

SS SCS HCS HB 345 -- TELECOMMUNICATIONS

This bill changes the laws regarding telecommunications practices and municipal pole attachments.

TELECOMMUNICATIONS PRACTICES

The bill prohibits an authority from instituting a moratorium on the permitting, construction, or issuance of approval of new wireless support structures, substantial modifications of wireless support structures, or attachments to existing facilities of wireless communication infrastructure if the moratorium exceeds six months and if the legislative act establishing it fails to state reasonable grounds and good cause for the moratorium. A moratorium must not affect any pending application. An authority may not charge a wireless service provider or wireless infrastructure provider any rental, license, or other fee to locate a wireless support structure on an authority's property in excess of the current market rates for rental or use of similarly situated property. An authority may not offer a lease or contract to use public lands to locate a wireless support structure on an authority's property that is less than 15 years in duration unless the applicant agrees to accept a lease or contract for a shorter period of time. The process for the resolution of any dispute over fair market value lease payments using appraisers appointed by both parties is specified in the bill.

These provisions cannot provide an applicant for a wireless facility permit the power of eminent domain or the right to compel any private or public property owner, the Department of Conservation, the Highways and Transportation Commission within the Department of Transportation, or the Department of Natural Resources to lease or sell property for the construction of a new wireless support structure or to locate or expand a wireless facility on an existing structure or wireless support structure.

MUNICIPAL POLE ATTACHMENTS

The bill requires any pole attachment fees, terms, and conditions demanded by a municipal utility pole owner or controlling authority of a municipality, not including a wireless antenna attachment or an attachment by a wireless communications provider to a pole, to be nondiscriminatory, just, and reasonable and not subject to any required franchise authority or government entity permitting. The rental fee will be considered nondiscriminatory, just, and reasonable if it is agreed upon by the parties or based on cost but it cannot be more than the fee that would apply if it was calculated based on the specified federal service rate formula. These provisions will not supersede existing pole

agreements established prior to August 28, 2013. Voluntary arbitration is allowed and if the parties cannot agree on a single arbitrator, the arbitration will be conducted by the American Arbitration Association. The arbitrated fee may exceed the fee resulting from the application of the cable service rate formula only if it is based on a written finding that it is based on competent and substantial evidence that the revenues produced under the cable service rate formula and other payments do not sufficiently recover the direct costs and a reasonable share of the fully allocated costs attributable to the attachment. A municipal pole owner may be authorized to exceed the rate of return cost components of the Federal Communications Commission formula if it is necessary to comply with Article X of the Missouri Constitution. When no prior contract exists, the attaching entity may proceed with its attachments under the agreed upon terms and conditions while the arbitration is pending.

These provisions cannot be construed as conferring any jurisdiction or authority to the Missouri Public Service Commission to regulate the fees, terms, or conditions for pole attachments or for any state agency to assert any jurisdiction over pole attachments regulated by 47 U.S.C. Sec. 224.