

SB 401 AMENDMENT

Proposed Amendment
2/17/2016
Prepared by M Sterling
Revisor of Statutes Office

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1 appropriate and timely performance in the construction and maintenance
2 of facilities located in the public right-of-way.

3 (o) A city may not assess any additional fees against providers for use
4 or occupancy of the public right-of-way other than those specified in
5 subsection (n).

6 (p) This act may not be construed to affect any valid taxation of a
7 provider's facilities or services.

8 (q) Providers shall indemnify and hold the city and its officers and
9 employees harmless against any and all claims, lawsuits, judgments, costs,
10 liens, losses, expenses, fees (including to include reasonable attorney fees
11 and costs of defense), proceedings, actions, demands, causes of action,
12 liability and suits of any kind and nature, including personal or bodily
13 injury (including or death), property damage or other harm for which
14 recovery of damages is sought, to the extent that it is found by a court of
15 competent jurisdiction to be caused by the negligence of the provider, any
16 agent, officer, director, representative, employee, affiliate or subcontractor
17 of the provider, or their respective officers, agents, employees, directors or
18 representatives, while installing, repairing or maintaining facilities in a
19 public right-of-way. The indemnity provided by this subsection does not
20 apply to any liability resulting from the negligence of the city, its officers,
21 employees, contractors or subcontractors. If a provider and the city are
22 found jointly liable by a court of competent jurisdiction, liability shall be
23 apportioned comparatively in accordance with the laws of this state
24 without, however, waiving any governmental immunity available to the
25 city under state law and without waiving any defenses of the parties under
26 state or federal law. This section is solely for the benefit of the city and
27 provider and does not create or grant any rights, contractual or otherwise,
28 to any other person or entity.

29 (r) A provider or city shall promptly advise the other in writing of any
30 known claim or demand against the provider or the city related to or
31 arising out of the provider's activities in a public right-of-way.

32 (s) Nothing contained in K.S.A. 17-1902, and amendments thereto, is
33 intended to affect the validity of any franchise fees collected pursuant to
34 state law or a city's home rule authority.

35 (t) Any ordinance enacted prior to the effective date of this act
36 governing the use and occupancy of the public right-of-way by a provider
37 shall not conflict with the provisions of this act.

38 Sec. 3. K.S.A. 17-1902 is hereby repealed.

39 Sec. 2. 4. This act shall take effect and be in force from and after
40 October 1, 2016, and its publication in the statute book.

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1 subsection, and may recover its damages, including reasonable attorney
2 fees, if the provider is found liable by a court of competent jurisdiction.
3 (l) If requested by a city, in order to accomplish construction and
4 maintenance activities directly related to improvements for the health,
5 safety and welfare of the public, a provider shall promptly remove its
6 facilities from the public right-of-way or shall relocate or adjust its
7 facilities within the public right-of-way at no cost to the political
8 subdivision. Such relocation or adjustment shall be completed as soon as
9 reasonably possible within the time set forth in any request by the city for
10 such relocation or adjustment. Any damages suffered by the city or its
11 contractors as a result of such provider's failure to timely relocate or adjust
12 its facilities shall be borne by such provider.
13 (m) No city shall create, enact or erect any unreasonable condition,
14 requirement or barrier for entry into or use of the public rights-of-way by a
15 provider.
16 (n) A city may assess any of the following fees against a provider, for
17 use and occupancy of the public right-of-way, provided that such fees
18 reimburse the city for its reasonable, actual and verifiable costs of
19 managing the city right-of-way, and are imposed on all such providers in a
20 nondiscriminatory and competitively neutral manner:
21 (1) A permit fee in connection with issuing each construction permit
22 to set fixtures in the public right-of-way within that city as provided in
23 K.S.A. 17-1901, and amendments thereto, to compensate the city for
24 issuing, processing and verifying the permit application;
25 (2) an excavation fee for each street or pavement cut to recover the
26 costs associated with construction and repair activity of the provider, their
27 assigns, contractors and/or subcontractors with the exception of
28 construction and repair activity required pursuant to subsection (l) of this
29 act related to construction and maintenance activities directly related to
30 improvements for the health, safety and welfare of the public; provided,
31 however, imposition of such excavation fee must be based upon a regional
32 specific or other appropriate study establishing the basis for such costs
33 which takes into account the life of the city street prior to the construction
34 or repair activity and the remaining life of the city street. Such excavation
35 fee is expressly limited to activity that results in an actual street or
36 pavement cut;
37 (3) inspection fees to recover all reasonable costs associated with city
38 inspection of the work of the provider in the right-of-way;
39 (4) repair and restoration costs associated with repairing and restoring
40 the public right-of-way because of damage caused by the provider, its
41 assigns, contractors, and/or subcontractors in the right-of-way; and
42 (5) a performance bond, in a form acceptable to the city, from a
43 surety licensed to conduct surety business in the state of Kansas, insuring

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1 governing body's denial of a provider's request to use or occupy a specific
2 portion of the public right-of-way may be appealed to a district court.

3 (g) A provider shall comply with all laws and rules and regulations
4 governing the use of public right-of-way.

5 (h) A city may not impose the following regulations on providers:

6 (1) Requirements that particular business offices or other
7 telecommunications facilities be located in the city;

8 (2) requirements for filing applications, reports and documents that
9 are not reasonably related to the use of a public right-of-way or this act;

10 (3) requirements for city approval of transfers of ownership or control
11 of the business or assets of a provider's business, except that a city may
12 require that such entity maintain current point of contact information and
13 provide notice of a transfer within a reasonable time; and

14 (4) requirements concerning the provisioning of or quality of
15 customer services, facilities, equipment or goods in-kind for use by the
16 city, political subdivision or any other provider or public utility.

17 (i) Unless otherwise required by state law, in the exercise of its lawful
18 regulatory authority, a city shall promptly, and in no event more than 30
19 days, with respect to facilities in the public right-of-way, process each
20 valid and administratively complete application of a provider for any
21 permit, license or consent to excavate, set poles, locate lines, construct
22 facilities, make repairs, effect traffic flow, obtain zoning or subdivision
23 regulation approvals, or for other similar approvals, and shall make
24 reasonable effort not to unreasonably delay or burden that provider in the
25 timely conduct of its business. The city shall use its best reasonable efforts
26 to assist the provider in obtaining all such permits, licenses and other
27 consents in an expeditious and timely manner.

28 (j) If there is an emergency necessitating response work or repair, a
29 provider may begin that repair or emergency response work or take any
30 action required under the circumstances, provided that the provider
31 notifies the affected city promptly after beginning the work and timely
32 thereafter meets any permit or other requirement had there not been such
33 an emergency.

34 (k) A city may require a provider to repair all damage to a public
35 right-of-way caused by the activities of that provider, or of any agent
36 affiliate, employee, or subcontractor of that provider, while occupying,
37 installing, repairing or maintaining facilities in a public right-of-way and
38 to return the right-of-way, to its functional equivalence before the damage
39 pursuant to the reasonable requirements and specifications of the city. If
40 the provider fails to make the repairs required by the city, the city may
41 effect those repairs and charge the provider the cost of those repairs. If a
42 city incurs damages as a result of a violation of this subsection, then the
43 city shall have a cause of action against a provider for violation of this

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1 maintain and operate poles, conduit, cable, switches and related
2 appurtenances and facilities along, across, upon and under any public
3 right-of-way in this state. Such appurtenances and facilities shall be so
4 constructed and maintained as not to obstruct or hinder the usual travel or
5 public safety on such public ways or obstruct the legal use by other
6 utilities.
7 (c) Nothing in this act shall be interpreted as granting a provider the
8 authority to construct, maintain or operate any facility or related
9 appurtenance on property owned by a city outside of the public right-of-
10 way.
11 (d) The authority of a provider to use and occupy the public right-of-
12 way shall always be subject and subordinate to the reasonable public
13 health, safety and welfare requirements and regulations of the city. A city
14 may exercise its home rule powers in its administration and regulation
15 related to the management of the public right-of-way provided that any
16 such exercise must be competitively neutral and may not be unreasonable
17 or discriminatory. Nothing herein shall be construed to limit the authority
18 of cities to require a competitive infrastructure provider to enter into a
19 contract franchise ordinance.
20 (e) The city shall have the authority to prohibit the use or occupation
21 of a specific portion of public right-of-way by a provider due to a
22 reasonable public interest necessitated by public health, safety and welfare
23 so long as the authority is exercised in a competitively neutral manner and
24 is not unreasonable or discriminatory. A reasonable public interest shall
25 include the following:
26 (1) The prohibition is based upon a recommendation of the city
27 engineer, is related to public health, safety and welfare and is
28 nondiscriminatory among providers, including incumbent providers;
29 (2) the provider has rejected a reasonable, competitively neutral and
30 nondiscriminatory justification offered by the city for requiring an
31 alternate method or alternate route that will result in neither unreasonable
32 additional installation expense nor a diminution of service quality;
33 (3) the city reasonably determines, after affording the provider
34 reasonable notice and an opportunity to be heard, that a denial is necessary
35 to protect the public health and safety and is imposed on a competitively
36 neutral and nondiscriminatory basis; or
37 (4) the specific portion of the public right-of-way for which the
38 provider seeks use and occupancy is environmentally sensitive as defined
39 by state or federal law or lies within a previously designated historic
40 district as defined by local, state or federal law.
41 (f) A provider's request to use or occupy a specific portion of the
42 public right-of-way shall not be denied without reasonable notice and an
43 opportunity for a public hearing before the city governing body. A city

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1 inaction, may bring an action for review in any court of competent
2 jurisdiction.

3 (h)(i) An authority may not institute any moratorium on the filing,
4 consideration or approval of applications, permitting or the construction of
5 new wireless support structures, substantial modifications of wireless
6 support structures or collocations.

7 (i)(j) Subject to the provisions of this section and applicable federal
8 law, an authority may continue to exercise zoning, land use, planning and
9 permitting authority within their the authority's territorial boundaries with
10 regard to the siting of new or the modification of wireless support
11 structures, wireless facilities, small cell facilities or utility poles, except
12 that no authority shall have or exercise any zoning or siting jurisdiction,
13 authority or control over the construction, installation or operation of any
14 small cell facility or distributed antennae system located in an interior
15 structure or located on privately-owned property or property not otherwise
16 owned or controlled by the authority upon the site of any campus, stadium
17 or athletic facility.

18 Sec. 2. K.S.A. 17-1902 is hereby amended to read as follows: 17-
19 1902. (a) (1) "Public right-of-way" means only the area of real property in
20 which the city has a dedicated or acquired right-of-way interest in the real
21 property. It shall include the area on, below or above the present and future
22 streets, alleys, avenues, roads, highways, parkways or boulevards
23 dedicated or acquired as right-of-way. The term does not include the
24 airwaves above a right-of-way with regard to wireless telecommunications
25 or other nonwire telecommunications or broadcast service, easements
26 obtained by utilities or private easements in platted subdivisions or tracts.

27 (2) "Provider" means a local exchange carrier as defined in
28 subsection (h) of K.S.A. 66-1,187, and amendments thereto, or a
29 telecommunications carrier as defined in subsection (m) of K.S.A. 66-
30 1,187, and amendments thereto, or a video service provider as defined in
31 K.S.A. 2007 2015 Supp. 12-2022, and amendments thereto, but does not
32 include an applicant as defined in section 1, and amendments thereto.

33 (3) "Telecommunications services" means providing the means of
34 transmission, between or among points specified by the user, of
35 information of the user's choosing, without change in the form or content
36 of the information as sent and received.

37 (4) "Competitive infrastructure provider" means an entity which
38 leases, sells or otherwise conveys facilities located in the right-of-way, or
39 the capacity or bandwidth of such facilities for use in the provision of
40 telecommunications services, internet services or other intrastate and
41 interstate traffic, but does not itself provide services directly to end users
42 within the corporate limits of the city.

43 (b) Any provider shall have the right pursuant to this act to construct,

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1 supported by substantial and competent evidence contained in a written
2 record and publicly released issued contemporaneously. If an authority
3 denies an application, there must be a reasonable basis for the denial. An
4 authority may not deny an application if such denial is discriminatory
5 discriminates against the wireless applicant with respect to the placement
6 of the facilities of other public utilities investor-owned utilities, wireless
7 service providers, wireless infrastructure providers or wireless carriers.
8 (2) The number of days an authority has to act under this subsection
9 shall be calculated in accordance with any rules established by the federal
10 communications commission pursuant to 47 U.S.C. § 332(c)(7) for
11 calculating the time to act, when the time to act commences and the
12 circumstances under which the time to act may be tolled. Any request for
13 missing information regarding any of the prohibited considerations set
14 forth in this section or pursuant to applicable federal law shall not toll the
15 authority's time to act on the application. (A) The time period for
16 approval of applications shall begin when the application is submitted and
17 may be tolled within the first 30 days after the submission of the
18 application if the authority notifies the applicant that such application is
19 incomplete, identifies all missing information and specifies the code
20 provision, ordinance, application instruction or otherwise publicly-stated
21 procedures that require the information to be submitted.
22 (B) The time period for approval of applications shall begin running
23 again when the applicant provides the necessary supplemental information.
24 Additionally, the time period for approval of applications may be tolled by
25 the express agreement in writing by both the applicant and the authority.
26 (3) An application shall be deemed approved if an authority fails to
27 act on an application for a: (A) New wireless support structure within the
28 150 calendar days review period specified; or
29 (B) substantial modification to an existing wireless support structure
30 or base station or any other applications for placement, installation or
31 construction of transmission equipment that does not constitute an eligible
32 facilities request as defined by 47 U.S.C. § 1455(a) within the 90 calendar
33 days review period specified.
34 (4) An authority shall approve applications for eligible facilities
35 requests, as defined by 47 U.S.C. § 1455(a), within the time periods and
36 60 days according to the procedures established by federal law under 47
37 C.F.R. 1.40001.
38 (5) An application shall be deemed approved once an applicant has
39 provided notice to the authority that the applicable time periods provided
40 in this section have lapsed.
41 (5) Within 30 days of the notice provided pursuant to paragraph
42 (h)(5), a party aggrieved by the final action of an authority, either by the
43 authority affirmatively denying an application or by the authority's

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1 violate local health and safety requirements and local noise control
2 ordinances, but no local regulations shall prevent the provision of
3 emergency power during an actual emergency;

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

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

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

16 (19) (18) limit, for less than 10 years, the duration of the approval of
17 an application, except that. Any renewals shall be negotiated in good faith.
18 Construction of the approved structure or facilities shall commence within
19 two years, one year of final approval and shall be diligently pursued to
20 completion.

21 (f) (g) An applicant for a small cell network involving multiple no
22 greater than 25 individual small cell facilities of a substantially similar
23 design within the jurisdiction of a single authority shall be permitted, upon
24 request by the applicant, to file a consolidated application and receive a
25 single permit for the installation, construction, maintenance and repair of a
26 small cell network instead of filing separate applications for each
27 individual small cell facility, except that the authority may require a
28 separate application for any small cell facilities that are not of a
29 substantially similar design. The authority shall render a decision no later
30 than 60 days after the submission of an application regarding small cell
31 facilities that satisfy satisfies the authority's requirements in a single
32 administrative proceeding.

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

41 (B) make a final decision to approve or disapprove the application;
42 and

43 (C) advise the applicant in writing of the authority's final decision,

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1 (8) impose surety requirements, including bonds, escrow deposits,
2 letters of credit or any other type of financial surety to ensure that
3 abandoned or unused facilities can be removed, unless the authority
4 imposes similar requirements on other permits for other types of
5 commercial development or land uses, and any such instrument cannot
6 exceed a reasonable estimate of the direct cost of the removal of the
7 facility. If surety requirements are imposed, any such requirements shall be
8 competitively neutral, non-discriminatory, reasonable in amount and
9 commensurate with the historical record for local facilities and structures
10 that are abandoned;
11 (9) discriminate or create a preference on the basis of the ownership,
12 including ownership by the authority, of any property, structure or tower,
13 base station or wireless support structure when promulgating rules or
14 procedures for siting wireless facilities or for evaluating applications or
15 require the placement of wireless support structures or wireless facilities
16 on property owned or leased by the authority, but an authority may
17 develop a process to encourage the placement of wireless support
18 structures or wireless facilities on property owned or leased by the
19 authority, including an expedited approval process. Nothing in this
20 subsection shall be construed to hinder or restrict the siting of public safety
21 communications towers, including, but not limited to, police and fire;
22 (10) impose any unreasonable requirements or obligations regarding
23 the presentation, appearance or function of the wireless facilities and
24 equipment including, but not limited to, those relating to any kinds of
25 materials used and those relating to arranging, screening or landscaping of
26 facilities, if such regulations or obligations are unreasonable;
27 (11) impose any requirements that an applicant purchase, subscribe
28 to, use or employ facilities, networks or services owned, provided or
29 operated by an authority, in whole or in part, or by any entity in which the
30 authority has a competitive, economic, financial, governance or other
31 interest;
32 (12) impose environmental testing, sampling or monitoring
33 requirements that exceed federal law;
34 (13) impose any compliance measures for radio frequency emissions
35 or exposure from wireless facilities that comply with exceed the
36 requirements of the federal communications commission rules for radio
37 frequency;
38 (14) in conformance with 47 U.S.C. § 332(c)(7)(B)(iv), reject a
39 collocation application or modification an application, in whole or in part,
40 based on perceived or alleged environmental effects of radio frequency
41 emissions or exposure;
42 (15) prohibit the placement use of emergency power systems that
43 comply with federal and state environmental requirements and do not

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1 (1) Require an applicant to submit information about, or evaluate an
2 applicant's business decisions with respect to, the applicant's designed
3 service, customer demand for service or quality of the applicant's service
4 to or from a particular area or site. An authority may require an applicant
5 filing an application for a new wireless support structure to state in such
6 application that the applicant conducted an analysis of available
7 collocation opportunities on existing wireless support structures within the
8 same search ring defined by the applicant, solely for the purpose of
9 confirming that an applicant undertook such analysis;

10 (2) require information that concerns the specific need for the
11 wireless support structure, including if the service to be provided from the
12 wireless support structure is to add additional wireless coverage or
13 additional wireless capacity. An authority may not require proprietary,
14 confidential or other business information to justify the need for the new
15 wireless support structure, including propagation maps and
16 telecommunications traffic studies;

17 (3) evaluate an application based on the availability of other potential
18 locations for the placement of wireless support structures or wireless
19 facilities including, but not limited to, the option to collocate, instead of
20 construct, a new wireless support structure or for substantial modifications
21 of a support structure;

22 (4) dictate the type of wireless facilities, infrastructure or
23 transmission equipment or technology to be used by the applicant
24 including, but not limited to, requiring an applicant to construct a
25 distributed antenna system or small cell facility in lieu of constructing a
26 new wireless support structure or discriminate between different types of
27 infrastructure or technology;

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

33 (6) impose any restrictions at or near airports or military installations
34 with respect to objects in navigable airspace height limitations, proximity
35 to airports or markings and lighting on wireless support structures or base
36 stations that are greater than, or in conflict with, any restrictions imposed
37 by the federal aviation administration, except that this paragraph shall not
38 be construed so as to impact any existing height restrictions adopted by an
39 authority as of the effective date of this section on wireless support
40 structures or base stations located at or near airport or military
41 installations;

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

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1 highway right-of-way under applicable federal and state law.
2 (e) (1) An authority may enter into a lease with an applicant for the
3 applicant's use of public lands, buildings and facilities. When entering into
4 a lease for use of publicly owned lands, an authority shall offer leases or
5 contracts for applicants to use publicly-owned lands that are at least 20
6 years in duration, unless otherwise agreed to by both the applicant and the
7 authority, and at market rates. Any lease renewals shall be negotiated in
8 good faith. Due to the benefit of increased broadband and wireless services
9 to the citizens of the authority, an authority may choose not to charge for
10 the placement of wireless facilities on public lands. If an authority does
11 charge, any such charges for use of publicly-owned lands and facilities
12 must be competitively neutral with regard to other users of the publicly-
13 owned lands and facilities, including public service or municipally-owned
14 utilities any investor-owned utilities or municipally-owned commercial
15 broadband providers, may not be unreasonable or discriminatory and may
16 not violate any applicable state or federal law, rule or regulation.
17 (2) If the applicant and the authority do not agree on the applicable
18 market rate for the use or lease of public land and are unable to agree on a
19 process to determine the applicable market rate for any such public land,
20 then the market rate will be determined by a panel of three appraisers. The
21 panel will consist of one appraiser appointed by each party and a third
22 appraiser selected by the two appointed appraisers. Each appraiser will
23 independently appraise the appropriate lease rate and the market rate shall
24 be set at the mean between the highest and lowest market rates among all
25 three independent appraisals, unless the mean between the highest and
26 lowest appraisals is greater than or less than 10% of the appraisal of the
27 third appraiser chosen by the parties' appointed appraisers, in which case
28 the third appraisal will determine the rate for the lease. The appraisal
29 process shall be concluded within 150 calendar days from the date the
30 applicant first tenders a proposed lease rate to the authority. Each party
31 will bear the cost of the party's own appointed appraiser, and the parties
32 shall share equally the cost of the third appraiser chosen by the two
33 appointed appraisers.
34 (3) Nothing in this subsection shall be construed to prevent wireless
35 structures and wireless facilities from being located on real property,
36 structures or facilities under the ownership, control or jurisdiction of the
37 secretary of transportation in accordance with reasonable policies and
38 procedures adopted by the secretary of transportation under applicable
39 federal and state law.
40 (3) (4) This subsection (e) shall not apply to public rights-of-way
41 governed by subsection (d).
42 (f) To ensure uniformity across the state with respect to consideration
43 of every application, an authority shall not:

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1 advance notice. If any such relocation or adjustment is for private benefit,
2 the provider shall not bear the cost of the relocation or adjustment to the
3 extent of such private benefit and the provider shall not be obligated to
4 commence the relocation or adjustment until receipt of funds for such
5 relocation or adjustment. The provider shall have no liability for any
6 delays caused by a failure to receive funds for the cost of such relocation
7 or adjustment and the authority shall have no obligation to collect such
8 funds.

9 (H) Wireless services providers and wireless infrastructure providers
10 shall indemnify and hold the authority and its officers and employees
11 harmless against any and all claims, lawsuits, judgments, costs, liens,
12 losses, expenses, fees to include reasonable attorney fees and costs of
13 defense, proceedings, actions, demands, causes of action, liability and suits
14 of any kind and nature, including personal or bodily injury or death,
15 property damage or other harm for which recovery of damages is sought,
16 to the extent that it is found by a court of competent jurisdiction to be
17 caused by the negligence of the wireless services provider or wireless
18 infrastructure provider, any agent, officer, director, representative,
19 employee, affiliate or subcontractor of the provider, or their respective
20 officers, agents, employees, directors or representatives, while installing,
21 repairing or maintaining facilities in a public right-of-way. The indemnity
22 provided by this paragraph does not apply to any liability resulting from
23 the negligence of an authority, its officers, employees, contractors or
24 subcontractors. If a provider and the authority are found jointly liable by a
25 court of competent jurisdiction, liability shall be apportioned
26 comparatively in accordance with the laws of this state, without waiving
27 any governmental immunity available to the authority under state law and
28 without waiving any defenses of the parties under state or federal law. This
29 paragraph is solely for the benefit of the authority and the wireless services
30 provider or wireless infrastructure provider and does not create or grant
31 any rights, contractual or otherwise, to any other person or entity.

32 (I) A wireless services provider or wireless infrastructure provider or
33 authority shall promptly advise the other in writing of any known claim or
34 demand against the provider or the authority related to or arising out of the
35 provider's activities in a public right-of-way.

36 (C) (3) The provisions of this subsection shall not apply or give any
37 authority to or affect any authority's jurisdiction over the activities of
38 wireless services providers or wireless infrastructure providers in public
39 utility easements, private easements or on privately owned property.

40 (4) Nothing in this subsection shall be construed to prevent wireless
41 structures and wireless facilities from being located on state, federal or
42 interstate highway right-of-way in accordance with reasonable policies and
43 procedures adopted by the manager of the state, federal and interstate

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proof satisfactory to the wireless services provider before any payment
may become due. Nothing in this subsection (d) shall be interpreted as
granting a wireless services provider or wireless infrastructure provider the
right to construct, maintain or operate any facility or related appurtenance
on property owned by the authority outside of the public right-of-way.
(C) The right of a wireless services provider or wireless infrastructure
provider to use and occupy the public right-of-way shall always be subject
and subordinate to the reasonable public health, safety and welfare
requirements and regulations of the authority. An authority may exercise
its home rule powers in its administration and regulation related to the
management of the public right-of-way provided that any such exercise
must be competitively neutral and may not be unreasonable or
discriminatory.
(D) The authority shall have the right to prohibit the use or
occupation of a specific portion of public right-of-way by a provider due
to a reasonable public interest necessitated by public health, safety and
welfare so long as such interest is exercised in a competitively neutral
manner and is not unreasonable or discriminatory.
(E) A wireless services provider or wireless infrastructure provider
shall comply with all laws and rules and regulations governing the use of
public right-of-way.
(F) An authority may require a wireless services provider or wireless
infrastructure provider to repair all damage to a public right-of-way caused
by the activities of that provider, or of any agent, affiliate, employee or
subcontractor of that provider, while occupying, installing, repairing or
maintaining facilities in a public right-of-way and to return the right-of-
way to its functional equivalence before the damage pursuant to the
reasonable requirements and specifications of the authority. If a wireless
services provider or wireless infrastructure provider fails to make the
repairs required by an authority, the authority may effect those repairs and
charge the provider the reasonable cost of those repairs.
(G) If requested by an authority, in order to accomplish construction
and maintenance activities directly related to improvements for the health,
safety and welfare of the public, a wireless services provider or wireless
infrastructure provider shall relocate or adjust its facilities within the
public right-of-way at no cost to the authority, as long as such request
similarly binds all users of such right-of-way. Such relocation or
adjustment shall be completed as soon as reasonably possible within the
time set forth in any written request by the authority for such relocation or
adjustment, as long as the authority provides the wireless services provider
or wireless infrastructure provider with a minimum of 180-days advance
written notice to comply with such relocation or adjustment, unless
circumstances beyond the authority's control require a shorter period of

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1 ~~modification~~, small cell facility application or distributed antenna system
2 application; or

3 ~~(C) \$1,000~~ (B) \$2,000 for an application for a new wireless support
4 structure or for a ~~collocation application that is a~~ substantial modification
5 of a wireless support structure.

6 (d) (1) An authority may not charge a wireless services provider or
7 wireless infrastructure provider any rental, license or other fee to locate a
8 wireless facility or wireless support structure on any public right-of-way
9 controlled by the authority, if the authority does not charge other
10 telecommunications or video service providers, alternative infrastructure
11 or wireless services providers or any ~~public or municipally-owned utilities~~
12 ~~investor-owned utilities or municipally-owned commercial broadband~~
13 ~~providers~~ for the use of public right-of-way. If an authority does assess a
14 charge, including a charge or rental fee for attachment to the facilities
15 owned by the authority in the right-of-way, any such charge must be
16 competitively neutral, with regard to other users of the public right-of-way,
17 including ~~public or municipally-owned utilities~~ investor-owned utilities or
18 ~~municipally-owned commercial broadband providers~~, and may not be
19 unreasonable or discriminatory or violate any applicable state or federal
20 law, rule or regulation.

21 (2) (A) Subject to the provisions of this subsection, a wireless
22 services provider ~~or wireless infrastructure provider, subject to an~~
23 ~~application~~, shall have the right to construct, maintain and operate wireless
24 support structures, ~~utility poles~~, small cell wireless facilities or distributed
25 antenna systems along, across, upon ~~or~~, under ~~or above~~ the public right-
26 of-way. ~~Such facilities shall be so constructed and maintained so as not to~~
27 ~~obstruct or hinder the usual travel or public safety on such public right-of-~~
28 ~~ways or obstruct the legal use of such public right-of-ways by other~~
29 ~~utilities. In the exercise of an authority's administration and regulation~~
30 ~~related to the management of the public right-of-way.~~ The authority must
31 be competitively neutral with regard to other users of the public right-of-
32 way, may not be unreasonable or discriminatory and may not violate any
33 applicable state or federal law, rule or regulation.

34 (B) ~~An authority may require a wireless services provider to repair all~~
35 ~~damage to a public right-of-way caused by the activities of the wireless~~
36 ~~services provider, while occupying, installing, repairing or maintaining~~
37 ~~wireless facilities in a public right-of-way and to return the right-of-way to~~
38 ~~its functional equivalence before the damage, pursuant to the~~
39 ~~competitively neutral, reasonable requirements and specifications of the~~
40 ~~authority. If the wireless services provider fails to make the repairs~~
41 ~~required by the authority within a reasonable time after written notice, the~~
42 ~~authority may effect those repairs and charge the provider the reasonable~~
43 ~~cost of those repairs, provided such costs are subject to substantiation by~~

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1 distribution or transmission of electrical service.
2 (18) (21) "Utility pole" means a structure owned or operated by a
3 public utility as defined in K.S.A. 66-104, and amendments thereto, a
4 municipality as defined in K.S.A. 75-6102, and amendments thereto, or an
5 electric cooperative as defined in K.S.A. 2015 Supp. 17-4652, and
6 amendments thereto, that is designed specifically for and used to carry
7 lines, cables or wires for telecommunications, cable, electricity or to
8 provide lighting.
9 (19) (22) "Water tower" means a water storage tank or a standpipe, or
10 an elevated tank situated on a support structure that was originally
11 constructed for use as a reservoir or facility to store or deliver water.
12 (20) (23) "Wireless services provider" means a provider of wireless
13 services.
14 (c) (1) An authority shall not charge an application fee, consulting fee
15 or other fee associated with the submission, review, processing and
16 approval of an application that is not required for similar types of
17 commercial development other wireless infrastructure providers or
18 wireline telecommunications or broadband providers within the authority's
19 jurisdiction.
20 (2) An authority shall only assess fees or charges for the actual costs
21 relating to the granting or processing of an application that are directly
22 incurred by the authority and the authority shall not charge any market-
23 based or value-based fees for the processing of an application. Such fees
24 and charges shall be reasonably related in time to the occurrence of such
25 costs.
26 (3) Any fee assessed by an authority may not include any travel
27 expenses incurred by a third party in the party's review of an application or
28 any direct payment or reimbursement of third-party fees charged on a
29 contingency basis or a result-based arrangement. In any dispute of a fee or
30 charge, the authority shall have the burden of proving that the fee or
31 charge is reasonably related to the direct costs incurred by the authority. An
32 authority or any third-party entity shall not include any travel expenses
33 incurred in the review of an application for more than one trip per
34 application to the authority's jurisdiction and an applicant shall not be
35 required to pay or reimburse an authority for consultant or other third-
36 party fees based on a contingency-based or results-based arrangement.
37 Any travel expenses included must be reasonable and directly related to
38 the application.
39 (4) The total charges and fees shall be the lesser of the amount
40 charged assessed by the authority for: (A) A building permit for any other
41 type of commercial development or land use development; shall not
42 exceed:
43 (B) (A) \$500 for a collocation application, that is not a substantial

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1 change, established by the federal communications commission pursuant
2 to 47 C.F.R. 1.40001.

3 (14) (16) "Transmission equipment" means equipment that facilitates
4 transmission for a wireless communications service licensed or authorized
5 by the federal communications commission including, but not limited to,
6 radio transceivers, antennas, coaxial or fiber optic cable and regular and
7 backup power supply. "Transmission equipment" includes equipment
8 associated with wireless communications services including, but not
9 limited to, private, broadcast and public safety services such as wireless
10 local area network services, and services utilizing a set of specifications
11 developed by the institute of electrical and electronics engineers for
12 interface between a wireless client and a base station or between two
13 wireless clients, as well as unlicensed wireless services and fixed wireless
14 services, such as microwave backhaul.

15 (15) (17) "Wireless facility" means the set of equipment and network
16 components used to provide wireless data and wireless
17 telecommunications services, exclusive of the underlying wireless support
18 structure, including antennas, transmitters, receivers, base stations, power
19 supplies, cabling and accessory equipment equipment at a fixed location
20 that enables wireless communications between user equipment and a
21 communications network, including, but not limited to: (A) Equipment
22 associated with wireless services such as private, broadcast and public
23 safety services, as well as unlicensed wireless services and fixed wireless
24 services such as microwave backhaul; and

25 (B) radio transceivers, antennas, coaxial or fiber-optic cable, regular
26 and backup power supplies and comparable equipment, regardless of
27 technological configuration.

28 "Wireless facility" does not mean any wired connections from a
29 wireless support structure or base station to a hub or switching location.

30 (16) (18) "Wireless Services" means "personal wireless services" and
31 "personal wireless service facilities" as defined in 47 U.S.C. § 332(c)(7)
32 (C), including commercial mobile services as defined in 47 U.S.C.
33 §332(d), provided to personal mobile communication devices through
34 wireless facilities or any fixed or mobile wireless services provided using
35 wireless facilities.

36 (19) "Wireless infrastructure provider" means any person that builds
37 or installs transmission equipment, wireless facilities or wireless support
38 structures, but that is not a wireless services provider.

39 (17) (20) "Wireless support structure" means a freestanding structure,
40 such as a monopole, guyed or self-supporting tower or other suitable
41 existing or alternative structure designed to support or capable of
42 supporting wireless facilities. "Wireless support structure" shall not
43 include any telephone or electrical utility pole or any tower used for the

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capacity, reliability and engineering, including, but not limited to, towers,

buildings and water towers.

(10) "Public lands, buildings and facilities" does not include any real

property, structures or facilities under the ownership, control or

jurisdiction of the secretary of transportation.

(11) "Public right-of-way" means only the area of real property in

which the authority has a dedicated or acquired right-of-way interest in the

real property. It shall include the area on, below or above the present and

future streets, alleys, avenues, roads, highways, parkways or boulevards

dedicated or acquired as right-of-way. "Public right-of-way" does not

include any state, federal or interstate highway right of way, which

generally includes the area that runs contiguous to, parallel with, and is

generally equidistant from the center of that portion of the highway

improved, designed or ordinarily used for public travel.

(10) (12) "Replacement" includes constructing a new wireless support

structure of comparable proportions and of comparable height or such

other height that would not constitute a substantial modification to an

existing structure in order to support wireless facilities or to accommodate

collocation and includes the associated removal of the pre-existing

wireless facilities, if any, or wireless support structure.

(11) (13) "Small cell facility" means a personal wireless service

facility as defined by the federal telecommunications act of 1996, as in

effect on the effective date of this act, that meets both of the following

qualifications: (A) Each antenna is located inside an enclosure of no more

than six cubic feet in volume, or in the case of an antenna that has exposed

elements, the antenna and all of the antenna's exposed elements could fit

within an imaginary enclosure of no more than six cubic feet; and

(B) primary equipment enclosures are no larger than 17 cubic feet in

volume, or facilities comprised of such higher limits as the federal

communications commission has excluded from review pursuant to 16

U.S.C. § 4701 54 U.S.C. § 306108. Associated equipment may be located in

outside the primary equipment, and if so located, is not to be included in

the calculation of equipment volume. Associated equipment includes, but

is not limited to, any electric meter, concealment, telecommunications

demarcation box, ground-based enclosures, back-up power systems,

grounding equipment, power transfer switch and cut-off switch and

vertical cable runs for the connection of power and other services.

(12) (14) "Small cell network" means a collection of interrelated

small cell facilities designed to deliver wireless service.

(13) (15) "Substantial modification" means a proposed modification

to an existing wireless support structure or base station that will

substantially change the physical dimensions of the wireless support

structure or base station under the objective standard for substantial

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

(C) for collocation of a wireless facility or replacement of a wireless facility on an existing structure or utility pole.

(5) "Authority" means any governing body, board, agency, office or commission of a municipality, city, county or the state that is authorized by law to make legislative, quasi judicial or administrative decisions concerning an application. "Authority" shall not include any school district as defined in K.S.A. 72-8301, and amendments thereto, or any court having jurisdiction over land use, planning or zoning or other decisions made by an authority.

(6) "Base station" means a station that includes a structure that currently supports or houses an antenna, transceiver, coaxial cables, power cables or other associated equipment at a specific site that is authorized to communicate with mobile stations, generally consisting of radio transceivers, antennas, coaxial cables, power supplies and other associated electronics. "Base station" does not mean a tower or equipment associated with a tower and does not include any structure that, at the time the relevant application is filed with the authority, does not support or house equipment described in this paragraph.

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

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

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

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

(9) "Existing structure" means a structure that exists at the time an application to collocate wireless facilities on a structure is filed with an authority. The term includes any structure that is capable of supporting currently supporting or designed to support the attachment of wireless facilities in compliance with applicable building codes, national electric safety codes and recognized industry standards for structural safety,

#2 Petrasen Brown Amendment

Proposed Amendment
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Session of 2016

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; amending K.S.A. 17-1902 and repealing the existing
4 section.

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 broadband and other advanced
10 technology and 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 services 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 and that submits an application.

33 (4) "Application" means a request submitted by an applicant to an
34 authority for: (A) To construct The construction of a new wireless support
35 structure or new wireless facility;