

**HOUSE****AMENDMENT NO. \_\_\_\_\_****Offered by \_\_\_\_\_****of \_\_\_\_\_**

1 AMEND House Committee Substitute for House Bill No. 345, Page 1,  
 2 Section A, Line 3, by inserting after all of said line the  
 3 following:

4 "67.1830. As used in sections 67.1830 to 67.1846, the  
 5 following terms shall mean:

6 (1) "Abandoned equipment or facilities", any equipment  
 7 materials, apparatuses, devices or facilities that are:

8 (a) Declared abandoned by the owner of such equipment or  
 9 facilities;

10 (b) No longer in active use, physically disconnected from a  
 11 portion of the operating facility or any other facility that is  
 12 in use or in service, and no longer capable of being used for the  
 13 same or similar purpose for which the equipment, apparatuses or  
 14 facilities were installed; or

15 (c) No longer in active use and the owner of such equipment  
 16 or facilities fails to respond within thirty days to a written  
 17 notice sent by a political subdivision;

18 (2) "Degradation", the actual or deemed reduction in the  
 19 useful life of the public right-of-way resulting from the  
 20 cutting, excavation or restoration of the public right-of-way;

21 (3) "Emergency", includes but is not limited to the  
 22 following:

23 (a) An unexpected or unplanned outage, cut, rupture, leak  
 24 or any other failure of a public utility facility that prevents  
 25 or significantly jeopardizes the ability of a public utility to  
 26 provide service to customers;

27 (b) An unexpected or unplanned outage, cut, rupture, leak  
 28 or any other failure of a public utility facility that results or  
 29 could result in danger to the public or a material delay or

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Action Taken \_\_\_\_\_ Date \_\_\_\_\_

1 hindrance to the provision of service to the public if the  
2 outage, cut, rupture, leak or any other such failure of public  
3 utility facilities is not immediately repaired, controlled,  
4 stabilized or rectified; or

5 (c) Any occurrence involving a public utility facility that  
6 a reasonable person could conclude under the circumstances that  
7 immediate and undelayed action by the public utility is necessary  
8 and warranted;

9 (4) "Excavation", any act by which earth, asphalt,  
10 concrete, sand, gravel, rock or any other material in or on the  
11 ground is cut into, dug, uncovered, removed, or otherwise  
12 displaced, by means of any tools, equipment or explosives, except  
13 that the following shall not be deemed excavation:

14 (a) Any de minimis displacement or movement of ground  
15 caused by pedestrian or vehicular traffic;

16 (b) The replacement of utility poles and related equipment  
17 at the existing general location that does not involve either a  
18 street or sidewalk cut; or

19 (c) Any other activity which does not disturb or displace  
20 surface conditions of the earth, asphalt, concrete, sand, gravel,  
21 rock or any other material in or on the ground;

22 (5) "Management costs" or "rights-of-way management costs",  
23 the actual costs a political subdivision reasonably incurs in  
24 managing its public rights-of-way, including such costs, if  
25 incurred, as those associated with the following:

26 (a) Issuing, processing and verifying right-of-way permit  
27 applications;

28 (b) Inspecting job sites and restoration projects;

29 (c) Protecting or moving public utility right-of-way user  
30 construction equipment after reasonable notification to the  
31 public utility right-of-way user during public right-of-way work;

32 (d) Determining the adequacy of public right-of-way  
33 restoration;

34 (e) Restoring work inadequately performed after providing  
35 notice and the opportunity to correct the work; and

36 (f) Revoking right-of-way permits.  
37

1 Right-of-way management costs shall be the same for all entities  
2 doing similar work. Management costs or rights-of-way management  
3 costs shall not include payment by a public utility right-of-way  
4 user for the use or rent of the public right-of-way, degradation  
5 of the public right-of-way or any costs as outlined in paragraphs  
6 (a) to (h) of this subdivision which are incurred by the  
7 political subdivision as a result of use by users other than  
8 public utilities, the attorneys' fees and cost of litigation  
9 relating to the interpretation of this section or section  
10 67.1832, or litigation, interpretation or development of any  
11 ordinance enacted pursuant to this section or section 67.1832, or  
12 attorneys' fees and costs in connection with issuing, processing,  
13 or verifying right-of-way permit or other applications or  
14 agreements, or the political subdivision's fees and costs related  
15 to appeals taken pursuant to section 67.1838. In granting or  
16 renewing a franchise for a cable television system, a political  
17 subdivision may impose a franchise fee and other terms and  
18 conditions permitted by federal law;

19 (6) "Managing the public right-of-way", the actions a  
20 political subdivision takes, through reasonable exercise of its  
21 police powers, to impose rights, duties and obligations on all  
22 users of the right-of-way, including the political subdivision,  
23 in a reasonable, competitively neutral and nondiscriminatory and  
24 uniform manner, reflecting the distinct engineering,  
25 construction, operation, maintenance and public work and safety  
26 requirements applicable to the various users of the public  
27 right-of-way, provided that such rights, duties and obligations  
28 shall not conflict with any federal law or regulation. In  
29 managing the public right-of-way, a political subdivision may:

30 (a) Require construction performance bonds or insurance  
31 coverage or demonstration of self-insurance at the option of the  
32 political subdivision or if the public utility right-of-way user  
33 has twenty-five million dollars in net assets and does not have a  
34 history of permitting noncompliance within the political  
35 subdivision as defined by the political subdivision, then the  
36 public utility right-of-way user shall not be required to provide  
37 such bonds or insurance;

1 (b) Establish coordination and timing requirements that do  
2 not impose a barrier to entry;

3 (c) Require public utility right-of-way users to submit,  
4 for right-of-way projects commenced after August 28, 2001,  
5 requiring excavation within the public right-of-way, whether  
6 initiated by a political subdivision or any public utility  
7 right-of-way user, project data in the form maintained by the  
8 user and in a reasonable time after receipt of the request based  
9 on the amount of data requested;

10 (d) Establish right-of-way permitting requirements for  
11 street excavation;

12 (e) Establish removal requirements for abandoned equipment  
13 or facilities, if the existence of such facilities prevents or  
14 significantly impairs right-of-way use, repair, excavation or  
15 construction;

16 (f) Establish permitting requirements for towers and other  
17 structures or equipment for wireless communications facilities in  
18 the public right-of-way, notwithstanding the provisions of  
19 section 67.1832;

20 (g) Establish standards for street restoration in order to  
21 lessen the impact of degradation to the public right-of-way; and

22 (h) Impose permit conditions to protect public safety;

23 (7) "Political subdivision", a city, town, village, county  
24 of the first classification or county of the second  
25 classification;

26 (8) "Public right-of-way", the area on, below or above a  
27 public roadway, highway, street or alleyway in which the  
28 political subdivision has an ownership interest, but not  
29 including:

30 (a) The airwaves above a public right-of-way with regard to  
31 cellular or other nonwire telecommunications or broadcast  
32 service;

33 (b) Easements obtained by utilities or private easements in  
34 platted subdivisions or tracts;

35 (c) Railroad rights-of-way and ground utilized or acquired  
36 for railroad facilities; or

37 (d) [Poles,] Pipes, cables, conduits, wires, optical

1 cables, or other means of transmission, collection or exchange of  
2 communications, information, substances, data, or electronic or  
3 electrical current or impulses utilized by a municipally owned or  
4 operated utility pursuant to chapter 91 or pursuant to a charter  
5 form of government;

6 (9) "Public utility", every cable television service  
7 provider, every pipeline corporation, gas corporation, electrical  
8 corporation, rural electric cooperative, telecommunications  
9 company, water corporation, heating or refrigerating corporation  
10 or sewer corporation under the jurisdiction of the public service  
11 commission; every municipally owned or operated utility pursuant  
12 to chapter 91 or pursuant to a charter form of government or  
13 cooperatively owned or operated utility pursuant to chapter 394;  
14 every street light maintenance district; every privately owned  
15 utility; and every other entity, regardless of its form of  
16 organization or governance, whether for profit or not, which in  
17 providing a public utility type of service for members of the  
18 general public, utilizes pipes, cables, conduits, wires, optical  
19 cables, or other means of transmission, collection or exchange of  
20 communications, information, substances, data, or electronic or  
21 electrical current or impulses, in the collection, exchange or  
22 dissemination of its product or services through the public  
23 rights-of-way;

24 (10) "Public utility right-of-way user", a public utility  
25 owning or controlling a facility in the public right-of-way; and

26 (11) "Right-of-way permit", a permit issued by a political  
27 subdivision authorizing the performance of excavation work in a  
28 public right-of-way.

29 67.1836. 1. A political subdivision may deny an  
30 application for a right-of-way permit if:

31 (1) The public utility right-of-way user fails to provide  
32 all the necessary information requested by the political  
33 subdivision for managing the public right-of-way;

34 (2) The public utility right-of-way user has failed to  
35 return the public right-of-way to its previous condition under a  
36 previous permit;

37 (3) The political subdivision has provided the public

1 utility right-of-way user with a reasonable, competitively  
2 neutral, and nondiscriminatory justification for requiring an  
3 alternative method for performing the work identified in the  
4 permit application or a reasonable alternative route that will  
5 result in neither additional installation expense up to ten  
6 percent to the public utility right-of-way user nor a declination  
7 of service quality;

8 (4) The political subdivision determines that the denial is  
9 necessary to protect the public health and safety, provided that  
10 the authority of the political subdivision does not extend to  
11 those items under the jurisdiction of the public service  
12 commission, such denial shall not interfere with a public  
13 utility's right of eminent domain of private property, and such  
14 denials shall only be imposed on a competitively neutral and  
15 nondiscriminatory basis; or

16 (5) The area is environmentally sensitive as defined by  
17 state statute or federal law or is a historic district as defined  
18 by local ordinance.

19 2. A political subdivision may, after reasonable notice and  
20 an opportunity to cure, revoke a right-of-way permit granted to a  
21 public utility right-of-way user, with or without fee refund,  
22 and/or impose a penalty as established by the political  
23 subdivision until the breach is cured, but only in the event of a  
24 substantial breach of the terms and material conditions of the  
25 permit. A substantial breach by a permittee includes but is not  
26 limited to:

27 (1) A material violation of a provision of the right-of-way  
28 permit;

29 (2) An evasion or attempt to evade any material provision  
30 of the right-of-way permit, or the perpetration or attempt to  
31 perpetrate any fraud or deceit upon the political subdivision or  
32 its citizens;

33 (3) A material misrepresentation of fact in the  
34 right-of-way permit application;

35 (4) A failure to complete work by the date specified in the  
36 right-of-way permit, unless a permit extension is obtained or  
37 unless the failure to complete the work is due to reasons beyond

1 the permittee's control; and

2 (5) A failure to correct, within the time specified by the  
3 political subdivision, work that does not conform to applicable  
4 national safety codes, industry construction standards, or local  
5 safety codes that are no more stringent than national safety  
6 codes, upon inspection and notification by the political  
7 subdivision of the faulty condition.

8 3. Any political subdivision that requires public utility  
9 right-of-way users to obtain a right-of-way permit, except in an  
10 emergency, prior to performing excavation work within a public  
11 right-of-way shall promptly, but not longer than thirty-one days,  
12 process all completed permit applications. If a political  
13 subdivision fails to act on an application for a right-of-way  
14 permit within thirty-one days, the application shall be deemed  
15 approved. In order to avoid excessive processing and accounting  
16 costs to either the political subdivision or the public utility  
17 right-of-way user, the political subdivision may establish  
18 procedures for bulk processing of permits and periodic payment of  
19 permit fees.

20 67.1838. [1.] A public utility right-of-way user that has  
21 been denied a right-of-way permit, has had its right-of-way  
22 permit revoked, believes that the fees imposed on the public  
23 right-of-way user by the political subdivision do not conform to  
24 the requirements of section 67.1840, believes the political  
25 subdivision has violated any provision of sections 67.1830 to  
26 67.1848, or asserts any other issues related to the use of the  
27 public right-of-way, [shall have, upon written request, such  
28 denials, revocations, fee impositions, or other disputes reviewed  
29 by the governing body of the political subdivision or an entity  
30 assigned by the governing body for this purpose. The governing  
31 body of the political subdivision or its delegated entity shall  
32 specify, in its permit processing schedules, the maximum number  
33 of days by which the review request shall be filed in order to be  
34 reviewed by the governing body of the political subdivision or  
35 its delegated entity. A decision affirming the denial,  
36 revocation, fee imposition or dispute resolution shall be in  
37 writing and supported by written findings establishing the

1     reasonableness of the decision.

2             2. Upon affirmation by the governing body of the denial,  
3     revocation, fee imposition or dispute resolution, the public  
4     utility right-of-way user may, in addition to all other remedies  
5     and if both parties agree, have the right to have the matter  
6     resolved by mediation or binding arbitration. Binding  
7     arbitration shall be before an arbitrator agreed to by both the  
8     political subdivision and the public utility right-of-way user.  
9     The costs and fees of a single arbitrator shall be borne equally  
10    by the political subdivision and the public utility right-of-way  
11    user.

12            3. If the parties cannot agree on an arbitrator, the matter  
13    shall be resolved by a three-person arbitration panel consisting  
14    of one arbitrator selected by the political subdivision, one  
15    arbitrator selected by the public utility right-of-way user, and  
16    one person selected by the other two arbitrators. In the event  
17    that a three-person arbitrator panel is necessary, each party  
18    shall bear the expense of its own arbitrator and shall jointly  
19    and equally bear with the other party the expense of the third  
20    arbitrator and of the arbitration.

21            4. Each party to the arbitration shall pay its own costs,  
22    disbursements and attorney fees] may bring an action for review  
23    in any court of competent jurisdiction. The court shall rule on  
24    any such petition for review within forty-five days of service.  
25    The petition for review shall be deemed granted if the court  
26    fails to rule within the forty-five-day time period.

27            67.1842. 1. In managing the public right-of-way and in  
28    imposing fees pursuant to sections 67.1830 to 67.1846, no  
29    political subdivision shall:

30            (1) Unlawfully discriminate among public utility  
31    right-of-way users;

32            (2) Grant a preference to any public utility right-of-way  
33    user;

34            (3) Create or erect any unreasonable requirement for entry  
35    to the public right-of-way by public utility right-of-way users;

36            (4) Require a telecommunications company to obtain a  
37    franchise or require a public utility right-of-way user to pay



1 for the use of the public right-of-way, except as provided in  
2 sections 67.1830 to 67.1846; [or]

3 (5) Enter into a contract or any other agreement for  
4 providing for an exclusive use, occupancy or access to any public  
5 right-of-way; or

6 (6) Require any public utility that has legally been  
7 granted access to the political subdivision's right-of-way prior  
8 to August 28, 2001, to enter into an agreement or obtain a permit  
9 for general access to or the right to remain in the right-of-way  
10 of the political subdivision.

11 2. A public utility right-of-way user shall not be required  
12 to apply for or obtain right-of-way permits for projects  
13 commenced prior to August 28, 2001, requiring excavation within  
14 the public right-of-way, for which the user has obtained the  
15 required consent of the political subdivision, or that are  
16 otherwise lawfully occupying or performing work within the public  
17 right-of-way. The public utility right-of-way user may be  
18 required to obtain right-of-way permits prior to any excavation  
19 work performed within the public right-of-way after August 28,  
20 2001.

21 3. A political subdivision shall not collect a fee imposed  
22 pursuant to section 67.1840 through the provision of in-kind  
23 services by a public utility right-of-way user, nor require the  
24 provision of in-kind services as a condition of consent to use  
25 the political subdivision's public right-of-way; however, nothing  
26 in this subsection shall preclude requiring services of a cable  
27 television operator, open video system provider or other video  
28 programming provider as permitted by federal law."; and  
29

30 Further amend said bill, Page 2, Section 67.5092, Line 17,  
31 by inserting after the word "law" the words "and acting in its  
32 capacity"; and  
33

34 Further amend said bill, Page 2, Section 67.5092, Line 18,  
35 by deleting the words "wireless facilities and wireless support  
36 structures" and inserting in lieu thereof the words "zoning or  
37 building permit review of an application"; and

1 Further amend said bill, Page 2, Section 67.5092, Line 42,  
2 by inserting after the word "codes," the words "National Electric  
3 Safety Codes, and recognized industry standards for structural  
4 safety, capacity, reliability, and engineering,"; and  
5

6 Further amend said bill, Page 3, Section 67.5092, Line 65,  
7 by inserting after the word "county," the words "municipality  
8 acting in its capacity as a utility, municipal utility board,";  
9 and  
10

11 Further amend said bill, Page 3, Section 67.5092, Line 66,  
12 by inserting after the word "electric," the words "natural gas,  
13 water, waste water,"; and  
14

15 Further amend said bill, Page 3, Section 67.5092, Line 67,  
16 by inserting after the word "telecommunications" the words "or  
17 internet protocol-related"; and  
18

19 Further amend said bill, Page 3, Section 67.5092, Lines 74  
20 to 80, by deleting all of said lines and inserting in lieu  
21 thereof the following:

22 "(17) "Wireless facility", the set of equipment and network  
23 components, exclusive of the underlying wireless support  
24 structure, including, but not limited to, antennas, accessory  
25 equipment, transmitters, receivers, power supplies, cabling and  
26 associated equipment necessary to provide wireless communications  
27 services;

28 "(18) "Wireless support structure", a structure, such as a  
29 monopole, tower, or building capable of supporting wireless  
30 facilities. This definition does not include utility poles.";  
31 and  
32

33 Further amend said bill, Page 4, Section 67.5094, Line 17,  
34 by deleting "FCC's" and inserting in lieu thereof "Federal  
35 Communication Commission's"; and  
36

37 Further amend said bill, Page 5, Section 67.5094, Line 56,

1 by deleting the word "unreasonable"; and

2  
3 Further amend said bill, Page 5, Section 67.5094, Line 59,  
4 by inserting after the word "facilities" the words "if such  
5 regulations or obligations are unreasonable"; and

6  
7 Further amend said bill, Page 6, Section 67.5096, Line 3, by  
8 deleting the words "this act" and inserting in lieu thereof  
9 "sections 67.5090 to 67.5104"; and

10  
11 Further amend said bill, Page 6, Section 67.5096, Line 4, by  
12 deleting the word "hereof"; and

13  
14 Further amend said bill, Page 6, Section 67.5096, Line 7, by  
15 deleting the words "this act" and inserting in lieu thereof  
16 "sections 67.5090 to 67.5104"; and

17  
18 Further amend said bill, Page 6, Section 67.5096, Line 9, by  
19 deleting all of said line and inserting in lieu thereof the  
20 following: "appropriate authority. Each application shall  
21 include a copy of a lease, letter of authorization or other  
22 agreement from the property owner evidencing applicant's right to  
23 pursue the application; and"; and

24  
25 Further amend said bill, Page 6, Section 67.5096, Lines 13  
26 and 14, by deleting all of said lines and inserting in lieu  
27 thereof the following: "including but not limited to documents  
28 and electronic data, shall be subject to chapter 610."; and

29  
30 Further amend said bill, Page 6, Section 67.5096, Line 15,  
31 by deleting the words "one hundred fifty" and inserting in lieu  
32 thereof the word "ninety"; and

33  
34 Further amend said bill, Page 6, Section 67.5096, Line 25,  
35 by deleting the words "one hundred fifty" and inserting in lieu  
36 thereof the word "ninety"; and

1 Further amend said bill, Page 6, Section 67.5096, Line 27,  
2 by deleting the words "one hundred fifty" and inserting in lieu  
3 thereof the word "ninety"; and  
4

5 Further amend said bill, Page 6, Section 67.5096, Line 32,  
6 by deleting the words "one hundred fifty" and inserting in lieu  
7 thereof the word "ninety"; and  
8

9 Further amend said bill, Page 7, Section 67.5098, Lines 3  
10 and 4, by deleting all of said lines and inserting in lieu  
11 thereof the following: "substantial modifications of wireless  
12 support structures, subject to the provisions of sections 67.5090  
13 to 67.5104, including without limitation section 67.5094, and  
14 subject to federal law."; and  
15

16 Further amend said bill, Page 7, Section 67.5098, Line 9, by  
17 deleting all of said line and inserting in lieu thereof the  
18 following: "appropriate authority. Each application shall  
19 include a copy of a lease, letter of authorization or other  
20 agreement from the property owner evidencing applicant's right to  
21 pursue the application; and"; and  
22

23 Further amend said bill, Page 7, Section 67.5098, Lines 13  
24 and 14, by deleting all of said lines and inserting in lieu  
25 thereof the following: "including but not limited to documents  
26 and electronic data, shall be subject to chapter 610."; and  
27

28 Further amend said bill, Page 8, Section 67.5100, Line 1, by  
29 deleting the words "this act," and inserting in lieu thereof  
30 "sections 67.5090 to 67.5104, including section 67.5094,"; and  
31

32 Further amend said bill, Page 8, Section 67.5100, Line 3, by  
33 inserting after the word "requirements," the words "National  
34 Electric Safety Codes, and recognized industry standards for  
35 structural safety, capacity, reliability, and engineering,"; and  
36

37 Further amend said bill, Page 8, Section 67.5100, Line 7, by

1 inserting after the word "application" the words "or application  
2 for replacement of wireless facilities"; and

3  
4 Further amend said bill, Page 8, Section 67.5100, Line 10,  
5 by deleting the words "this act" and inserting in lieu thereof  
6 "sections 67.5090 to 67.5104"; and

7  
8 Further amend said bill, Page 8, Section 67.5100, Line 13,  
9 by inserting after the word "complete." the following: "Each  
10 collocation application or application to replace wireless  
11 facilities shall include a copy of a lease, letter of  
12 authorization or other agreement from the property owner  
13 evidencing applicant's right to pursue the application."; and

14  
15 Further amend said bill, Page 8, Section 67.5100, Line 22,  
16 by deleting the word "facilities" and inserting in lieu thereof  
17 the word "facilities"; and

18  
19 Further amend said bill, Page 8, Section 67.5100, Line 27,  
20 by deleting all of said line and inserting in lieu thereof the  
21 following:

22 "4. Except as provided in section 67.5104, the provisions  
23 of sections 67.5090 to 67.5104 shall not:"; and

24  
25 Further amend said bill, Page 8, Section 67.5100, Line 28,  
26 by deleting "(a)" and inserting in lieu thereof "(1)"; and

27  
28 Further amend said bill, Page 8, Section 67.5100, Line 30,  
29 by deleting all of said line and inserting in lieu thereof the  
30 following: "wireless facility on new, existing, or replacement  
31 poles owned or operated by a utility;"; and

32  
33 Further amend said bill, Page 8, Section 67.5100, Line 31,  
34 by deleting all of said line and inserting in lieu thereof the  
35 following:

36 "(2) Expand the power of an authority to regulate any  
37 utility; or

1       (3) Restrict any utility's rights or authority, or negate  
2 any utility's agreement, regarding requested access to, or the  
3 rates and terms applicable to placement of any wireless facility  
4 on new, existing, or replacement poles, structures, or existing  
5 structures owned or operated by a utility."; and  
6

7       Further amend said bill, Page 9, Section 67.5102, Line 5, by  
8 deleting all of said line and inserting in lieu thereof the  
9 following: "wireless support structures, or collocations if such  
10 moratorium exceeds six months in length and if the legislative  
11 act establishing it fails to state reasonable grounds and good  
12 cause for such moratorium. No such moratorium shall affect an  
13 already pending application;"; and  
14

15       Further amend said bill, Page 9, Section 67.5102, Line 14,  
16 by inserting after the word "appraisers" the words "licensed  
17 under chapter 339"; and  
18

19       Further amend said bill, Page 9, Section 67.5102, Line 22,  
20 by deleting the words "one hundred fifty" and inserting in lieu  
21 thereof the word "ninety"; and  
22

23       Further amend said bill, Page 9, Section 67.5102, Line 31,  
24 by deleting "." and inserting in lieu thereof ";"; and  
25

26       Further amend said bill, Page 9, Section 67.5102, Line 35,  
27 by inserting after all of said line the following:

28       "67.5103. Notwithstanding any provision of sections 67.5090  
29 to 67.5102, nothing herein shall provide any applicant the power  
30 of eminent domain or the right to compel any private or public  
31 property owner, or the department of conservation or department  
32 of natural resources to:

33       (1) Lease or sell property for the construction of a new  
34 wireless support structure; or

35       (2) Locate or cause the collocation of a wireless facility  
36 on any existing structure or wireless support structure."; and  
37

1 Further amend said bill, Page 9, Section 67.5104, Lines 1 to  
2 3, by deleting all of said lines and inserting in lieu thereof  
3 the following:

4 "67.5104. Any pole attachment rates, terms, and conditions,  
5 including those related to the granting or denial of access,  
6 demanding by a municipal utility pole owner or controlling  
7 authority of a municipality shall be nondiscriminatory, just and  
8 reasonable and shall not be subject to any required franchise  
9 authority or government entity permitting. An annual pole  
10 attachment rental rate shall be calculated on a per pole basis  
11 and shall be considered just and reasonable"; and  
12

13 Further amend said bill, Page 10, Section 67.5104, Line 6,  
14 by deleting the word "any" and inserting in lieu thereof the word  
15 "an"; and  
16

17 Further amend said bill, Page 10, Section 67.5104, Line 7,  
18 by deleting all of said line and inserting in lieu thereof the  
19 following: "provider, or by a telecommunications, wireless  
20 communications or other communications-related service provider  
21 or municipal utility pole owner, to a pole. A service provider  
22 may seek review of any rate, term, or"; and  
23

24 Further amend said bill, Page 10, Section 67.5104, Line 8 by  
25 deleting the word "district" and inserting in lieu thereof the  
26 word "circuit"; and  
27

28 Further amend said bill, Page 10, Section 67.5104, Line 8,  
29 by inserting after the word "court" the following: "if that  
30 entity believes the rates, terms, and conditions are not fair,  
31 just, and reasonable"; and  
32

33 Further amend said bill, Page 10, Section 67.5104, Line 8,  
34 by inserting after all of said line the following:

35 "389.585. 1. As used in sections 389.585 to 389.591, the  
36 following terms mean:

37 (1) "Crossing", the construction, operation, repair, or

1 maintenance of a facility over, under, or across a railroad  
2 right-of-way by a utility when the right-of-way is owned by a  
3 land management company and not a registered rail carrier;

4 (2) "Direct expenses", includes, but is not limited to, any  
5 or all of the following:

6 (a) The cost of inspecting and monitoring the crossing  
7 site;

8 (b) Administrative and engineering costs for review of  
9 specifications and for entering a crossing on the railroad's  
10 books, maps, and property records and other reasonable  
11 administrative and engineering costs incurred as a result of the  
12 crossing;

13 (c) Document and preparation fees associated with a  
14 crossing and any engineering specifications related to the  
15 crossing;

16 (d) Damages assessed in connection with the rights granted  
17 to a utility with respect to a crossing;

18 (3) "Facility", any cable, conduit, wire, pipe, casing  
19 pipe, supporting poles and guys, manhole, or other material or  
20 equipment that is used by a utility to furnish any of the  
21 following:

22 (a) Communications, communications-related, wireless  
23 communications, video, or information services;

24 (b) Electricity;

25 (c) Gas by piped system;

26 (d) Petroleum or petroleum products by piped system;

27 (e) Sanitary and storm sewer service;

28 (f) Water by piped system;

29 (4) "Land management company", an entity that is the owner,  
30 manager, or agent of a railroad right-of-way and is not a  
31 registered rail carrier;

32 (5) "Railroad" or "railroad corporation", a railroad  
33 corporation organized and operating under chapter 388, or any  
34 other corporation, trustees of a railroad corporation, company,  
35 affiliate, association, joint stock association or company, firm,  
36 partnership, or individual, which is an owner, operator,  
37 occupant, lessee, manager, or railroad right-of-way agent, or the



1 railroad or railroad corporation's successor in interest;

2 (6) "Railroad right-of-way", includes one or more of the  
3 following:

4 (a) A right-of-way or other interest in real estate that is  
5 owned or operated by a land management company and not a  
6 registered rail carrier;

7 (b) Any other interest in a former railroad right-of-way  
8 that has been acquired or is operated by a land management  
9 company or similar entity;

10 (7) "Special circumstances", includes either or both of the  
11 following:

12 (a) The characteristics of a segment of a railroad  
13 right-of-way not found in a typical segment of a railroad  
14 right-of-way that enhance the value or increase the damages or  
15 the engineering or construction expenses for the land management  
16 company associated with a proposed crossing, or to the current or  
17 reasonably anticipated use by a land management company of the  
18 railroad right-of-way, necessitating additional terms and  
19 conditions or compensation associated with a crossing;

20 (b) Variances from the standard specifications requested by  
21 the land management company;

22  
23 "Special circumstances" may include, but is not limited to, the  
24 railroad right-of-way segment's relationship to other property,  
25 location in urban or other developed areas, the existence of  
26 unique topography or natural resources, or other characteristics  
27 or dangers inherent in the particular crossing or segment of the  
28 railroad right-of-way;

29 (8) "Telecommunications service", the transmission of  
30 information by wire, radio, optical cable, electronic impulses,  
31 or other similar means. As used in this definition,  
32 "information" means knowledge or intelligence represented by any  
33 form of writing, signs, signals, pictures, sounds, or any other  
34 symbols;

35 (9) "Utility", shall include:

36 (a) Any public utility subject to the jurisdiction of the  
37 public service commission;

1       (b) Providers of telecommunications service, wireless  
2 communications, or other communications-related service;

3       (c) Any electrical corporation which is required by its  
4 bylaws to operate on the not-for-profit cooperative business  
5 plan, with its consumers who receive service as the stockholders  
6 of such corporation, and which holds a certificate of public  
7 convenience and necessity to serve a majority of its customer-  
8 owners in counties of the third classification as of August 28,  
9 2003;

10       (d) Any rural electric cooperative; and

11       (e) Any municipally owned utility.

12       389.586. 1. After thirty days from the mailing of the  
13 notice, completing the engineering specifications, and payment of  
14 the fee, the utility, absent a claim of special circumstances,  
15 shall be deemed to have authorization to commence the crossing  
16 activity.

17       2. The land management company and the utility shall  
18 maintain and repair its own property within the railroad  
19 right-of-way and bear responsibility for its own acts and  
20 omissions, except that the utility shall be responsible for any  
21 bodily injury or property damage that typically would be covered  
22 under a standard railroad protective liability insurance policy.

23       3. A utility shall have immediate access to a crossing for  
24 repair and maintenance of existing facilities in case of  
25 emergency.

26       4. Applicable engineering standards shall be complied with  
27 for utility facilities crossing railroad rights-of-way.

28       5. The utility shall be provided an expedited crossing,  
29 absent a claim of special circumstances, after payment by the  
30 utility of the standard crossing fee, if applicable, and  
31 submission of completed engineering specifications to the land  
32 management company. The engineering specifications shall address  
33 the applicable clearance requirements as established by the  
34 National Electrical Safety Code.

35       6. The utility and the land management company may agree to  
36 other terms and conditions necessary to provide for reasonable  
37 use of a railroad right-of-way by a utility.

1       389.587. Unless otherwise agreed by the parties and subject  
2 to section 389.588, a utility that locates its facilities within  
3 the railroad right-of-way for a crossing, other than a crossing  
4 along a state highway or other public road, shall pay the land  
5 management company a one-time standard crossing fee of one  
6 thousand five hundred dollars for each crossing plus the costs  
7 associated with modifications to existing insurance contracts of  
8 the utility and the land management company. The standard  
9 crossing fee shall be in lieu of any license, permit,  
10 application, plan review, or any other fees or charges to  
11 reimburse the land management company for the direct expenses  
12 incurred by the land management company as a result of the  
13 crossing. The utility shall also reimburse the land management  
14 company for any actual flagging expenses associated with a  
15 crossing in addition to the standard crossing fee. Nothing in  
16 this section is intended to restrict or otherwise limit any  
17 authority or right a utility may have to locate facilities at a  
18 crossing along a state highway or any other public road or to  
19 otherwise enter upon lands where authorized by law.

20       389.588. 1. Notwithstanding the provisions of section  
21 389.586, nothing shall prevent a land management company and a  
22 utility from otherwise negotiating the terms and conditions  
23 applicable to a crossing or the resolution of any disputes  
24 relating to the crossing.

25       2. Notwithstanding subsection 1 of this section, the  
26 provisions of this section shall not impair the authority of a  
27 utility to secure crossing rights by easement pursuant to the  
28 exercise of the power of eminent domain.

29       389.589. 1. If the parties cannot agree that special  
30 circumstances exist, the dispute shall be submitted to nonbinding  
31 arbitration. Any party proposing informal arbitration shall  
32 serve an arbitration notice detailing a description of the  
33 dispute, including, without limitation, the position and proposed  
34 resolution of the party requesting arbitration and shall name one  
35 arbitrator chosen by that party. Within twenty days after  
36 receipt of an arbitration notice, the receiving party shall serve  
37 a written notice on the other party containing a detailed

1 response to the claim giving the position and proposed resolution  
2 of the receiving party, and an acceptance of the arbitrator  
3 designated in the arbitration notice or rejection of same and  
4 suggestion of no less than two other alternatives. The informal  
5 arbitration shall be decided by a single arbitrator. In the  
6 event that the parties do not agree on the selection of an  
7 arbitrator within seven business days after service of the reply  
8 notice, either party may apply to the American Arbitration  
9 Association for the purpose of appointing an independent  
10 arbitrator. To the extent practicable, the arbitrator shall be a  
11 person with expertise in the principal areas of dispute.

12 2. A conference shall be commenced by the arbitrator within  
13 fifteen calendar days after the appointment of the arbitrator and  
14 a recommendation regarding the matter submitted shall be rendered  
15 within ten business days after the conference or as soon as  
16 practicable thereafter. During the thirty calendar days  
17 following the filing of the arbitration notice, the parties shall  
18 meet and confer to attempt to resolve the dispute. The decision  
19 of the arbitrator and the rationale for its decision shall be in  
20 writing and signed by the arbitrator; provided, however, that  
21 such written recommendation shall have no evidentiary value and  
22 shall not be deemed to set forth any findings of fact for  
23 purposes of any future proceedings. Except as otherwise provided  
24 in this section, the informal arbitration shall be held in  
25 accordance with the rules and procedures of the American  
26 Arbitration Association. Each party shall bear its own expenses,  
27 including, without limitation, legal and accounting fees, and the  
28 cost of the arbitrator shall be shared equally by each party.  
29 The parties may or may not elect to abide by the decision of the  
30 arbitrator.

31 3. If the parties cannot resolve their dispute based on the  
32 arbitrator's recommendation within thirty days, either party may,  
33 upon the expiration of the thirty-day period, give written notice  
34 to the other party of the commencement of a binding arbitration  
35 proceeding in accordance with the commercial rules of Arbitration  
36 in the American Arbitration Association. Any decision by the  
37 board of arbitration shall be final, binding, and conclusive as

1 to the parties. Nothing provided in this section shall prevent  
2 either party from submission of disputes to the court, limited to  
3 requests for injunctive or equitable relief in advance of a  
4 breach or threatened breach of this agreement, if necessary to  
5 prevent serious and irreparable injury to such party or the  
6 public and if such injury cannot be appropriately addressed by  
7 informal or formal arbitration.

8 4. If the dispute over special circumstances concerns only  
9 the compensation associated with a crossing, then the utility may  
10 proceed with installation of the crossing during the pendency of  
11 the arbitration.

12 389.591. 1. Notwithstanding any provision of law to the  
13 contrary, sections 389.585 to 389.591 shall apply in all  
14 crossings of railroad rights-of-way involving a land management  
15 company and a utility and shall govern in the event of any  
16 conflict with any other provision of law.

17 2. The provisions of sections 389.585 to 389.591 shall  
18 apply to a crossing commenced prior to August 28, 2013, if an  
19 agreement concerning the crossing has expired or is terminated  
20 and to a crossing commenced on or after August 28, 2013."; and  
21

22 Further amend said title, enacting clause and intersectional  
23 references accordingly.