

SENATE BILL No. 401

By Committee on Utilities

2-3

1 AN ACT concerning telecommunications; relating to wireless
2 communications, deployment of equipment; concerning municipalities
3 and state entities.

4
5 *Be it enacted by the Legislature of the State of Kansas:*

6 Section 1. (a) The Kansas legislature finds and declares that:

7 (1) The permitting, construction, modification, maintenance and
8 operation of broadband and wireless facilities are critical to ensuring that
9 all citizens in the state have true access to advanced technology and
10 information;

11 (2) these facilities are critical to ensuring that businesses and schools
12 throughout the state remain competitive in the global economy;

13 (3) wireless telecommunications facilities that enable mobile
14 broadband have a significant economic benefit; and

15 (4) the permitting, construction, modification, maintenance and
16 operation of these facilities, to the extent specifically addressed in this
17 section, are declared to be matters of statewide concern and interest.

18 (b) As used in this section:

19 (1) "Accessory equipment" means any equipment serving or being
20 used in conjunction with a wireless communications facility or wireless
21 support structure including, but not limited to, utility or transmission
22 equipment, power supplies, generators, batteries, cables, equipment
23 buildings, cabinets and storage sheds, shelters or similar structures.

24 (2) "Antenna" means communications equipment that transmits or
25 receives electromagnetic radio signals used in the provision of any type of
26 wireless communications services, including on-site accessory equipment
27 associated with the antenna.

28 (3) "Applicant" means any person or entity that submits an
29 application for placement of a wireless facility that is engaged in the
30 business of providing wireless telecommunications services or the wireless
31 telecommunications infrastructure required for wireless
32 telecommunications services.

33 (4) "Application" means a request submitted by an applicant to an
34 authority: (A) To construct a new wireless support structure;

35 (B) for the substantial modification of a wireless support structure; or

36 (C) for collocation of a wireless facility or replacement of a wireless

1 facility on an existing structure or utility pole.

2 (5) "Authority" means any governing body, board, agency, office or
3 commission of a municipality, county or the state that is authorized by law
4 to make legislative, quasi judicial or administrative decisions concerning
5 an application. "Authority" shall not include any court having jurisdiction
6 over land use, planning or zoning decisions made by an authority.

7 (6) "Base station" means a station that includes a structure that
8 currently supports or houses an antenna, transceiver, coaxial cables, power
9 cables or other associated equipment at a specific site that is authorized to
10 communicate with mobile stations, generally consisting of radio
11 transceivers, antennas, coaxial cables, power supplies and other associated
12 electronics.

13 (7) "Collocation" means the mounting or installation of an antenna or
14 equipment on a wireless support structure, tower, utility pole, base station,
15 building or structure with existing antenna, telecommunications, electric or
16 cable equipment for the purpose of transmitting or receiving radio
17 frequency signals for communications purposes.

18 (8) "Distributed antenna system" means a network that distributes
19 radio frequency signals and consisting of: (A) Remote communications or
20 antenna nodes deployed throughout a desired coverage area, each
21 including at least one antenna for transmission and reception;

22 (B) a high capacity signal transport medium that is connected to a
23 central communications hub site; and

24 (C) radio transceivers located at the hub's site to process or control
25 the communications signals transmitted and received through the antennas
26 to provide wireless or mobile service within a geographic area or structure.

27 (9) "Existing structure" means a structure that exists at the time an
28 application to collocate wireless facilities on a structure is filed with an
29 authority. The term includes any structure that is capable of supporting the
30 attachment of wireless facilities in compliance with applicable building
31 codes, national electric safety codes and recognized industry standards for
32 structural safety, capacity, reliability and engineering, including, but not
33 limited to, towers, buildings and water towers.

34 (10) "Replacement" includes constructing a new wireless support
35 structure of comparable proportions and of comparable height or such
36 other height that would not constitute a substantial modification to an
37 existing structure in order to support wireless facilities or to accommodate
38 collocation and includes the associated removal of the pre-existing
39 wireless facilities, if any, or wireless support structure.

40 (11) "Small cell facility" means a personal wireless service facility as
41 defined by the federal telecommunications act of 1996, as in effect on the
42 effective date of this act, that meets both of the following qualifications:

43 (A) Each antenna is located inside an enclosure of no more than six cubic

1 feet in volume, or in the case of an antenna that has exposed elements, the
2 antenna and all of the antenna's exposed elements could fit within an
3 imaginary enclosure of no more than six cubic feet; and

4 (B) primary equipment enclosures are no larger than 17 cubic feet in
5 volume, or facilities comprised of such higher limits as the federal
6 communications commission has excluded from review pursuant to 16
7 U.S.C. § 470f. Associated equipment includes, but is not limited to, any
8 electric meter, concealment, telecommunications demarcation box,
9 ground-based enclosures, back-up power systems, grounding equipment,
10 power transfer switch and cut-off switch.

11 (12) "Small cell network" means a collection of interrelated small cell
12 facilities designed to deliver wireless service.

13 (13) "Substantial modification" means a proposed modification to an
14 existing wireless support structure or base station that will substantially
15 change the physical dimensions of the wireless support structure or base
16 station under the objective standard for substantial change, established by
17 the federal communications commission pursuant to 47 C.F.R. 1.40001.

18 (14) "Transmission equipment" means equipment that facilitates
19 transmission for a wireless communications service licensed or authorized
20 by the federal communications commission including, but not limited to,
21 radio transceivers, antennas, coaxial or fiber optic cable and regular and
22 backup power supply. "Transmission equipment" includes equipment
23 associated with wireless communications services including, but not
24 limited to, private, broadcast and public safety services such as wireless
25 local area network services, and services utilizing a set of specifications
26 developed by the institute of electrical and electronics engineers for
27 interface between a wireless client and a base station or between two
28 wireless clients, as well as unlicensed wireless services and fixed wireless
29 services, such as microwave backhaul.

30 (15) "Wireless facility" means the set of equipment and network
31 components used to provide wireless data and wireless
32 telecommunications services, exclusive of the underlying wireless support
33 structure, including antennas, transmitters, receivers, base stations, power
34 supplies, cabling and accessory equipment.

35 (16) "Wireless Services" means "personal wireless services" and
36 "personal wireless service facilities" as defined in 47 U.S.C. § 332(c)(7)
37 (C), including commercial mobile services as defined in 47 U.S.C.
38 §332(d), provided to personal mobile communication devices through
39 wireless facilities.

40 (17) "Wireless support structure" means a freestanding structure, such
41 as a monopole, guyed or self-supporting tower or other suitable existing or
42 alternative structure designed to support or capable of supporting wireless
43 facilities. "Wireless support structure" shall not include any telephone or

1 electrical utility pole or any tower used for the distribution or transmission
2 of electrical service.

3 (18) "Utility pole" means a structure owned or operated by a public
4 utility as defined in K.S.A. 66-104, and amendments thereto, a
5 municipality as defined in K.S.A. 75-6102, and amendments thereto, or an
6 electric cooperative as defined in K.S.A. 2015 Supp. 17-4652, and
7 amendments thereto, that is designed specifically for and used to carry
8 lines, cables or wires for telecommunications, cable, electricity or to
9 provide lighting.

10 (19) "Water tower" means a water storage tank or a standpipe, or an
11 elevated tank situated on a support structure that was originally
12 constructed for use as a reservoir or facility to store or deliver water.

13 (20) "Wireless services provider" means a provider of wireless
14 services.

15 (c) (1) An authority shall not charge an application fee, consulting fee
16 or other fee associated with the submission, review, processing and
17 approval of an application that is not required for similar types of
18 commercial development within the authority's jurisdiction.

19 (2) An authority shall only assess fees or charges for the actual costs
20 relating to the granting or processing of an application that are directly
21 incurred by the authority and the authority shall not charge any market-
22 based or value-based fees for the processing of an application. Such fees
23 and charges shall be reasonably related in time to the occurrence of such
24 costs.

25 (3) Any fee assessed by an authority may not include any travel
26 expenses incurred by a third party in the party's review of an application or
27 any direct payment or reimbursement of third-party fees charged on a
28 contingency basis or a result-based arrangement. In any dispute of a fee or
29 charge, the authority shall have the burden of proving that the fee or
30 charge is reasonably related to the direct costs incurred by the authority.

31 (4) The total charges and fees shall be the lesser of the amount
32 charged by the authority for: (A) A building permit for any other type of
33 commercial development or land use development;

34 (B) \$500 for a collocation application, small cell facility application
35 or distributed antenna system application; or

36 (C) \$1,000 for an application for a new wireless support structure or
37 for a substantial modification of a wireless support structure.

38 (d) (1) An authority may not charge a wireless services provider or
39 wireless infrastructure provider any rental, license or other fee to locate a
40 wireless facility or wireless support structure on any public right-of-way
41 controlled by the authority, if the authority does not charge other
42 telecommunications or video service providers, alternative infrastructure
43 or wireless services providers or any public or municipally-owned utilities

1 for the use of public right-of-way. If an authority does assess a charge, any
2 such charge must be competitively neutral, with regard to other users of
3 the public right-of-way, including public or municipally-owned utilities,
4 and may not be unreasonable or discriminatory or violate any applicable
5 state or federal law, rule or regulation.

6 (2) (A) Subject to the provisions of this subsection, a wireless
7 services provider shall have the right to construct, maintain and operate
8 wireless support structures, small cell wireless facilities or distributed
9 antenna systems along, across, upon or under the public right-of-way. Such
10 facilities shall be so constructed and maintained so as not to obstruct or
11 hinder the usual travel or public safety on such public right-of-ways or
12 obstruct the legal use of such public right-of-ways by other utilities. In the
13 exercise of an authority's administration and regulation related to the
14 management of the public right-of-way, the authority must be
15 competitively neutral with regard to other users of the public right-of-way,
16 may not be unreasonable or discriminatory and may not violate any
17 applicable state or federal law, rule or regulation.

18 (B) An authority may require a wireless services provider to repair all
19 damage to a public right-of-way caused by the activities of the wireless
20 services provider, while occupying, installing, repairing or maintaining
21 wireless facilities in a public right-of-way and to return the right-of-way to
22 its functional equivalence before the damage, pursuant to the
23 competitively neutral, reasonable requirements and specifications of the
24 authority. If the wireless services provider fails to make the repairs
25 required by the authority within a reasonable time after written notice, the
26 authority may effect those repairs and charge the provider the reasonable
27 cost of those repairs, provided such costs are subject to substantiation by
28 proof satisfactory to the wireless services provider before any payment
29 may become due.

30 (C) The provisions of this subsection shall not apply or give any
31 authority jurisdiction over the activities of wireless services providers in
32 public utility easements, private easements or on privately owned property.

33 (e) (1) An authority may enter into a lease with an applicant for the
34 applicant's use of public lands, buildings and facilities. When entering into
35 a lease for use of publicly owned lands, an authority shall offer leases or
36 contracts for applicants to use publicly-owned lands that are at least 20
37 years in duration and at market rates. Due to the benefit of increased
38 broadband and wireless services to the citizens of the authority, an
39 authority may choose not to charge for the placement of wireless facilities
40 on public lands. Any charges for use of publicly-owned lands and facilities
41 must be competitively neutral with regard to other users of the publicly-
42 owned lands and facilities, including public service or municipally-owned
43 utilities, may not be unreasonable or discriminatory and may not violate

1 any applicable state or federal law, rule or regulation.

2 (2) If the applicant and the authority do not agree on the applicable
3 market rate for the use or lease of public land and are unable to agree on a
4 process to determine the applicable market rate for any such public land,
5 then the market rate will be determined by a panel of three appraisers. The
6 panel will consist of one appraiser appointed by each party and a third
7 appraiser selected by the two appointed appraisers. Each appraiser will
8 independently appraise the appropriate lease rate and the market rate shall
9 be set at the mean between the highest and lowest market rates among all
10 three independent appraisals, unless the mean between the highest and
11 lowest appraisals is greater than or less than 10% of the appraisal of the
12 third appraiser chosen by the parties' appointed appraisers, in which case
13 the third appraisal will determine the rate for the lease. The appraisal
14 process shall be concluded within 150 calendar days from the date the
15 applicant first tenders a proposed lease rate to the authority. Each party
16 will bear the cost of the party's own appointed appraiser, and the parties
17 shall share equally the cost of the third appraiser chosen by the two
18 appointed appraisers.

19 (3) This subsection (e) shall not apply to public rights-of-way
20 governed by subsection (d).

21 (f) To ensure uniformity across the state with respect to consideration
22 of every application, an authority shall not:

23 (1) Require an applicant to submit information about, or evaluate an
24 applicant's business decisions with respect to, the applicant's designed
25 service, customer demand for service or quality of the applicant's service
26 to or from a particular area or site;

27 (2) require information that concerns the specific need for the
28 wireless support structure, including if the service to be provided from the
29 wireless support structure is to add additional wireless coverage or
30 additional wireless capacity. An authority may not require proprietary,
31 confidential or other business information to justify the need for the new
32 wireless support structure, including propagation maps and
33 telecommunications traffic studies;

34 (3) evaluate an application based on the availability of other potential
35 locations for the placement of wireless support structures or wireless
36 facilities including, but not limited to, the option to collocate, instead of
37 construct, a new wireless support structure or for substantial modifications
38 of a support structure;

39 (4) dictate the type of wireless facilities, infrastructure or technology
40 to be used by the applicant including, but not limited to, requiring an
41 applicant to construct a distributed antenna system or small cell facility in
42 lieu of constructing a new wireless support structure or discriminate
43 between different types of infrastructure or technology;

1 (5) require the removal of existing wireless support structures or
2 wireless facilities, wherever located, as a condition for approval of an
3 application. This paragraph shall not preclude an authority from adopting
4 reasonable rules with respect to the removal of abandoned wireless support
5 structures or wireless facilities;

6 (6) impose any restrictions with respect to objects in navigable
7 airspace that are greater than, or in conflict with, any restrictions imposed
8 by the federal aviation administration;

9 (7) establish or enforce regulations or procedures for radio frequency
10 signal strength or the adequacy of service quality;

11 (8) impose surety requirements, including bonds, escrow deposits,
12 letters of credit or any other type of financial surety to ensure that
13 abandoned or unused facilities can be removed, unless the authority
14 imposes similar requirements on other permits for other types of
15 commercial development or land uses, and any such instrument cannot
16 exceed a reasonable estimate of the direct cost of the removal of the
17 facility. If surety requirements are imposed, any such requirements shall be
18 competitively neutral, non-discriminatory, reasonable in amount and
19 commensurate with the historical record for local facilities and structures
20 that are abandoned;

21 (9) discriminate or create a preference on the basis of the ownership,
22 including ownership by the authority, of any property, structure or tower
23 when promulgating rules or procedures for siting wireless facilities or for
24 evaluating applications;

25 (10) impose any requirements or obligations regarding the
26 presentation, appearance or function of the wireless facilities and
27 equipment including, but not limited to, those relating to any kinds of
28 materials used and those relating to arranging, screening or landscaping of
29 facilities, if such regulations or obligations are unreasonable;

30 (11) impose any requirements that an applicant purchase, subscribe
31 to, use or employ facilities, networks or services owned, provided or
32 operated by an authority, in whole or in part, or by any entity in which the
33 authority has a competitive, economic, financial, governance or other
34 interest;

35 (12) impose environmental testing, sampling or monitoring
36 requirements that exceed federal law;

37 (13) impose any compliance measures for radio frequency emissions
38 or exposure from wireless facilities that comply with federal
39 communications commission rules for radio frequency;

40 (14) in conformance with 47 U.S.C. § 332(c)(7)(B)(iv), reject a
41 collocation application or modification application, in whole or in part,
42 based on perceived or alleged environmental effects of radio frequency
43 emissions or exposure;

1 (15) prohibit the placement of emergency power systems that comply
2 with federal and state environmental requirements;

3 (16) condition or require the approval of an application based on the
4 applicant's agreement to permit any wireless facilities provided or
5 operated, in whole or in part, by an authority or by any other entity to be
6 placed at, or collocated with, the applicant's wireless support structure;

7 (17) impose a setback or fall-zone requirement for a wireless support
8 structure that is different from a requirement that is imposed on other types
9 of commercial structures;

10 (18) prohibit, or have the effect of prohibiting, the provision of
11 personal wireless services or personal wireless service facilities or the
12 ability of any entity to provide any service in support of personal wireless
13 service facilities; or

14 (19) limit the duration of the approval of an application, except that
15 construction of the approved structure or facilities shall commence within
16 two years of final approval and shall be diligently pursued to completion.

17 (f) An applicant for a small cell network involving multiple
18 individual small cell facilities within the jurisdiction of a single authority
19 shall be permitted, upon request by the applicant, to file a consolidated
20 application and receive a single permit for the installation, construction,
21 maintenance and repair of a small cell network instead of filing separate
22 applications for each individual small cell facility. The authority shall
23 render a decision regarding small cell facilities that satisfy the authority's
24 requirements in a single administrative proceeding.

25 (g) (1) Within 150 calendar days of receiving an application for a new
26 wireless support structure and within 90 calendar days of receiving an
27 application for a substantial modification to an existing wireless support
28 structure or base station, or any other application for placement,
29 installation or construction of transmission equipment that does not
30 constitute an eligible facilities request as defined by 47 U.S.C. § 1455(a),
31 an authority shall: (A) Review the application in light of the application's
32 conformity with applicable local zoning regulations;

33 (B) make a final decision to approve or disapprove the application;
34 and

35 (C) advise the applicant in writing of the authority's final decision,
36 supported by substantial and competent evidence contained in a written
37 record and publicly released contemporaneously. If an authority denies an
38 application, there must be a reasonable basis for the denial. An authority
39 may not deny an application if such denial is discriminatory against the
40 wireless applicant with respect to the placement of the facilities of other
41 public utilities or wireless carriers.

42 (2) The number of days an authority has to act under this subsection
43 shall be calculated in accordance with any rules established by the federal

1 communications commission pursuant to 47 U.S.C. § 332(c)(7) for
2 calculating the time to act, when the time to act commences and the
3 circumstances under which the time to act may be tolled. Any request for
4 missing information regarding any of the prohibited considerations set
5 forth in this section or pursuant to applicable federal law shall not toll the
6 authority's time to act on the application.

7 (3) An application shall be deemed approved if an authority fails to
8 act on an application for a: (A) New wireless support structure within the
9 150 calendar days review period specified; or

10 (B) substantial modification to an existing wireless support structure
11 or base station or any other applications for placement, installation or
12 construction of transmission equipment that does not constitute an eligible
13 facilities request as defined by 47 U.S.C. § 1455(a) within the 90 calendar
14 days review period specified.

15 (4) An authority shall approve applications for eligible facilities
16 requests, as defined by 47 U.S.C. § 1455(a), within the time periods and
17 procedures established by federal law under 47 C.F.R. 1.40001.

18 (5) A party aggrieved by the final action of an authority, either by the
19 authority affirmatively denying an application or by the authority's
20 inaction, may bring an action for review in any court of competent
21 jurisdiction.

22 (h) An authority may not institute any moratorium on the filing,
23 consideration or approval of applications, permitting or the construction of
24 new wireless support structures, substantial modifications of wireless
25 support structures or collocations.

26 (i) Subject to the provisions of this section and applicable federal law,
27 an authority may continue to exercise zoning, land use, planning and
28 permitting authority within their territorial boundaries with regard to the
29 siting of new or the modification of wireless support structures, wireless
30 facilities, small cell facilities or utility poles, except that no authority shall
31 have or exercise any jurisdiction, authority or control over the
32 construction, installation or operation of any small cell facility or
33 distributed antennae system located in an interior structure or located on
34 privately-owned property or property not otherwise owned or controlled
35 by the authority.

36 Sec. 2. This act shall take effect and be in force from and after its
37 publication in the statute book.