

House File 655 - Introduced

HOUSE FILE 655

BY COMMITTEE ON WAYS AND MEANS

(SUCCESSOR TO HF 556)

(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, the utilities division of the department of
26 commerce, or entities that do not have zoning or permitting
27 authority.

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

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

35 c. "*Base station*" includes but is not limited to equipment

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

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

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

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

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

25 5A. *"Electric utility"* means any owner or operator of
26 electric transmission or distribution facilities subject to the
27 regulation and enforcement activities of the Iowa utilities
28 board relating to safety standards.

29 6. *"Eligible facilities request"* means a request for
30 modification of an existing tower or base station that does
31 not substantially change the physical dimensions of the tower
32 or base station and involves collocation of new transmission
33 equipment, the removal of transmission equipment, or the
34 replacement of transmission equipment.

35 7. *"Existing tower"* or *"existing base station"* means a tower

1 or base station that has been reviewed and approved under the
2 applicable zoning or siting process, or under another state or
3 local regulatory review process. *"Existing tower"* includes a
4 tower that was not reviewed and approved because it was not in
5 a zoned area when it was built and lawfully constructed.

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

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

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

16 10. *"Substantial change"* means a change in the existing
17 support structure which results in one or more of the
18 following:

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

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

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

34 b. (1) Addition of an appurtenance to the body of the
35 tower, other than a tower in the public right-of-way, that

1 would protrude from the edge of the tower more than twenty
2 feet, or more than the width of the tower structure at the
3 level of the appurtenance, whichever is greater.

4 (2) Addition of an appurtenance to an existing support
5 structure, other than a tower under subparagraph (1), that
6 would protrude from the edge of the structure by more than six
7 feet.

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

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

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

18 d. Excavation or deployment outside the current site.

19 e. Defeat of concealment elements of the existing support
20 structure.

21 f. Noncompliance with conditions associated with the siting
22 approval of the construction or modification of the existing
23 support structure or base station equipment, except if the
24 change is noncompliant only in a manner that does not exceed
25 the thresholds identified in paragraphs "a" through "d".

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

34 12. "Transmission equipment" means equipment that
35 facilitates transmission for a wireless communications

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

13 12A. *“Utility pole”* means a structure owned or operated by
14 a public utility, municipality, or electric utility that is
15 designed specifically for and used to carry lines, cable, or
16 wires for telephone, cable television, or electricity, or to
17 provide lighting.

18 13. *“Wireless support structure”* means a structure that
19 exists at the time an application is submitted and is capable
20 of supporting the attachment or installation of transmission
21 equipment in compliance with applicable codes, including but
22 not limited to water towers, buildings, and other structures,
23 whether within or outside the public right-of-way. *“Wireless*
24 *support structure”* does not include a tower or existing base
25 station.

26 Sec. 3. NEW SECTION. 8C.3 Uniform rules and limitations —
27 applications.

28 In order to ensure uniformity across this state with respect
29 to the consideration of every application, and notwithstanding
30 any other provision to the contrary, an authority shall not do
31 any of the following:

32 1. Require an applicant to submit information about, or
33 evaluate an applicant’s business decisions with respect to, the
34 applicant’s designed service, customer demand for service, or
35 quality of the applicant’s service to or from a particular area

1 or site.

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

5 b. Require the applicant to establish other options for
6 collocation instead of the construction of a new tower or
7 modification of an existing tower or existing base station
8 that constitutes a substantial change to an existing tower or
9 existing base station.

10 c. Notwithstanding paragraph "b", an authority may require
11 an applicant applying for the construction of a new tower to
12 state in its application that it conducted an analysis of
13 available collocation opportunities on existing towers or
14 existing base stations within the same search ring defined by
15 the applicant solely for the purpose of confirming that the
16 applicant undertook such analysis.

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

20 4. a. Require the removal of existing towers, base
21 stations, or transmission equipment, wherever located, as a
22 condition to approval of an application.

23 b. Notwithstanding paragraph "a", the authority may adopt
24 reasonable rules regarding removal of abandoned towers or
25 transmission equipment.

26 5. Impose environmental testing, sampling, or monitoring
27 requirements, or other compliance measures, for radio frequency
28 emissions from transmission equipment that are categorically
29 excluded under the federal communications commission's
30 rules for radio frequency emissions pursuant to 47 C.F.R.
31 §1.1307(b)(1).

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

34 7. Reject an application, in whole or in part, based on
35 perceived or alleged environmental effects of radio frequency

1 emissions, as provided in 47 U.S.C. §332(c)(7)(B)(iv).

2 8. Prohibit the placement of emergency power systems that
3 comply with federal and state environmental requirements.

4 9. Charge an application fee, consulting fee, or other fee
5 associated with the submission, review, processing, or approval
6 of an application that is not required for similar types of
7 commercial development within the authority's jurisdiction.
8 Fees imposed by an authority or by a third-party entity
9 providing review or technical consultation to the authority
10 shall be based on actual, direct, and reasonable administrative
11 costs incurred for the review, processing, and approval of an
12 application. In no case shall total charges and fees exceed
13 five hundred dollars for an eligible facilities request or
14 three thousand dollars for an application for a new tower, for
15 the initial placement or installation of transmission equipment
16 on a wireless support structure, for a modification of an
17 existing tower or existing base station that constitutes a
18 substantial change to an existing tower or base station, or any
19 other application to construct or place transmission equipment
20 that does not constitute an eligible facilities request. An
21 authority or any third-party entity shall not include within
22 its charges any travel expenses incurred in the review of an
23 application, and an applicant shall not be required to pay or
24 reimburse an authority for consultant or other third-party fees
25 based on a contingency or result-based arrangement.

26 10. Impose surety requirements, including bonds,
27 escrow deposits, letters of credit, or any other type
28 of financial surety, to ensure that abandoned or unused
29 towers or transmission equipment can be removed unless the
30 authority imposes similar requirements on other applicants
31 for other types of commercial development or land uses. If
32 surety requirements are imposed, the requirements must be
33 competitively neutral, nondiscriminatory, reasonable in
34 amount, and commensurate with the historical record for local
35 facilities and structures that are abandoned.

1 11. Condition the approval of an application on the
2 applicant's agreement to provide space on or near the tower,
3 base station, or wireless support structure for authority or
4 local governmental or nongovernmental services at less than the
5 market rate for such space or to provide other services via the
6 structure or facilities at less than the market rate for such
7 services.

8 12. Limit the duration of the approval of an application,
9 except that construction of the approved structure or
10 facilities shall be commenced within two years of final
11 approval, including the disposition of any appeals, and
12 diligently pursued to completion.

13 13. Discriminate on the basis of the ownership, including
14 ownership by the authority, of any property, structure, or
15 tower when promulgating rules or procedures for siting wireless
16 facilities or for evaluating applications.

17 Sec. 4. NEW SECTION. **8C.4 Uniform rules — new tower**
18 **applications.**

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

23 2. An applicant that proposes to construct a new tower
24 within the jurisdiction of an authority that has adopted
25 planning and zoning regulations shall submit the necessary
26 copies and attachments of the application to the appropriate
27 authority and comply with applicable local ordinances
28 concerning land use and the appropriate permitting processes.

29 3. All records, documents, and electronic data, except
30 the name of the applicant and the location of the proposed
31 project, in the possession or custody of authority personnel
32 shall be considered confidential trade secrets as provided for
33 in section 22.7, subsection 3.

34 4. An authority, within one hundred fifty calendar days
35 of receiving an application to construct a new tower, unless

1 another date is specified in a written agreement between the
2 authority and the applicant, shall comply with the following
3 provisions:

4 *a.* Review the application for conformity with applicable
5 local zoning regulations, building permit requirements, and
6 consistency with this chapter. An application is deemed to
7 be complete unless the authority notifies the applicant in
8 writing, within thirty calendar days of submission of the
9 application, specifying the deficiencies in the application
10 which, if cured, would make the application complete. The
11 authority's timeframe to review the application is tolled
12 beginning the date the notice is sent. The authority's
13 timeframe of one hundred fifty days for review of the
14 application begins running again when the applicant cures the
15 specified deficiencies. Following the applicant's supplemental
16 submission, the authority has ten days to notify the
17 applicant that the supplemental submission did not provide the
18 information identified in the original notice that specified
19 deficiencies in the application. The authority's timeframe of
20 one hundred fifty days to review the application is tolled in
21 the case of second or subsequent notices in conformance with
22 this paragraph. The authority shall not include deficiencies
23 in a second or subsequent notice that were not delineated in
24 the original notice. The authority's timeframe for review does
25 not toll if the authority requests information regarding any of
26 the considerations an authority may not consider as described
27 in section 8C.3.

28 *b.* Make its final decision to approve or disapprove the
29 application.

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

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

34 6. A party aggrieved by the final action of an authority,
35 either by its affirmative disapproval of an application under

1 the provisions of this section or by its inaction, may bring an
2 action for review in any court of competent jurisdiction.

3 Sec. 5. NEW SECTION. **8C.5 Uniform rules for certain**
4 **changes.**

5 1. An authority may exercise zoning, land use, planning,
6 and permitting authority within the authority's territorial
7 boundaries with regard to an application for initial placement
8 or installation of transmission equipment on wireless support
9 structures, for modification of an existing tower or existing
10 base station that constitutes a substantial change, or for a
11 request for construction or placement of transmission equipment
12 that does not constitute an eligible facilities request,
13 subject to the provisions of this chapter and federal law.

14 2. An applicant that proposes an initial placement or
15 installation of transmission equipment on wireless support
16 structures, a modification of an existing tower or existing
17 base station that constitutes a substantial change, or a
18 request for construction or placement of transmission equipment
19 that does not constitute an eligible facilities request, within
20 the jurisdiction of an authority that has adopted planning
21 and zoning ordinances, rules, or regulations shall submit the
22 necessary copies and attachments of the application to the
23 authority and comply with such applicable local ordinances,
24 rules, or regulations concerning land use and zoning and the
25 appropriate local permitting processes.

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

30 4. An authority, within ninety calendar days of receiving an
31 application pursuant to subsection 2, unless another date is
32 specified in a written agreement between the authority and the
33 applicant, shall comply with the following provisions:

34 a. Review the application for conformity with applicable
35 local zoning ordinances, rules, or regulations, building

1 permit requirements, and consistency with this chapter. An
2 application is deemed to be complete unless the authority
3 notifies the applicant in writing, within thirty calendar
4 days of submission of the application, specifying the
5 deficiencies in the application which, if cured, would make
6 the application complete. The authority's timeframe for
7 review is tolled beginning the date the notice is sent. The
8 authority's ninety-day timeframe for review of the application
9 begins running again when the applicant cures the specified
10 deficiencies. Following the applicant's supplemental
11 submission, the authority has ten days to notify the
12 applicant that the supplemental submission did not provide the
13 information identified in the original notice that specified
14 deficiencies. The authority's ninety-day timeframe to review
15 the application is tolled in the case of second or subsequent
16 notices in conformance with this paragraph. The authority
17 shall not include deficiencies in a second or subsequent
18 notice that were not delineated in the original notice. The
19 authority's ninety-day timeframe for review does not toll
20 if the authority requests information regarding any of the
21 considerations an authority may not consider as described in
22 section 8C.3.

23 *b.* Make its final decision to approve or disapprove the
24 application.

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

26 5. If the authority fails to act on an application for an
27 initial placement or installation of transmission equipment on
28 wireless support structures, for a modification of an existing
29 tower or existing base station that constitutes a substantial
30 change, or for a request for construction or placement of
31 transmission equipment that does not constitute an eligible
32 facilities request within the review period specified under
33 subsection 4, the application shall be deemed approved.

34 6. A party aggrieved by the final action of an authority,
35 either by its affirmative disapproval of an application under

1 the provisions of this section or by its inaction, may bring an
2 action for review in any court of competent jurisdiction.

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

5 1. In accordance with other applicable laws, when entering
6 into a lease with an applicant for the applicant's use of
7 public lands, an authority shall offer the market rate value
8 for use of that land. The term of the lease shall be for at
9 least twenty years.

10 2. *a.* If the authority and the applicant cannot agree
11 on the market rate for lease of the public land and cannot
12 agree on the process to derive the market rate, the appraisals
13 of a three-person panel of appraisers shall determine the
14 market rate. Each party will appoint one appraiser and the
15 two appointed appraisers shall select a third appraiser. Each
16 appraiser shall independently appraise the appropriate market
17 rate for lease of the land. The market rate shall be set at
18 the median value between the highest and lowest market rates
19 determined by the three independent appraisers. However, if
20 the median between the appraisals of the appraisers appointed
21 by each party is greater than or less than ten percent of the
22 appraisal of the appraiser selected by the two appraisers, then
23 the appraisal of the appraiser selected by the two appraisers
24 shall determine the rate for the lease. Each appraiser
25 shall send a copy of the appraisal to the authority and the
26 applicant. The authority shall use the appraisal process under
27 this paragraph to determine the lease rate for purposes of this
28 subsection.

29 *ob.* An authority shall approve or reject the lease rate as
30 determined by the appraisal process pursuant to paragraph "a"
31 within fifteen days following completion and receipt of the
32 appraisals obtained pursuant to paragraph "a". The authority's
33 failure to reject the lease rate as determined by the appraisal
34 process within fifteen days constitutes approval of the lease
35 rate determined pursuant to paragraph "a" as the market rate

1 value for the use of the land for purposes of the lease between
2 the authority and the applicant.

3 *b.* The authority and applicant shall conclude the appraisal
4 process within one hundred fifty calendar days from the date
5 the applicant first offered a proposed lease rate to the
6 authority.

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

10 Sec. 7. NEW SECTION. **8C.7 Utility poles.**

11 Notwithstanding any provision to the contrary, an authority
12 shall not mandate, require, or regulate the installation,
13 location, or use of transmission equipment on a utility pole.

14 Sec. 8. NEW SECTION. **8C.8 Application and construction.**

15 This chapter shall not be construed as:

16 1. Prohibiting an airport, aviation authority, or
17 municipality from administering and enforcing airport zoning
18 pursuant to the provisions of chapter 329 for the protection
19 of navigable airspace.

20 2. Infringing upon the jurisdiction of a commission, as
21 defined in section 303.20, to approve or deny applications
22 for proposed alterations to exterior features within an area
23 designated as an area of historical significance.

24 3. Infringing upon the jurisdiction of a city or county,
25 or any other entity authorized by statute, to approve or deny
26 applications for proposed alterations to exterior features of
27 designated local landmarks.

28 EXPLANATION

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

31 This bill relates to the deployment of and applications for
32 wireless communications facilities and infrastructure.

33 The bill provides a number of definitions regarding wireless
34 facilities and infrastructure. "Authority" is defined to mean
35 a state, county, or municipal governing body, board, agency,

1 office, or commission authorized by law to make legislative,
2 quasi-judicial, or administrative decisions relative to an
3 application. "Application" is defined as a request submitted
4 by an applicant to an authority to construct a new tower, for
5 the initial placement of transmission equipment on a wireless
6 support structure, for the modification of an existing tower
7 or existing base station that constitutes a substantial
8 change to an existing tower or existing base station, or any
9 other request to construct or place transmission equipment
10 that does not meet the definition of an eligible facilities
11 request as it is not a substantial change. "Tower" is a
12 structure built for the sole or primary purpose of supporting
13 an authorized or federal communications commission licensed
14 antenna and the associated facilities. "Wireless support
15 structure" is defined as a structure that exists at the time
16 an application is submitted and is capable of supporting the
17 attachment or installation of transmission equipment, but does
18 not include a tower or existing base station. "Transmission
19 equipment" means equipment that facilitates transmission for an
20 authorized federal communications commission licensed wireless
21 communications service.

22 The bill provides a series of uniform rules or limitations
23 applicable to all applications. The rules and limitations
24 include prohibiting requiring certain information, as specified
25 in the bill, from or about an applicant.

26 The bill provides timeframes within which an authority must
27 act upon an application to construct a new tower, for the
28 initial placement or installation of transmission equipment on
29 wireless support structures, for modification of an existing
30 tower or base station that constitutes a substantial change,
31 or for a request for construction or placement of transmission
32 equipment that does not constitute an eligible facilities
33 request. The authority may request that the applicant cure
34 deficiencies in the application, during which time the
35 timeframe for review is tolled.

1 When entering into a lease with an applicant for the
2 applicant's use of public land, the bill requires an authority
3 to offer the market rate value for use of that land and a lease
4 term of at least 20 years. The bill provides a process for
5 determination of the market rate value for purposes of the
6 lease if the authority and the applicant disagree on the rate.

7 The bill provides that an authority, as defined in the bill,
8 shall not mandate, require, or regulate the installation,
9 location, or use of transmission equipment on a utility pole.

10 The bill states that nothing in the bill shall be construed
11 as prohibiting an airport, aviation authority, or municipality
12 from administering and enforcing airport zoning for the
13 protection of navigable airspace.

14 The bill states that nothing in the bill should be construed
15 as infringing upon the jurisdiction of a commission, defined
16 for purposes of historical preservation districts, to approve
17 or deny applications for proposed alterations to exterior
18 features within an area designated as an area of historical
19 significance. In addition, the bill provides that nothing in
20 the bill should be construed as infringing upon a city, county,
21 or other entity authorized by statute in approving or denying
22 applications for proposed alterations to exterior features of
23 designated local landmarks.