. Treatment of existing agreements for such collocations that do not comply with this**
4 **section is addressed in section 67.5119.**

5 **2. Subject to subsection 3 of this section, an authority shall authorize the collocation**
6 **of small wireless facilities on authority wireless support structures and authority poles to**
7 **the same extent, if any, that the authority permits access to such structures for other**
8 **commercial projects or uses. Such collocations shall be subject to reasonable and**
9 **nondiscriminatory rates, fees, and terms as provided in an agreement between the**
10 **authority, or its agent, and the wireless provider.**

11 **3. An authority shall not enter into an exclusive agreement with a wireless provider**
12 **concerning authority poles or authority wireless support structures, including stadiums**
13 **and enclosed arenas, unless the agreement meets the following requirements:**

14 **(1) The wireless provider provides service using a shared network of wireless**
15 **facilities that it makes available for access by other wireless providers, on reasonable and**
16 **nondiscriminatory rates and terms that shall include use of the entire shared network, as**
17 **to itself, an affiliate, or any other entity; or**

18 **(2) The wireless provider allows other wireless providers to collocate small wireless**
19 **facilities, on reasonable and nondiscriminatory rates and terms, as to itself, an affiliate, or**
20 **any other entity.**

21 **4. When determining whether a rate, fee, or term is reasonable and**
22 **nondiscriminatory for the purposes of this section, consideration may be given to any**

23 relevant facts, including alternative financial or service remuneration, characteristics of
24 the proposed equipment or installation, structural limitations, or other commercial or
25 unique features or components.

67.5115. 1. The provisions of this section shall apply to activities of the wireless
2 provider within the ROW.

3 2. A person owning, managing, or controlling authority poles in the ROW shall not
4 enter into an exclusive arrangement with any person for the right to attach to such poles.
5 A person who purchases or otherwise acquires an authority pole is subject to the
6 requirements of this section.

7 3. An authority shall allow the collocation of small wireless facilities on authority
8 poles using the process in section 67.5113.

9 4. The authority may require, as part of an application, engineering and
10 construction drawings, as well as plans and detailed cost estimates for any make-ready
11 work as needed, for which the applicant is solely responsible.

12 5. Make-ready work shall be addressed as follows, unless the parties agree to
13 different terms in a pole attachment agreement:

14 (1) The rates, fees, and terms and conditions for the make-ready work to collocate
15 on an authority pole shall be nondiscriminatory, competitively neutral, and commercially
16 reasonable and shall comply with sections 67.5110 to 67.5121;

17 (2) The authority shall provide a good-faith estimate for any make-ready work
18 necessary to enable the pole to support the requested collocation by a wireless provider,
19 including pole replacement if necessary, within sixty days after receipt of a complete
20 application. Make-ready work, including any pole replacement, shall be completed within
21 sixty days of written acceptance of the good-faith estimate and advance payment, if
22 required, by the applicant. An authority may require replacement of the authority pole
23 on a nondiscriminatory basis for reasons of safety and reliability, including demonstrations
24 that the collocation would make the authority pole structurally unsound; and

25 (3) The person owning, managing, or controlling the authority pole shall not
26 require more make-ready work than required to meet applicable codes or industry
27 standards. Fees for make-ready work shall not include costs related to preexisting or prior
28 damage or noncompliance unless the authority had determined, prior to the filing of the
29 application, to permanently abandon and not repair or replace the structure. Fees for
30 make-ready work, including any pole replacement, shall not exceed actual costs or the
31 amount charged to other communications service providers for similar work and shall not
32 include third-party fees, charges, or expenses, except for amounts charged by licensed
33 contractors actually performing the make-ready work.

67.5116. 1. This section shall govern the rate to collocate small wireless facilities and an authority's rates and fees for the placement of utility poles, but shall not limit an authority's ability to recover specific removal costs from the attaching wireless provider for abandoned structures. The rates to collocate on authority poles shall be nondiscriminatory regardless of the services provided by the collocating applicant.

2. An authority shall not require a wireless provider to pay any rates, fees, or compensation to the authority or other person other than what is expressly authorized by sections 67.5110 to 67.5121 for the use and occupancy of a ROW, for collocation of small wireless facilities on utility poles in the ROW, or for the installation, maintenance, modification, operation, and replacement of utility poles in the ROW.

3. Application fees shall be subject to the following requirements:

(1) Application fees must be based on actual, direct, and reasonable administrative costs incurred for the review, processing, and approval of an application for the placement of a small wireless facility or the installation or replacement of a utility pole. Any such costs already recovered by existing fees, rates, licenses, or taxes paid by a wireless services provider shall not be included in the application fee;

(2) An application fee shall not include travel expenses incurred by a third party in its review of an application, or direct payment or reimbursement of third party rates or fees charged on a contingency basis or a result-based arrangement;

(3) The total fee for any application under subsection 3 of section 67.5113 for collocation of small wireless facilities on existing authority poles shall not exceed one hundred dollars per small wireless facility. An applicant filing a consolidated application under subdivision (11) of subsection 3 of section 67.5113 shall pay one hundred dollars per small wireless facility included in the consolidated application; and

(4) The total application fees for the installation, modification, or replacement of a utility pole and the collocation of an associated small wireless facility shall not exceed five hundred dollars per pole.

4. (1) The rate for collocation of a small wireless facility to an authority pole shall not exceed thirty-five dollars per authority pole per year. Five years from the date of an ordinance or agreement setting the annual rate in accordance with the rates established in this subsection, and for two additional five year periods, an authority may increase its rate for the collocation of a small wireless facility on an authority pole by no more than ten percent, rounded to the nearest dollar amount;

(2) An authority shall not charge a wireless provider any fee, tax other than a tax authorized by subdivision (3) of this subsection, or other charge, or require any other form of payment or compensation, to locate a wireless facility or wireless support structure on

37 privately-owned property, or on a wireless support structure not owned by the authority;
38 and

39 (3) No authority shall demand any fees, rentals, licenses, charges, payments, or
40 assessments from any applicant or wireless provider for, or in any way relating to or
41 arising from, the construction, deployment, installation, mounting, modification, operation,
42 use, replacement, maintenance, or repair of small wireless facilities or utility poles, except
43 for the following:

44 (a) As otherwise expressly provided in sections 67.5110 to 67.5121;

45 (b) Applicable personal property and sales taxes or generally applicable fees for
46 encroachment or electrical permits;

47 (c) Applicable fair and reasonable linear foot fees as provided in subsection 1 of
48 section 67.1846 associated with coaxial or fiber-optic cable in the ROW that is:

49 a. Between wireless support structures or utility poles;

50 b. Not directly associated with a particular small wireless facility; or

51 c. A wireline backhaul facility.

52

53 No authority shall require a wireless provider to pay a linear foot fee for coaxial or fiber-
54 optic cable in the ROW associated with a small wireless facility if the owner of such coaxial
55 or fiber-optic cable in the ROW already is assessed and charged such a linear foot fee; and

56 (d) Right-of-way permit fees established under 67.1840 for the recovery of actual,
57 substantiated ROW management costs or as otherwise authorized under section 229.340.

58

59 Right-of-way permit fees imposed on applicants and wireless providers shall be
60 competitively neutral with regard to all other users of the ROW; shall not be in the form
61 of a franchise fee or tax or other fee based on noncost related factors such as revenue, sales,
62 profits, lines, subscriptions, or customer counts; and shall not result in double recovery
63 where existing charges already recover the direct and actual costs of managing the ROW.
64 This paragraph prohibits the imposition of business license taxes, business license fees, or
65 gross receipts taxes on wireless providers, whether based on gross receipts or other factors,
66 except that this subdivision allows the imposition of such taxes and fees consistent with
67 subsection 2 of section 67.1846 that are also imposed on wireline telecommunications
68 businesses operating within the jurisdiction of the authority, or as mutually agreed to by
69 the authority and the wireless provider.

67.5117. This section applies to activities in the ROW only. Sections 67.5110 to
2 67.5121 shall not be interpreted to allow any entity to provide services regulated under 47
3 U.S.C. Sections 521 to 573 without compliance with all laws applicable to such providers.

4 Nor shall sections 67.5110 to 67.5121 be interpreted to impose any new requirements on
5 cable providers for the provision of such service in this state.

67.5118. Subject to the provisions of sections 67.5110 to 67.5121 and applicable
2 federal law, an authority shall continue to exercise zoning, land use, planning, and
3 permitting authority within its territorial boundaries, including with respect to wireless
4 support structures and utility poles, except that no authority shall have or exercise any
5 jurisdiction or authority over the design, engineering, construction, installation, or
6 operation of any small wireless facility located in an interior structure or upon the site of
7 any campus, stadium, or athletic facility not owned or controlled by the authority, other
8 than to comply with applicable codes. Nothing in sections 67.5110 to 67.5121 authorizes
9 the state or any political subdivision, including an authority, to require wireless facility
10 deployment or to regulate wireless services.

67.5119. 1. Within the later of two months after August 28, 2018, or two months
2 after receiving a request from a wireless provider, an authority shall adopt an ordinance
3 or develop an agreement that makes available to wireless providers rates, fees, and other
4 terms that comply with sections 67.5110 to 67.5121, subject to subsections 2, 3, and 4 of this
5 section. An authority and a wireless provider may enter into an agreement implementing
6 sections 67.5110 to 67.5121, but an authority shall not require a wireless provider to enter
7 into such an agreement.

8 2. Notwithstanding the provisions of subsection 1 of this section, a municipal
9 electric utility may require an attaching entity to enter into a pole attachment agreement
10 consistent with this section, except that wireless providers may collocate small wireless
11 facilities on municipal electric utility-owned utility poles located within public roads or
12 ROWs without being required to apply for, or enter into, any individual license or
13 franchise with the municipal electric utility, municipality, or other entity, but subject to
14 nondiscriminatory, competitively neutral, and commercially reasonable terms and
15 conditions as may be set forth in a pole attachment agreement with the municipal electric
16 utility, which terms and conditions shall comply with this section and federal pole
17 attachment requirements under 47 U.S.C. Section 224 and corresponding regulations in
18 effect as of August 28, 2018. Within the later of three months after August 28, 2018, or
19 three months after receiving a request by a wireless provider, each municipal electric
20 utility shall, acting in good faith, prepare and make available a standard wireless pole
21 attachment agreement that complies with the requirements of sections 67.5110 to 67.5121.
22 A standard wireless pole attachment agreement shall be in a form that is substantially
23 complete so that a wireless provider, acting in good faith, shall accept it with little
24 substantive negotiation. Notwithstanding any provision of law to the contrary, nothing

25 shall preclude the contractual parties to a standard pole attachment agreement, if mutually
26 agreeable, from negotiating terms beyond those contemplated by the standard pole
27 attachment agreement. In the absence of a standard pole attachment agreement that
28 complies with the requirements of sections 67.5110 to 67.5121 by the dates set forth in this
29 subsection, wireless providers may install and operate small wireless facilities and utility
30 poles under the requirements of sections 67.5110 to 67.5121. All pole attachment
31 agreements with wireless providers shall be considered a public record as defined in
32 chapter 610.

33 3. Sections 67.5110 to 67.5121 shall not nullify, modify, amend, or prohibit a mutual
34 agreement between an authority and a wireless provider made prior to August 28, 2018,
35 but an agreement that does not fully comply with sections 67.5110 to 67.5121 shall apply
36 only to small wireless facilities and utility poles that were installed or approved for
37 installation before August 28, 2018, subject to any termination provisions in the agreement.
38 Such an agreement shall not be renewed, extended, or made to apply to any small wireless
39 facility or utility pole installed or approved for installation after August 28, 2018, unless
40 it is modified to fully comply with sections 67.5110 to 67.5121. In the absence of an
41 agreement, and until such a compliant agreement or ordinance is entered or adopted, small
42 wireless facilities and utility poles that become operational or were constructed before
43 August 28, 2018, may remain installed and be operated under the requirements of sections
44 67.5110 to 67.5121.

 67.5120. A court of competent jurisdiction shall have jurisdiction to determine all
2 disputes arising under sections 67.5110 to 67.5121.

 67.5121. 1. An authority may adopt indemnification, insurance, and bonding
2 requirements related to small wireless facility permits subject to the requirements of this
3 section.

4 2. An authority may only require a wireless provider to indemnify and hold the
5 authority and its officers and employees harmless against any damage or personal injury
6 caused by the negligence of the wireless provider or its employees, agents, or contractors.

7 3. An authority may require a wireless provider to have in effect insurance
8 coverage consistent with subsection 2 of this section, or a demonstration of comparable
9 self-insurance program, so long as the authority imposes similar requirements on other
10 similarly situated utility ROW users and such requirements are reasonable and
11 nondiscriminatory. An authority shall not require a self-insured wireless provider to
12 obtain insurance naming the authority or its officers and employees an additional insured.
13 An authority may require a wireless provider to furnish proof of insurance, if required,
14 prior to the effective date of any permit issued for a small wireless facility.

15 **4. An authority may adopt bonding requirements for small wireless facilities if the**
16 **authority imposes similar requirements in connection with permits issued for other**
17 **similarly situated utility ROW users. The purpose of such bonds shall be to:**

18 **(1) Provide for the removal of abandoned or improperly maintained small wireless**
19 **facilities, including those that an authority determines need to be removed to protect public**
20 **health, safety, or welfare;**

21 **(2) Restore the ROW in connection with removals under section 67.5113;**

22 **(3) Recoup rates or fees that have not been paid by a wireless provider in over**
23 **twelve months, so long as the wireless provider has received reasonable notice from the**
24 **authority of any noncompliance listed above and been given an opportunity to cure;**

25 **(4) Bonding requirements shall not exceed one thousand five hundred dollars per**
26 **small wireless facility. For wireless providers with multiple small wireless facilities within**
27 **the jurisdiction of a single authority, the total bond amount across all facilities shall not**
28 **exceed seventy-five thousand dollars, which amount may be combined into one bond**
29 **instrument.**

30 **5. Applicants that have at least twenty-five million dollars in assets in the state and**
31 **do not have a history of permitting noncompliance as defined by an authority within its**
32 **jurisdiction shall, under section 67.1830, be exempt from the insurance and bonding**
33 **requirements otherwise authorized by this section.**

34 **6. Any contractor, subcontractor, or wireless infrastructure provider must be**
35 **under contract with a wireless services provider to perform work in the ROW related to**
36 **small wireless facilities or utility poles, and such entities shall be properly licensed under**
37 **the laws of the state and all applicable local ordinances, if required. Each contracted entity**
38 **shall have the same obligations with respect to his or her work as a wireless services**
39 **provider would have under sections 67.5110 to 67.5121 and other applicable laws if the**
40 **work were performed by a wireless services provider. The wireless services provider shall**
41 **be responsible for ensuring that the work of such contracted entities is performed**
42 **consistently with the wireless services provider's permits and applicable laws relating to**
43 **the deployment of small wireless facilities and utility poles, and responsible for promptly**
44 **correcting acts or omissions by such contracted entity.**

45 **7. If any provision of sections 67.1830, 67.1846, or 67.5110 to 67.5121 or the**
46 **application thereof to any person or circumstance is held invalid, such determination shall**
47 **not affect the provisions or applications of sections 67.1830, 67.1846, or 67.5110 to 67.5121**
48 **which may be given effect without the invalid provision or application, and to that end the**
49 **provisions of sections 67.1830, 67.1846, and 67.5110 to 67.5121 are severable.**

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