

LEGISLATURE OF NEBRASKA
ONE HUNDRED FIFTH LEGISLATURE
FIRST SESSION

LEGISLATIVE BILL 389

Introduced by Friesen, 34.

Read first time January 13, 2017

Committee:

- 1 A BILL FOR AN ACT relating to telecommunications and technology; to adopt
- 2 the Small Wireless Facilities Act; to provide a duty for the Revisor
- 3 of Statutes; and to provide an operative date.
- 4 Be it enacted by the people of the State of Nebraska,

1 Section 1. Sections 1 to 22 of this act shall be known and may be
2 cited as the Small Wireless Facilities Act.

3 Sec. 2. The Legislature finds and declares that:

4 (1) There is a need for statewide uniformity in the regulation of
5 the deployment of facilities for providing communications service;

6 (2) Communications facilities are critical to public safety and to
7 increase access to advanced technology and information;

8 (3) Communications facilities are essential to help businesses and
9 schools throughout the state remain competitive in the global economy;
10 and

11 (4) The permitting, construction, modification, maintenance, and
12 operation of communications facilities are matters of statewide concern
13 and interest.

14 Sec. 3. The purposes of the Small Wireless Facilities Act are to:

15 (1) Secure public access to advanced wireless technology and
16 information in an efficient manner;

17 (2) Promote the public benefits from such wireless technology and a
18 reliable process for deployment of small wireless facilities; and

19 (3) Confirm that communications service providers and communications
20 facilities providers have a right to occupy and utilize public rights-of-
21 way on a competitively neutral basis for the efficient conduct of their
22 business.

23 Sec. 4. For purposes of the Small Wireless Facilities Act, the
24 definitions in sections 5 to 19 apply.

25 Sec. 5. Applicant means a communications service provider or
26 communications facilities provider that submits an application to an
27 authority.

28 Sec. 6. Authority means a state agency or a county, city, village,
29 public power district, or other political subdivision within the State of
30 Nebraska.

31 Sec. 7. Authority lands means lands owned by an authority.

1 Sec. 8. Authority right-of-way means a public highway, street, or
2 alley under the jurisdiction of the authority.

3 Sec. 9. Collocate or collocation means mounting, installation,
4 maintenance, modification, replacement, or operation of wireless
5 facilities on or adjacent to a tower, building, pole, or structure for
6 the purpose of transmitting or receiving radio frequency signals for
7 communications purposes, but does not include routine maintenance or
8 replacement of facilities that are substantially similar or smaller in
9 size, weight, height, and structural loading.

10 Sec. 10. Communications facilities provider means a person or
11 entity that installs or constructs facilities or structures used to
12 provide communications service.

13 Sec. 11. Communications facility means any freestanding tower,
14 monopole, pole, small wireless facility, or similar structure used to
15 provide wireless service, unlicensed wireless service, or fixed wireless
16 service, including microwave backhaul, and includes a base station, an
17 antenna, coaxial cables, fiber optic cables, wires, conduit, pipes, radio
18 transceivers, microwave devices, power supplies, and all other equipment
19 used to provide communications service. The term also includes a personal
20 wireless services facility as defined in 47 U.S.C. 332, as such section
21 existed on January 1, 2017, and wireless facilities.

22 Sec. 12. Communications service means cable service as defined in
23 47 U.S.C. 522(6), information service as defined in 47 U.S.C. 153(24),
24 telecommunications service as defined in 47 U.S.C. 153(53), mobile
25 service as defined in 47 U.S.C. 153(33), or personal wireless service as
26 defined in 47 U.S.C. 332, as such sections existed on January 1, 2017.
27 The term also means wireless service other than mobile service.

28 Sec. 13. Communications service provider means a cable operator as
29 defined in 47 U.S.C. 522(5), a provider of information service as defined
30 in 47 U.S.C. 153(24), or a telecommunications carrier as defined in 47
31 U.S.C. 153(51), as such sections existed on January 1, 2017. The term

1 also means a wireless service provider.

2 Sec. 14. Pole means a utility pole, pole, light pole, light
3 standard, or structure that is used in whole or in part for
4 communications service, electric service, lighting, traffic control,
5 signage, or a similar function.

6 Sec. 15. Small wireless facility means a wireless facility that
7 meets the following qualifications:

8 (1) Each antenna is located inside an enclosure of no more than six
9 cubic feet in volume or, in the case of an antenna that has exposed
10 elements, the antenna and all its exposed elements could fit within an
11 enclosure of no more than six cubic feet; and

12 (2) All other wireless equipment associated with the structure is
13 cumulatively no more than twenty-eight cubic feet in volume. The
14 following types of associated ancillary equipment are not included in the
15 calculation of equipment volume: Electric meters, concealment material,
16 telecommunications demarcation boxes, ground-based enclosures, backup
17 power systems, grounding equipment, power transfer switches, cutoff
18 switches, and vertical cable runs for connection of power and other
19 services.

20 Sec. 16. Wireless facility means equipment at a fixed location that
21 enables wireless communications between user equipment and a
22 communications network, including, but not limited to: (a) Equipment
23 associated with wireless service such as private, broadcast, and public
24 safety services, as well as unlicensed wireless service and fixed
25 wireless service such as microwave backhaul; and (b) radio transceivers,
26 antennas, coaxial or fiber optic cables, regular and backup power
27 supplies, and comparable equipment regardless of technological
28 configuration. The term includes communications facilities and small
29 wireless facilities.

30 Sec. 17. Wireless service means a fixed or mobile wireless service
31 provided using wireless facilities and includes personal wireless service

1 and communications service.

2 Sec. 18. Wireless service provider means a provider of wireless
3 service including personal wireless service under 47 U.S.C. 332, as such
4 section existed on January 1, 2017.

5 Sec. 19. Wireless support structure means a structure capable of
6 supporting the attachment or installation of communications facilities in
7 compliance with applicable codes, including, but not limited to, water
8 towers, buildings, and other structures whether within or outside the
9 authority right-of-way.

10 Sec. 20. (1) Communications service providers and communications
11 facilities providers may place poles and wireless facilities in an
12 authority right-of-way.

13 (2)(a) An authority may require an application for a permit to
14 collocate small wireless facilities on wireless support structures and
15 poles, including authority poles.

16 (b) An application for the collocation of small wireless facilities
17 shall be processed on a nondiscriminatory basis and deemed approved if
18 the authority fails to approve or deny the application within sixty days
19 after submission of a complete application.

20 (c) Batched applications may be made for projects involving multiple
21 individual small wireless facilities within the jurisdiction of a single
22 authority. The authority shall allow the applicant, at the applicant's
23 discretion, to file a consolidated application and receive a single
24 permit for multiple individual small wireless facilities instead of
25 filing separate applications for each individual small wireless facility.
26 If an applicant applies to construct or collocate several small wireless
27 facilities within the jurisdiction of a single authority, the authority
28 shall:

29 (i) Allow the applicant, at the applicant's discretion, to file a
30 single set of documents that apply to all the applicant's small wireless
31 facilities; and

1 (ii) Render a decision regarding all the applicant's small wireless
2 facilities in a single administrative proceeding unless local
3 requirements call for an elected or appointed body to render such
4 decision.

5 (d) An authority shall approve an application unless it does not
6 meet the authority's applicable industry construction standards in the
7 authority right-of-way or its building, electrical, or pole attachment
8 codes, standards, or regulations if such codes, standards, or regulations
9 are of general applicability and do not apply exclusively to wireless
10 facilities.

11 (e) The authority shall document the basis for a denial, including
12 the specific code provisions, standards, or regulations on which the
13 denial was based, and send the documentation to the applicant on or
14 before the day the authority denies an application. The applicant may
15 cure the deficiencies identified by the authority and resubmit the
16 application within thirty days after the denial without paying an
17 additional application fee. The authority shall approve or deny the
18 revised application within thirty days.

19 (f) Once an application is approved, a permit authorizing the
20 collocation or collocations shall remain valid for at least ten years and
21 shall be approved automatically for at least three five-year periods
22 unless the applicant requests that the permit be terminated.

23 (g) An authority shall only charge an application fee reasonably
24 related to the costs directly incurred by the authority in the granting
25 or administration of permits. Such fee shall be reasonably related in
26 time to the occurrence of such costs and shall not exceed two hundred
27 fifty dollars inclusive of any third-party fees, charges, or expenses.
28 All costs of construction shall be borne by the applicant with no
29 additional fees, taxes, lease payments, or in-kind consideration paid or
30 provided to the authority for use of the authority's right-of-way or
31 land, except that the applicant shall be responsible for any costs to

1 improve or maintain its own small wireless facility. An applicant shall
2 not be required to pay the occupation tax authorized under section 86-704
3 for projects undertaken pursuant to the Small Wireless Facilities Act.

4 (h) An applicant may collocate small wireless facilities on
5 authority poles located within the authority right-of-way without being
6 required to apply for or enter into any individual license, franchise, or
7 other agreement with the authority or any other entity subject to such
8 nondiscriminatory, competitively neutral, and commercially reasonable
9 terms and conditions as may be set forth in the building permit. Such
10 terms and conditions shall comply with this section and federal pole
11 attachment requirements under 47 U.S.C. 224 and implementing regulations,
12 as such section and regulations existed on January 1, 2017. The annual
13 recurring rate to collocate a small wireless facility on an authority
14 pole shall not exceed the rate produced by applying the formula adopted
15 by the Federal Communications Commission for telecommunications pole
16 attachments under 47 C.F.R. 1.1409(e)(2), as such regulation existed on
17 January 1, 2017.

18 (i) For authority poles that support aerial cables used for video
19 communications or electric service, the applicant shall comply with the
20 process for make-ready work under 47 U.S.C. 224 and implementing
21 regulations, as such section and regulations existed on January 1, 2017.
22 The good faith estimate of the entity owning or controlling the pole for
23 any make-ready work necessary to enable the pole to support the requested
24 collocation shall include pole replacement, if necessary.

25 (j) For authority poles that do not support aerial cables used for
26 video communications or electric service, the authority shall provide a
27 good faith estimate for any make-ready work necessary to enable the pole
28 to support the requested collocation, including pole replacement, if
29 necessary, within sixty days after receipt of a complete application.
30 Make-ready work, including any pole replacement, shall be completed
31 within sixty days after written acceptance of the good faith estimate by

1 the applicant.

2 (k) Make-ready work shall not require more work than required to
3 meet applicable codes or industry standards. Charges for make-ready work,
4 including any pole replacement, shall not exceed actual costs for the
5 amount charged to other communications service providers for similar work
6 and shall not include third-party fees, charges, or expenses.

7 (l) For purposes of this subsection, make-ready work generally
8 refers to the modification of poles or lines or the installation of guys
9 and anchors to accommodate additional facilities.

10 (3) For a pole placed or a small wireless facility collocated in
11 whole or in part under either subsection (1) or (2) of this section, an
12 authority shall only impose nondiscriminatory, competitively neutral, and
13 commercially reasonable application requirements and shall not:

14 (a) Require any additional information from applicants that is not
15 required from other users of authority rights-of-way;

16 (b) Institute a moratorium on the collocation of small wireless
17 facilities, either directly through a written policy, resolution,
18 ordinance, rule, or regulation or indirectly through action or inaction
19 on filing, receiving, or processing applications for small wireless
20 facilities;

21 (c) Impose discriminatory licensing standards for persons
22 collocating small wireless facilities but shall receive and process
23 applications and issue licenses for persons constructing or collocating
24 small wireless facility applications in a manner substantially comparable
25 to the licensing of other contractors within the jurisdiction of the
26 authority; and

27 (d) Require a communications service provider to provide (i) space
28 on or near the wireless facility for authority services at less than the
29 market rate for space, (ii) services by use of the structure or
30 facilities at less than the market rate for such services, or (iii) any
31 services unrelated to the wireless facility.

1 Sec. 21. For purposes of zoning regulation, small wireless
2 facilities shall be a permitted use in all zoning districts other than
3 areas outside the authority right-of-way that are zoned and used for
4 single family residential use. An authority shall not impose a specific
5 or conditional use permit requirement or any similar requirement or
6 prohibition on small wireless facilities, and the authority shall not
7 impose more restrictive requirements on placement, height, setbacks, or
8 spacing than what are of general applicability in the zoning district.

9 Sec. 22. An authority shall not require a communications service
10 provider or communications facilities provider to indemnify and hold
11 harmless the authority from such authority's own negligence, or require a
12 communications service provider or communications facilities provider to
13 obtain insurance naming the authority and its officers and employees as
14 an additional insured party. No communications service provider or
15 communications facilities provider may avoid responsibility for its own
16 negligence in installing, repairing, or maintaining poles and wireless
17 facilities in an authority right-of-way.

18 Sec. 23. The Revisor of Statutes shall assign sections 1 to 22 of
19 this act to Chapter 86.

20 Sec. 24. This act becomes operative on XXX XX, XXXX.