

FIRST REGULAR SESSION

# SENATE BILL NO. 354

99TH GENERAL ASSEMBLY

INTRODUCED BY SENATOR ROWDEN.

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ADRIANE D. CROUSE, Secretary.

1482S.01I

## AN ACT

To repeal sections 67.5092, 67.5102, and 67.5104, RSMo, and to enact in lieu thereof four new sections relating to wireless communications infrastructure.

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

Section A. Sections 67.5092, 67.5102, and 67.5104, RSMo, are repealed  
2 and four new sections enacted in lieu thereof, to be known as sections 67.5092,  
3 67.5101, 67.5102, and 67.5104, to read as follows:

67.5092. As used in sections 67.5090 to 67.5103, the following terms  
2 mean:

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

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

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

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

18 (5) "Authority", each state, county, and municipal governing body, board,

**EXPLANATION—Matter enclosed in bold-faced brackets [thus] in this bill is not enacted and is intended to be omitted in the law.**

19 agency, office, or commission authorized by law and acting in its capacity to make  
20 legislative, quasi-judicial, or administrative decisions relative to zoning or  
21 building permit review of an application. The term shall not include state courts  
22 having jurisdiction over land use, planning, or zoning decisions made by an  
23 authority;

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

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

35 (8) "Collocation", the placement or installation of a new wireless facility  
36 on **[a] or immediately adjacent to an existing** structure [that already has an  
37 existing wireless facility], including electrical transmission towers, water towers,  
38 buildings, **utility poles, existing structures**, and other structures capable of  
39 structurally supporting the attachment of wireless facilities in compliance with  
40 applicable codes;

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

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

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

53 (12) "Replacement", includes constructing a new wireless support  
54 structure of equal proportions and of equal height or such other height that would

55 not constitute a substantial modification to an existing structure in order to  
56 support wireless facilities or to accommodate collocation and includes the  
57 associated removal of the preexisting wireless facilities or wireless support  
58 structure;

59 (13) **"Small wireless facility", a wireless facility with an antenna**  
60 **of no more than six cubic feet in volume and associated equipment with**  
61 **a cumulative volume no larger than twenty-eight cubic feet. An**  
62 **associated electric meter, concealment, telecom demarcation box,**  
63 **ground-based enclosure, battery backup power system, grounding**  
64 **equipment, power transfer switch, cutoff switch, cable, or conduit may**  
65 **be located outside the primary equipment enclosure and is not included**  
66 **in the calculation of the equipment volume. Volume shall be a measure**  
67 **of the exterior displacement, not the interior volume, of the**  
68 **enclosure. Any equipment that is concealed from public view within or**  
69 **behind an existing structure or concealment shall not be included in**  
70 **the volume calculations;**

71 (14) "Substantial modification", the mounting of a proposed wireless  
72 facility on a wireless support structure which, as applied to the structure as it  
73 was originally constructed:

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

75 a. More than ten percent; or

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

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

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

87 (d) Increases the square footage of the existing equipment compound by  
88 more than one thousand two hundred fifty square feet;

89 [(14)] (15) "Utility", any person, corporation, county, municipality acting  
90 in its capacity as a utility, municipal utility board, or other entity, or department

91 thereof or entity related thereto, providing retail or wholesale electric, natural  
92 gas, water, waste water, data, cable television, or telecommunications, **wireless**  
93 **communications service**, or internet protocol-related services;

94 [(15)] **(16)** "Utility pole", a structure owned or operated by a utility that  
95 is designed specifically for and used to carry lines, cables, [or] wires **or wireless**  
96 **facilities** for telephony, **wireless communications service**, cable television,  
97 or electricity, or to provide lighting;

98 [(16)] **(17)** "Water tower", a water storage tank, or a standpipe or an  
99 elevated tank situated on a support structure, originally constructed for use as  
100 a reservoir or facility to store or deliver water;

101 **(18)** "Wireless communications infrastructure provider", a person  
102 **or entity that installs or constructs facilities or structures used to**  
103 **provide wireless communications service;**

104 [(17)] **(19)** "Wireless communications service", includes the wireless  
105 facilities of all services licensed to use radio communications pursuant to Section  
106 301 of the Communications Act of 1934, 47 U.S.C. Section 301, **and fixed or**  
107 **mobile communication transmission services such as, but not limited**  
108 **to, data or voice transmissions provided using wireless facilities,**  
109 **including both one-way and two-way communications services;**

110 **(20)** "Wireless communications service provider", a provider of  
111 **wireless communications service;**

112 [(18)] **(21)** "Wireless facility", the set of equipment and network  
113 components, exclusive of the underlying wireless support structure, including, but  
114 not limited to, antennas, accessory equipment, transmitters, receivers, power  
115 supplies, cabling, **small wireless facilities**, and associated equipment necessary  
116 to provide wireless communications services;

117 [(19)] **(22)** "Wireless support structure", a structure, such as a monopole,  
118 tower, **electrical transmission tower, water tower, utility pole**, or building  
119 capable of supporting wireless facilities. [This definition does not include utility  
120 poles.]

**67.5101. Notwithstanding any provision of sections 67.5090 to**  
2 **67.5103, the following provisions shall apply to applications relating to**  
3 **small wireless facilities:**

4 **(1) An authority may not require an application for the following**  
5 **work on previously permitted small wireless facility collocations:**

6 **(a) Routine maintenance; and**

7           **(b) The replacement of small wireless facilities with small**  
8 **wireless facilities that are substantially similar in size, weight, and**  
9 **height and that have the same or less wind loading and structural**  
10 **loading; provided that, if applicable, an authority may regulate the**  
11 **time and manner in which an applicant may access the public right-of-**  
12 **way to perform such work;**

13           **(2) An authority shall process an application for the collocation**  
14 **of small wireless facilities on a nondiscriminatory basis, and an**  
15 **application may include up to twenty-five separate small wireless**  
16 **facilities;**

17           **(3) An authority shall authorize the collocation of a small**  
18 **wireless facility on a wireless support structure not located within the**  
19 **public right-of-way to the same extent the authority authorizes access**  
20 **to such wireless support structures for other commercial projects or**  
21 **uses, and may authorize the collocation even if the authority has not**  
22 **previously permitted such access;**

23           **(4) If an application for the collocation of small wireless**  
24 **facilities is denied, the authority shall document the basis for a denial,**  
25 **including the specific standards on which the denial was based, and**  
26 **send the documentation to the applicant on or before the day the**  
27 **authority denies an application. The applicant may cure the**  
28 **deficiencies identified by the authority and resubmit the application**  
29 **within thirty days of the denial. The authority shall approve or deny**  
30 **the revised application within thirty days;**

31           **(5) Once an application for the collocation of small wireless**  
32 **facilities is approved, the applicant may maintain the small wireless**  
33 **facility in the permitted location for at least ten years, which period**  
34 **shall be extended automatically for at least three five-year periods**  
35 **unless the applicant requests that the permit be terminated. During**  
36 **the initial and renewal periods, there shall be no requirement for the**  
37 **applicant to reapply to collocate in an approved location; and**

38           **(6) An authority may not institute a moratorium, whether**  
39 **directly through a written policy or indirectly through action or**  
40 **inaction, on:**

41           **(a) Filing, receiving, or processing applications for the**  
42 **collocation of small wireless facilities; or**

43           **(b) Issuing permits or approvals for the collocation of small**

**44 wireless facilities.**

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

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

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

11 (a) An authority may not charge a wireless service provider or wireless  
12 infrastructure provider any rental, license, or other fee to locate a wireless facility  
13 or wireless support structure on an authority's property in excess of the current  
14 market rates for rental or use of similarly situated property. If the applicant and  
15 the authority do not agree on the applicable market rate for any such public land  
16 and cannot agree on a process by which to derive the applicable market rate for  
17 any such public land, then the market rate will be determined by a state-certified  
18 general real estate appraiser licensed under chapter 339 mutually agreed upon  
19 by the parties at the applicant's cost. The appraisal process shall be concluded  
20 within ninety calendar days from the date the applicant first tenders its proposed  
21 lease rate to the authority. In the event either party is dissatisfied with the  
22 value determined by the appraiser, such party may bring an action for review in  
23 any court of competent jurisdiction. The court shall rule on any such petition for  
24 review in an expedited manner. Nothing in this paragraph shall bar an applicant  
25 and an authority from agreeing to reasonable, periodic reviews and adjustments  
26 of current market rates during the term of a lease or contract to use an  
27 authority's property; [and]

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

32 **(c) An authority may not charge a wireless communications**  
33 **service provider or wireless communications infrastructure provider**  
34 **any fee, tax, or other charge, or require any other form of payment or**  
35 **compensation, to locate a wireless facility or wireless support structure**

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

38 (d) Except as otherwise expressly provided in sections 67.5090 to  
39 67.5103, and notwithstanding sections 67.1830 to 67.1846 to the contrary,  
40 no authority nor any other political subdivision shall demand or  
41 impose any fees, licenses, charges, payments, or assessments from any  
42 applicant, nor shall any authority or any other political subdivision  
43 demand or impose any fees, licenses, charges, payments, or assessments  
44 on wireless communications service providers or wireless  
45 communications infrastructure providers for, or in any way relating to  
46 or arising from, the deployment, installation, operation, use,  
47 replacement, maintenance, or repair of wireless facilities;

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

67.5104. 1. As used in this section, "pole attachment" means an  
2 attachment by an attaching entity, including a video service provider, a  
3 telecommunications provider, **a wireless communications service provider**  
4 **as defined in section 67.5092**, or other communications-related service  
5 provider to a pole owned or controlled by a municipal utility or municipality[, but  
6 not a wireless antenna attachment or an attachment by a wireless  
7 communications provider to a pole]. As used in this section, "pole" means a  
8 utility pole which is owned or controlled by a municipal utility or municipality,  
9 but shall not include poles that are not associated with the transmission or  
10 distribution of electric power, communications, broadband, [or] video services, **or**  
11 **with providing lighting**. A municipal utility or municipality may only deny  
12 an attaching entity access to the utility's poles on a nondiscriminatory basis if  
13 there is insufficient capacity or for reasons of safety and reliability and if the  
14 attaching entity will not resolve the issue. If a municipal utility or municipality  
15 does not find any capacity, safety, or reliability issues, such municipal utility or  
16 municipality shall issue the attaching entity a permit to attach to the municipal  
17 utility's or municipality's poles. Nothing in this section shall be construed to  
18 prohibit a municipal utility or municipality from requiring an attaching entity to  
19 enter into a pole attachment agreement consistent with this section, **except that**  
20 **a wireless communications infrastructure provider or wireless**

21 **communications service provider may collocate small wireless facilities**  
22 **on authority utility poles located within the public roads or rights-of-**  
23 **way without being required to apply for or enter into any individual**  
24 **license, franchise, or other agreement with the authority or any other**  
25 **entity, but subject to such nondiscriminatory, competitively neutral,**  
26 **and commercially reasonable terms and conditions as may be set forth**  
27 **in the building permit, which terms and conditions shall comply with**  
28 **this section and federal pole attachment requirements under 47 U.S.C.**  
29 **Section 224 and corresponding regulations. The annual recurring rate**  
30 **to collocate a small wireless facility on an authority utility pole shall**  
31 **not exceed the rate produced by applying the formula adopted by the**  
32 **Federal Communications Commission for telecommunications pole**  
33 **attachments under paragraph (2) of subsection (e) of 47 CFR 1.1409.**

34       2. (1) Notwithstanding sections 67.1830 to 67.1846, any pole attachment  
35 fees, terms, and conditions, including those related to the granting or denial of  
36 access, demanded by a municipal utility pole owner or controlling authority of a  
37 municipality shall be nondiscriminatory, just, and reasonable and shall not be  
38 subject to any required franchise authority or government entity permitting,  
39 except as provided in this section. A pole attachment rental fee shall be  
40 calculated on an annual, per-pole basis. Such rental fee shall be considered  
41 nondiscriminatory, just, and reasonable if it is agreed upon by the parties or, in  
42 the absence of such an agreement, based on cost but in no such case shall such  
43 fee so calculated be greater than the fee which would apply if it were calculated  
44 in accordance with the [cable service] **telecommunications pole attachment**  
45 **rate formula [referenced in 47 U.S.C. Sec. 224(d) as applied by the Federal**  
46 **Communications Commission] adopted by the Federal Communications**  
47 **Commission for telecommunications pole attachments under paragraph**  
48 **(2) of subsection (e) of 47 CFR 1.1409.** In addition, a municipal pole owner  
49 may be authorized to exceed the rate of return cost components of the Federal  
50 Communications Commission formula referenced in this section if necessary to  
51 comply with Article X of the Missouri Constitution. In the event of a dispute  
52 between the parties, either party may bring an action for review in any court of  
53 competent jurisdiction. The court shall rule on any such petition for review in an  
54 expedited manner by moving the petition to the head of the docket consistent  
55 with subsection 2 of this section. Nothing shall deny any party the right to a  
56 hearing before the court.



57           **(2) Make-ready work shall be addressed as follows:**

58           **(a) For authority utility poles that support aerial cables used for**  
59 **video communications or electric service, the parties shall comply with**  
60 **the process for make-ready work under 47 U.S.C. Section 224 and**  
61 **implementing regulations as they existed on January 1, 2017. The good**  
62 **faith estimate of the entity owning or controlling the pole for any**  
63 **make-ready work necessary to enable the pole to support the requested**  
64 **collocation shall include pole replacement, if necessary;**

65           **(b) For authority utility poles that do not support aerial cables**  
66 **used for video communications or electric service, the authority shall**  
67 **provide a good faith estimate for any make-ready work necessary to**  
68 **enable the pole to support the requested collocation, including pole**  
69 **replacement, if necessary, within sixty days after receipt of a complete**  
70 **application. Make-ready work, including any pole replacement, shall**  
71 **be completed within sixty days of written acceptance of the good faith**  
72 **estimate by the applicant;**

73           **(c) Make-ready work shall not require more work than required**  
74 **to meet applicable codes or industry standards. Charges for make-**  
75 **ready work, including any pole replacement, shall not exceed actual**  
76 **costs or the amount charged to other communications service providers**  
77 **for similar work and shall not include third-party fees, charges, or**  
78 **expenses.**

79           3. Where no pole attachment agreement exists between an attaching  
80 entity and the municipal utility pole owner or controlling authority of a  
81 municipality, and a dispute between a municipal utility pole owner or controlling  
82 authority of a municipality and an attaching entity exclusively concerns the  
83 per-pole fee or any requirement or issue not directly related to pole attachments  
84 consistent with this section or both, then the attaching entity may proceed with  
85 its attachments during the pendency of the dispute under the agreed-upon terms  
86 and conditions at a rental rate of no more than as set forth in subsection 2 of this  
87 section. The attaching entity shall comply with applicable and reasonable  
88 engineering, safety and reliability standards and shall hold the municipal pole  
89 owner or controlling authority of the municipality harmless for any liabilities or  
90 damages incurred that are caused by the attaching entity.

91           4. The provisions of this section shall not supersede existing pole  
92 attachment agreements established prior to August 28, 2014.

93           5. Nothing in this section shall be construed as conferring any jurisdiction  
94 or authority to the public service commission or any state agency to regulate  
95 either the fees, terms, or conditions for pole attachments, or for any state agency  
96 to assert any jurisdiction over attachments to poles regulated by 47 U.S.C. Sec.  
97 224.

98           6. A municipal utility or municipality may, after reasonable written notice  
99 and an opportunity to cure, as provided in the applicable pole attachment  
100 agreement between a municipal utility or municipality and an attaching entity,  
101 revoke a pole attachment permit granted to an attaching entity and require  
102 removal of the attachment with or without fee refund for breach of the pole  
103 attachment agreement or permit until the breach is cured, but only in the event  
104 of a substantial breach of material terms and conditions of the pole attachment  
105 agreement or permit. A substantial breach by an attaching entity shall be limited  
106 to:

107           (1) A material violation of a material provision of the applicable pole  
108 attachment agreement or permit;

109           (2) An evasion or attempt to evade any material provision of the  
110 applicable pole attachment agreement or permit;

111           (3) A material misrepresentation of fact in the applicable pole attachment  
112 agreement or permit application;

113           (4) A failure to complete work by the date and in accordance with the  
114 terms specified in the applicable pole attachment agreement or permit, unless an  
115 extension is obtained or unless the failure to complete the work is due to reasons  
116 beyond the attaching entity's control; or

117           (5) A failure to correct, within the time and in accordance with the terms  
118 specified by the municipal utility or municipality in the applicable pole  
119 attachment agreement or permit, work by the attaching entity that does not  
120 conform to applicable national safety codes, industry construction standards, or  
121 local safety codes that are not more stringent than national safety codes, upon  
122 inspection and notification by the municipal utility or municipality of the faulty  
123 condition. If the time for correction is not specified in the applicable pole  
124 attachment agreement or permit, the time for correction shall be reasonable  
125 under the particular circumstances, and in no event less than thirty days.

126           7. Unless otherwise provided for in an applicable pole attachment  
127 agreement, in the event of an imminent threat to public health, life, or safety, a  
128 municipal utility or municipality shall, upon notice to the attaching entity,

129 request the attaching entity rearrange, relocate, or remove a pole attachment  
130 from a pole or absent action from the attaching entity, have the authority to  
131 rearrange, relocate, or remove a pole attachment consistent with industry  
132 practices. The attaching entity shall be notified as soon as practicable upon the  
133 cessation of the threat to public health, life, or safety, or upon restoration of the  
134 attachment by the municipal utility or municipality.

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