

Testimony Before The
SENATE UTILITIES COMMITTEE

In Opposition of Senate Bill No. 401

Presented on behalf of the
Board of Johnson County Commissioners

By

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Mr. Chairman and Members of the Committee:

Thank you for the opportunity to submit written testimony in opposition of Senate Bill No. 401 (Bill), which proposes a new statutory act that will, among other things, (i) radically change the ability of local government to exercise regulatory zoning control pertaining to wireless facilities, thereby compromising the public's health, safety and welfare; and (ii) conflicts with and is contrary to portions of exiting state law. The Board of Johnson County Commissioners is opposed to the Bill, and sets forth below its reasons and rational in support of its opposition.

A. Compromises Public Health, Safety and Welfare

Zoning authority has traditionally been a means by which local government can weigh and balance the desires of the applicant against the interest of protecting the public health, safety, and welfare. Up to now, that has been the case with municipal zoning regulations that regulate wireless facilities. This Bill is an attempt to alter that balance, by prohibiting municipalities from utilizing traditional zoning regulations that ensure the protection of the public. The Bill will therefore prohibit municipalities:

1. From requiring information to ensure the location of a wireless facility not only satisfies the technical requirements of the wireless provider, but is located such that it causes the least amount of detrimental impacts to surrounding property. See Bill, Page 6, Lines 27-33.
2. From adopting regulations for public safety communication towers, such as fire and police, that are different than those imposed on wireless carriers. Bill, Page 7, Lines 21-24.

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3. From requiring that wireless towers be constructed such that they collapse upon its base, rather than falling a distance equal to the height of the structure, thereby putting lives at risk and damaging nearby property; and from requiring setback or fall zone requirements. Bill, Page 6, Lines 39-43 and Page 8, Lines 7-9.
4. From adopting any height restrictions that are in conflict with restrictions imposed by the FAA. For example, if the FAA allows 1,000 foot structures if located more than 5 miles from an airport runway, a municipality could not prohibit, for aesthetic reasons, a 1,000 foot wireless tower in the downtown area of the city if otherwise allowed by the FAA. Bill, Page 7, Lines 6-8.
5. From requiring screening or landscaping of wireless facilities, primarily accessory equipment, that may have a negative aesthetic impact on nearby property. Bill, Page 7, Lines 25-29.
6. From requiring limitations on the term of permits, and instead mandating that they be approved for an unlimited duration, for perpetuity, without a subsequent opportunity for review at a later date should unforeseen circumstances arise. Bill, Page 8, Lines 14-16.

B. Conflicts with Existing State Law

Kansas has already adopted an act, K.S.A. 17-1901 et seq., that regulates the ability of telecommunication carriers to use and occupy the public right-of-way (Row Act). The Bill creates a competing statutory act that facially varies from and conflicts with the Row Act, thereby causing needless confusion. The Bill should acknowledge the Row Act and conform to its provisions. Similarly, Kansas has also adopted the Video Competition Act, K.S.A. 2014 Supp. 12-2021 et seq., (VCA). Because the Bill allows for the installation of accessory equipment in the public right-of-way, the Bill appears to violate and be in conflict with the provisions of the VCA. These apparent inconsistencies should be remedied.

C. Miscellaneous

1. The Bill creates new definitions of industry terms that conflict with some of those currently utilized in applicable federal law, thereby causing unnecessary confusion.
2. The Bill inappropriately links the regulation of wireless facilities with that of "other types of commercial development" and/or "public or municipally-owned utilities", by requiring they be regulated in a similar manner. See, for example, Bill, Page 7, Lines 11-15 and Page 4, Lines 38-43. Wireless facilities and towers are distinct land uses that are different than other commercial development, such as retail stores, and should not be regulated in the same manner, such as surety requirements for unused structures. Similarly, a wireless carrier should not demand equal treatment regarding fees if a municipality does not charge itself a fee to locate in its own right-of-way. Bill, Page 4, Lines 38-43.

We appreciate your consideration of our concerns, and ask that you oppose the adoption of Senate Bill No. 401. Thank you.