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300 SW TENTH AVENUE ■ SUITE 24-E ■ TOPEKA, KS 66612 ■ (785) 296-2321

MEMORANDUM

To: Members of the House Committee on Energy, Utilities and Telecommunications
From: Matt Sterling, Assistant Revisor of Statutes
Date: March 14, 2019
RE: Senate Bill 68

SB 68 would amend K.S.A. 12-2001 concerning the authority of a city to require a franchise agreement with a wireless service provider.

SB 68 would prohibit a city from requiring a wireless services provider or a wireless infrastructure provider to enter into any franchise agreement for the provision of wireless services. Cities would be allowed to govern the use of the public right-of-way by a provider by requiring a small cell facility deployment agreement or a master license agreement through permitting requirements or municipal ordinances or codes in a manner consistent with federal and state law and could assess a provider a fixed right-of-way access fee for each small cell facility that the provider deployed that requires use of the city's public right-of-way.

SB 68 also states that it could not be construed to apply to a provider's other operations and services as a utility or otherwise or have any effect on any franchise that is related to such other operations and services or to prohibit a city from requiring a telecommunications local exchange service provider to enter into a valid contract franchise ordinance.

The bill would also create a new definition for "Small cell facility deployment agreement" that means an agreement between a wireless services provider or wireless infrastructure provider and an authority for the deployment of small cell facilities on or adjacent to existing, modified, replacement or new utility poles within the public right-of-way pursuant to K.S.A. 66-2019, and amendments thereto, and federal law. A "small cell facility deployment agreement" is not a franchise, franchise agreement, franchise ordinance, contract franchise or contract franchise ordinance.

Other terms used in the bill that were created in the Wireless Siting Act in 2016:

- "Wireless services" is defined as "personal wireless services" and "personal wireless service facilities" as defined in 47 U.S.C. § 332(c)(7)(C), including commercial mobile services as defined in 47 U.S.C. § 332(d), provided to personal mobile communication

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devices through wireless facilities or any fixed or mobile wireless services provided using wireless facilities¹.

- "Public right-of-way" means only the area of real property in which the authority has a dedicated or acquired right-of-way interest in the real property. It shall include the area on, below or above the present and future streets, alleys, avenues, roads, highways, parkways or boulevards dedicated or acquired as right-of-way. "Public right-of-way" does not include any state, federal or interstate highway right-of-way, which generally includes the area that runs contiguous to, parallel with, and is generally equidistant from the center of that portion of the highway improved, designed or ordinarily used for public travel.
- "Small cell facility" means a wireless facility that meets both of the following qualifications:
 - (A) Each antenna is located inside an enclosure of no more than six cubic feet in volume, or in the case of an antenna that has exposed elements, the antenna and all of the antenna's exposed elements could fit within an imaginary enclosure of no more than six cubic feet; and
 - (B) primary equipment enclosures that are no larger than 17 cubic feet in volume, or facilities comprised of such higher limits as the federal communications commission has excluded from review pursuant to 54 U.S.C. § 306108. Associated equipment may be located outside the primary equipment, and if so located, is not to be included in the calculation of equipment volume. Associated equipment includes, but is not limited to, any electric meter, concealment, telecommunications demarcation box, ground-based enclosures, back-up power systems, grounding equipment, power transfer switch, cut-off switch and vertical cable runs for the connection of power and other services.
- "Wireless infrastructure provider" means any person that builds or installs transmission equipment, wireless facilities or wireless support structures, but that is not a wireless services provider.
- "Wireless services provider" means a provider of wireless services.
- "Utility pole" means a structure owned or operated by a public utility as defined in K.S.A. 66-104, and amendments thereto, a municipality as defined in K.S.A. 75-6102, and amendments thereto, or an electric cooperative as defined in K.S.A. 2018 Supp. 17-4652, and amendments thereto, that is designed specifically for and used to carry lines, cables or wires for telecommunications, cable, electricity or to provide lighting.

¹ This definition of "wireless services" is tied to several definitions in the federal code that are listed below:

- "Personal wireless service" means commercial mobile services, unlicensed wireless services, and common carrier wireless exchange access services.
- "Personal wireless service facilities" means facilities for the provision of personal wireless service.
- "Commercial mobile service" means any mobile service (as defined in section 153 of this title) that is provided for profit and makes interconnected service available (A) to the public or (B) to such classes of eligible users as to be effectively available to a substantial portion of the public, as specified by regulation by the Commission.
- "Unlicensed wireless service" means the offering of telecommunications services using duly authorized devices which do not require individual licenses, but does not mean the provision of direct-to-home satellite services.