

House File 556 - Introduced

HOUSE FILE 556
BY COMMITTEE ON COMMERCE

(SUCCESSOR TO HSB 167)

A BILL FOR

1 An Act relating to applications for wireless communications
2 facilities and infrastructure.

3 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

1 Section 1. NEW SECTION. 8C.1 Short title.

2 This chapter shall be known and may be cited as the "Iowa
3 *Cell Siting Act*".

4 Sec. 2. NEW SECTION. 8C.2 Definitions.

5 For the purposes of this chapter, unless the context
6 otherwise requires:

7 1. "*Applicant*" means any person engaged in the business of
8 providing wireless telecommunications services or the wireless
9 telecommunications infrastructure required for wireless
10 telecommunications services and who submits an application.

11 2. "*Application*" means a request submitted by an applicant
12 to an authority to construct a new tower, for the initial
13 placement of transmission equipment on a wireless support
14 structure, for the modification of an existing tower or
15 existing base station that constitutes a substantial change
16 to an existing tower or existing base station, or any other
17 request to construct or place transmission equipment that does
18 not meet the definition of an eligible facilities request.

19 3. "*Authority*", used as a noun, means a state, county,
20 or city governing body, board, agency, office, or commission
21 authorized by law to make legislative, quasi-judicial,
22 or administrative decisions relative to an application.
23 "*Authority*" does not include state courts having jurisdiction
24 over land use, planning, or zoning decisions made by an
25 authority, or the utilities division of the department of
26 commerce.

27 4. a. "*Base station*" means a structure or equipment at a
28 fixed location that enables wireless communications licensed by
29 the federal communications commission or authorized wireless
30 communications between user equipment and a communications
31 network.

32 b. "*Base station*" does not mean a tower or equipment
33 associated with a tower.

34 c. "*Base station*" includes but is not limited to equipment
35 associated with wireless communications services such as

1 private, broadcast, and public safety services and unlicensed
2 wireless services and fixed wireless services such as microwave
3 backhaul.

4 *d. "Base station"* includes but is not limited to radio
5 transceivers, antennas, coaxial or fiberoptic cable, regular
6 and backup power supplies, and comparable equipment, regardless
7 of technological configuration.

8 *e. "Base station"* includes a structure other than a tower
9 that, at the time the relevant application is filed with
10 the state or local government, supports or houses equipment
11 described in this subsection that has been reviewed and
12 approved under the applicable zoning or siting process, or
13 under another state or local regulatory review process, even if
14 the structure was not built for the sole or primary purpose of
15 providing such support.

16 *f. "Base station"* does not include any structure that at
17 the time the relevant application is filed with the state or
18 local government does not support or house equipment described
19 in this subsection.

20 5. *"Collocation"* means the mounting or installation of
21 transmission equipment on a support structure for the purpose
22 of transmitting or receiving radio frequency signals for
23 communications purposes.

24 6. *"Eligible facilities request"* means a request for
25 modification of an existing tower or base station that does
26 not substantially change the physical dimensions of the tower
27 or base station and involves collocation of new transmission
28 equipment, the removal of transmission equipment, or the
29 replacement of transmission equipment.

30 7. *"Existing tower"* or *"existing base station"* means a tower
31 or base station that has been reviewed and approved under the
32 applicable zoning or siting process, or under another state or
33 local regulatory review process. *"Existing tower"* includes a
34 tower that was not reviewed and approved because it was not in
35 a zoned area when it was built and lawfully constructed.

1 8. *"Initial placement or installation"* means the first time
2 transmission equipment is placed or installed on a wireless
3 support structure.

4 9. a. *"Site"*, in relation to a tower that is not in the
5 public right-of-way, means the current boundaries of the leased
6 or owned property surrounding the tower and any access or
7 utility easements currently related to the site.

8 b. *"Site"*, in relation to support structures other than
9 towers, means an area in proximity to the structure and to
10 other transmission equipment already deployed on the ground.

11 10. *"Substantial change"* means a change in the existing
12 support structure which results in one or more of the
13 following:

14 a. (1) Increase in the height of a tower, other than a
15 tower in the public right-of-way, by more than ten percent or
16 by the height of one additional antenna array with separation
17 from the nearest existing antenna not to exceed twenty feet,
18 whichever is greater.

19 (2) Increase in the height of existing support structures,
20 other than a tower in subparagraph (1), by more than ten
21 percent or more than ten feet, whichever is greater.

22 (3) Height shall be measured from the original support
23 structure in cases where deployments are or will be separated
24 horizontally, such as on buildings' rooftops. Otherwise,
25 height shall be measured from the dimensions of the tower or
26 base station, inclusive of originally approved appurtenances
27 and any modifications that were approved prior to the passage
28 of the Spectrum Act, Pub. L. No. 112-96, Tit. VI.

29 b. (1) Addition of an appurtenance to the body of the
30 tower, other than a tower in the public right-of-way, that
31 would protrude from the edge of the tower more than twenty
32 feet, or more than the width of the tower structure at the
33 level of the appurtenance, whichever is greater.

34 (2) Addition of an appurtenance to an existing support
35 structure, other than a tower under subparagraph (1), that

1 would protrude from the edge of the structure by more than six
2 feet.

3 c. (1) Installation of more than the standard number of
4 new equipment cabinets for the technology involved, but not to
5 exceed four cabinets.

6 (2) Installation of any new equipment cabinets on the ground
7 if there are no preexisting ground cabinets associated with the
8 tower in the public right-of-way or base station.

9 (3) Installation of ground cabinets that are more than
10 ten percent larger in height or overall volume than any
11 other ground cabinets associated with a tower in the public
12 right-of-way or base station.

13 d. Excavation or deployment outside the current site.

14 e. Defeat of concealment elements of the existing support
15 structure.

16 f. Noncompliance with conditions associated with the siting
17 approval of the construction or modification of the existing
18 support structure or base station equipment, except if the
19 change is noncompliant only in a manner that does not exceed
20 the thresholds identified in paragraphs "a" through "d".

21 11. "Tower" means a structure built for the sole or
22 primary purpose of supporting an antenna and the associated
23 facilities authorized or licensed by the federal communications
24 commission. "Tower" includes structures constructed for
25 wireless communications services, including but not limited to
26 private, broadcast, and public safety services and unlicensed
27 wireless services and fixed wireless services, such as
28 microwave backhaul, and the associated site.

29 12. "Transmission equipment" means equipment that
30 facilitates transmission for a wireless communications
31 service licensed or authorized by the federal communications
32 commission, including but not limited to radio transceivers,
33 antennas, coaxial or fiberoptic cable, and regular and backup
34 power supply. "Transmission equipment" includes equipment
35 associated with wireless communications services, including but

1 not limited to private, broadcast, and public safety services,
2 as well as unlicensed wireless services and fixed wireless
3 services, such as microwave backhaul.

4 13. *"Wireless support structure"* means a structure that
5 exists at the time an application is submitted and is capable
6 of supporting the attachment or installation of transmission
7 equipment in compliance with applicable codes, including
8 but not limited to water towers, utility poles, buildings,
9 and other structures, whether within or outside the public
10 right-of-way. *"Wireless support structure"* does not include a
11 tower or existing base station.

12 Sec. 3. NEW SECTION. 8C.3 Uniform rules and limitations —
13 applications.

14 In order to ensure uniformity across this state with respect
15 to the consideration of every application, and notwithstanding
16 any other provision to the contrary, an authority shall not do
17 any of the following:

18 1. Require an applicant to submit information about, or
19 evaluate an applicant's business decisions with respect to, the
20 applicant's designed service, customer demand for service, or
21 quality of the applicant's service to or from a particular area
22 or site.

23 2. a. Evaluate an application based on the availability of
24 other potential locations for the placement or construction of
25 a tower or transmission equipment.

26 b. An authority shall not require the applicant to establish
27 other options for collocation instead of the construction of a
28 new tower or modification of an existing tower or existing base
29 station that constitutes a substantial change to an existing
30 tower or existing base station.

31 c. Notwithstanding paragraph "b", an authority may require
32 an applicant applying for the construction of a new tower to
33 state in its application that it conducted an analysis of
34 available collocation opportunities on existing towers or
35 existing base stations within the same search ring defined by

1 the applicant solely for the purpose of confirming that the
2 applicant undertook such analysis.

3 3. Dictate the type of transmission equipment or technology
4 to be used by the applicant or discriminate between different
5 types of infrastructure or technology.

6 4. a. Require the removal of existing towers, base
7 stations, or transmission equipment, wherever located, as a
8 condition to approval of an application.

9 b. Notwithstanding paragraph "a", the authority may adopt
10 reasonable rules regarding removal of abandoned towers or
11 transmission equipment.

12 5. Impose environmental testing, sampling, or monitoring
13 requirements, or other compliance measures, for radio frequency
14 emissions from transmission equipment that are categorically
15 excluded under the federal communications commission's
16 rules for radio frequency emissions pursuant to 47 C.F.R.
17 §1.1307(b)(1).

18 6. Establish or enforce regulations or procedures for radio
19 frequency signal strength or the adequacy of service quality.

20 7. Reject an application, in whole or in part, based on
21 perceived or alleged environmental effects of radio frequency
22 emissions, as provided in 47 U.S.C. §332(c)(7)(B)(iv).

23 8. Impose restrictions with respect to objects in navigable
24 airspace that are greater than or in conflict with the
25 restrictions imposed by the federal aviation administration.

26 9. Prohibit the placement of emergency power systems that
27 comply with federal and state environmental requirements.

28 10. Charge an application fee, consulting fee, or other fee
29 associated with the submission, review, processing, or approval
30 of an application that is not required for similar types of
31 commercial development within the authority's jurisdiction.
32 Fees imposed by an authority or by a third-party entity
33 providing review or technical consultation to the authority
34 shall be based on actual, direct, and reasonable administrative
35 costs incurred for the review, processing, and approval of an

1 application. In no case shall total charges and fees exceed
2 five hundred dollars for an eligible facilities request or
3 three thousand dollars for an application for a new tower, for
4 the initial placement or installation of transmission equipment
5 on a wireless support structure, for a modification of an
6 existing tower or existing base station that constitutes a
7 substantial change to an existing tower or base station, or any
8 other application to construct or place transmission equipment
9 that does not constitute an eligible facilities request. An
10 authority or any third-party entity shall not include within
11 its charges any travel expenses incurred in the review of an
12 application, and an applicant shall not be required to pay or
13 reimburse an authority for consultant or other third-party fees
14 based on a contingency or result-based arrangement.

15 11. Impose surety requirements, including bonds,
16 escrow deposits, letters of credit, or any other type
17 of financial surety, to ensure that abandoned or unused
18 towers or transmission equipment can be removed unless the
19 authority imposes similar requirements on other applicants
20 for other types of commercial development or land uses. If
21 surety requirements are imposed, the requirements must be
22 competitively neutral, nondiscriminatory, reasonable in
23 amount, and commensurate with the historical record for local
24 facilities and structures that are abandoned.

25 12. Condition the approval of an application on the
26 applicant's agreement to provide space on or near the tower,
27 base station, or wireless support structure for authority
28 services at less than the market rate for such space or to
29 provide other services via the structure or facilities at less
30 than the market rate for such services.

31 13. Limit the duration of the approval of an application.

32 14. Discriminate on the basis of the ownership, including
33 ownership by the authority, of any property, structure, or
34 tower when promulgating rules or procedures for siting wireless
35 facilities or for evaluating applications.

1 Sec. 4. NEW SECTION. **8C.4 Uniform rules — new tower**
2 **applications.**

3 1. An authority may exercise zoning, land use, planning,
4 and permitting authority within the authority's territorial
5 boundaries with regard to the siting of new towers, subject to
6 the provisions of this chapter and federal law.

7 2. An applicant that proposes to construct a new tower
8 within the jurisdiction of an authority that has adopted
9 planning and zoning regulations shall submit the necessary
10 copies and attachments of the application to the appropriate
11 authority and comply with applicable local ordinances
12 concerning land use and the appropriate permitting processes.

13 3. All records, including but not limited to documents and
14 electronic data, in the possession or custody of authority
15 personnel shall be considered confidential trade secrets as
16 provided for in section 22.7, subsection 3.

17 4. An authority, within one hundred fifty calendar days
18 of receiving an application to construct a new tower, unless
19 another date is specified in a written agreement between the
20 authority and the applicant, shall comply with the following
21 provisions:

22 a. Review the application for conformity with applicable
23 local zoning regulations, building permit requirements, and
24 consistency with this chapter. An application is deemed to
25 be complete unless the authority notifies the applicant in
26 writing, within thirty calendar days of submission of the
27 application, specifying the deficiencies in the application
28 which, if cured, would make the application complete. The
29 authority's timeframe to review the application is tolled
30 beginning the date the notice is sent. The authority's
31 timeframe of one hundred fifty days for review of the
32 application begins running again when the applicant cures the
33 specified deficiencies. Following the applicant's supplemental
34 submission, the authority has ten days to notify the
35 applicant that the supplemental submission did not provide the

1 information identified in the original notice that specified
2 deficiencies in the application. The authority's timeframe of
3 one hundred fifty days to review the application is tolled in
4 the case of second or subsequent notices in conformance with
5 this paragraph. The authority's timeframe for review does not
6 toll if the authority requests information regarding any of the
7 considerations an authority may not consider as described in
8 section 8C.3.

9 *b.* Make its final decision to approve or disapprove the
10 application.

11 *c.* Advise the applicant in writing of its final decision.

12 5. If the authority fails to act on an application to
13 construct a new tower within the timeframe for review specified
14 under subsection 4, the application shall be deemed approved.

15 6. A party aggrieved by the final action of an authority,
16 either by its affirmative disapproval of an application under
17 the provisions of this section or by its inaction, may bring
18 an action for review in any court of competent jurisdiction to
19 recover reasonable costs related to the application process and
20 attorney fees.

21 Sec. 5. NEW SECTION. **8C.5 Uniform rules for certain**
22 **changes.**

23 1. An authority may exercise zoning, land use, planning,
24 and permitting authority within the authority's territorial
25 boundaries with regard to an application for initial placement
26 or installation of transmission equipment on wireless support
27 structures, for modification of an existing tower or existing
28 base station that constitutes a substantial change, or for a
29 request for construction or placement of transmission equipment
30 that does not constitute an eligible facilities request,
31 subject to the provisions of this chapter and federal law.

32 2. An applicant that proposes an initial placement or
33 installation of transmission equipment on wireless support
34 structures, a modification of an existing tower or existing
35 base station that constitutes a substantial change, or a

1 request for construction or placement of transmission equipment
2 that does not constitute an eligible facilities request, within
3 the jurisdiction of an authority that has adopted planning
4 and zoning ordinances, rules, or regulations shall submit the
5 necessary copies and attachments of the application to the
6 authority and comply with such applicable local ordinances,
7 rules, or regulations concerning land use and zoning and the
8 appropriate local permitting processes.

9 3. All records, including but not limited to documents and
10 electronic data, in the possession or custody of authority
11 personnel shall be considered confidential trade secrets as
12 provided for in section 22.7, subsection 3.

13 4. An authority, within ninety calendar days of receiving
14 an application for a substantial modification of a wireless
15 support structure, unless another date is specified in a
16 written agreement between the authority and the applicant,
17 shall comply with the following provisions:

18 a. Review the application for conformity with applicable
19 local zoning ordinances, rules, or regulations, building
20 permit requirements, and consistency with this chapter. An
21 application is deemed to be complete unless the authority
22 notifies the applicant in writing, within thirty calendar
23 days of submission of the application, specifying the
24 deficiencies in the application which, if cured, would make
25 the application complete. The authority's timeframe for
26 review is tolled beginning the date the notice is sent. The
27 authority's ninety-day timeframe for review of the application
28 begins running again when the applicant cures the specified
29 deficiencies. Following the applicant's supplemental
30 submission, the authority has ten days to notify the
31 applicant that the supplemental submission did not provide the
32 information identified in the original notice that specified
33 deficiencies. The authority's ninety-day timeframe to review
34 the application is tolled in the case of second or subsequent
35 notices in conformance with this paragraph. The authority's

1 ninety-day timeframe for review does not toll if the authority
2 requests information regarding any of the considerations an
3 authority may not consider as described in section 8C.3.

4 *b.* Make its final decision to approve or disapprove the
5 application.

6 *c.* Advise the applicant in writing of its final decision.

7 5. If the authority fails to act on an application for an
8 initial placement or installation of transmission equipment on
9 wireless support structures, for a modification of an existing
10 tower or existing base station that constitutes a substantial
11 change, or for a request for construction or placement of
12 transmission equipment that does not constitute an eligible
13 facilities request within the review period specified under
14 subsection 4, the application for a substantial modification
15 shall be deemed approved.

16 6. A party aggrieved by the final action of an authority,
17 either by its affirmative disapproval of an application under
18 the provisions of this section or by its inaction, may bring
19 an action for review in any court of competent jurisdiction to
20 recover reasonable costs related to the application process and
21 attorney fees.

22 **Sec. 6. NEW SECTION. 8C.6 Use of public lands for towers**
23 **and transmission equipment.**

24 1. In accordance with other applicable laws, when entering
25 into a lease with an applicant for the applicant's use of
26 public lands, an authority shall offer the market rate value
27 for use of that land. The term of the lease shall be for at
28 least twenty years.

29 2. *a.* If the authority and the applicant cannot agree on
30 the market rate for lease of the public land and cannot agree
31 on the process to derive the market rate, a three-person panel
32 of appraisers shall determine the market rate. Each party will
33 appoint one appraiser and the two appointed appraisers shall
34 select a third appraiser. Each appraiser shall independently
35 appraise the appropriate market rate for lease of the land.

1 The market rate shall be set at the median value between
2 the highest and lowest market rates determined by the three
3 independent appraisers. However, if the median between the
4 appraisals of the appraisers appointed by each party is greater
5 than or less than ten percent of the appraisal of the appraiser
6 selected by the two appraisers, then the appraisal of the
7 appraiser selected by the two appraisers shall determine the
8 rate for the lease.

9 *b.* The authority and applicant shall conclude the appraisal
10 process within one hundred fifty calendar days from the date
11 the applicant first offered a proposed lease rate to the
12 authority.

13 *c.* If using the three-person panel, each party shall bear
14 the cost of its own appointed appraiser and equally share the
15 cost of the third appraiser.

16

EXPLANATION

17
18

The inclusion of this explanation does not constitute agreement with
the explanation's substance by the members of the general assembly.

19 This bill relates to the deployment of and applications for
20 wireless communications facilities and infrastructure.

21 The bill provides a number of definitions regarding wireless
22 facilities and infrastructure. "Authority" is defined to mean
23 a state, county, or municipal governing body, board, agency,
24 office, or commission authorized by law to make legislative,
25 quasi-judicial, or administrative decisions relative to an
26 application. "Application" is defined as a request submitted
27 by an applicant to an authority to construct a new tower, for
28 the initial placement of transmission equipment on a wireless
29 support structure, for the modification of an existing tower
30 or existing base station that constitutes a substantial
31 change to an existing tower or existing base station, or any
32 other request to construct or place transmission equipment
33 that does not meet the definition of an eligible facilities
34 request as it is not a substantial change. "Tower" is a
35 structure built for the sole or primary purpose of supporting

1 an authorized or federal communications commission licensed
2 antenna and the associated facilities. "Wireless support
3 structure" is defined as a structure that exists at the time
4 an application is submitted and is capable of supporting the
5 attachment or installation of transmission equipment, but does
6 not include a tower or existing base station. "Transmission
7 equipment" means equipment that facilitates transmission for an
8 authorized federal communications commission licensed wireless
9 communications service.

10 The bill provides a series of uniform rules or limitations
11 applicable to all applications. The rules and limitations
12 include prohibiting requiring certain information, as specified
13 in the bill, from or about an applicant.

14 The bill provides timeframes within which an authority must
15 act upon an application to construct a new tower, for the
16 initial placement or installation of transmission equipment on
17 wireless support structures, for modification of an existing
18 tower or base station that constitutes a substantial change,
19 or for a request for construction or placement of transmission
20 equipment that does not constitute an eligible facilities
21 request. The authority may request that the applicant cure
22 deficiencies in the application, during which time the
23 timeframe for review is tolled.

24 When entering into a lease with an applicant for the
25 applicant's use of public land, the bill requires an authority
26 to offer the market rate value for use of that land and a lease
27 term of at least 20 years. The bill provides a process for
28 determination of the market rate value for purposes of the
29 lease if the authority and the applicant disagree on the rate.