

LEGISLATURE OF NEBRASKA
ONE HUNDRED SIXTH LEGISLATURE
FIRST SESSION

LEGISLATIVE BILL 184

FINAL READING

Introduced by Friesen, 34; Lowe, 37.

Read first time January 11, 2019

Committee: Transportation and Telecommunications

- 1 A BILL FOR AN ACT relating to telecommunications and technology; to adopt
- 2 the Small Wireless Facilities Deployment Act.
- 3 Be it enacted by the people of the State of Nebraska,

1 Section 1. Sections 1 to 44 of this act shall be known and may be
2 cited as the Small Wireless Facilities Deployment Act.

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

4 (1) The deployment of small wireless facilities and other next-
5 generation wireless facilities is a matter of statewide concern and
6 interest and public policy;

7 (2) Wireless products and services are a significant and continually
8 growing part of the state's economy. Encouraging the development of
9 strong and robust wireless communications networks throughout the state
10 is necessary to address public need and policy and is integral to the
11 state's economic competitiveness;

12 (3) Rapid deployment of small wireless facilities will serve
13 numerous important statewide goals and public policy, including meeting
14 growing consumer demand for wireless data, increasing competitive options
15 for communications services available to the state's residents, improving
16 the ability of the state's residents to communicate with other residents
17 and with their state and local governments, and promoting public safety;

18 (4) Small wireless facilities, including facilities commonly
19 referred to as small cells and distributed antenna systems, are deployed
20 most effectively in public rights-of-way;

21 (5) To meet the public need and policy and the key objectives of the
22 Small Wireless Facilities Deployment Act, wireless providers must have
23 access to the public rights-of-way to densify their networks and provide
24 next-generation wireless services;

25 (6) Uniform procedures, rates, and fees for permit issuance and
26 deployment of small wireless facilities in public rights-of-way and on
27 authority infrastructure, including poles, throughout the state are
28 reasonable and will encourage the development of robust next-generation
29 wireless networks for the benefit of residents throughout the state; and

30 (7) The procedures, rates, and fees in the Small Wireless Facilities
31 Deployment Act, together with any taxes, fees, or charges imposed under

1 section 86-704, (a) are fair and reasonable when viewed from the
2 perspective of the state's residents and the state's interest in having
3 robust, reliable, and technologically advanced wireless networks and (b)
4 reflect a balancing of the interests of the wireless providers deploying
5 new facilities and the interests of authorities in receiving fair value
6 by recovering their costs of managing access to the public rights-of-way
7 and the attachment space provided on authority infrastructure and
8 reviewing and processing applications for the installation of small
9 wireless facilities within the rights-of-way.

10 Sec. 3. For purposes of the Small Wireless Facilities Deployment
11 Act, the definitions in sections 4 to 35 of this act apply.

12 Sec. 4. Antenna means communications equipment that transmits or
13 receives electromagnetic radio frequency signals used in providing
14 wireless services.

15 Sec. 5. Applicable codes means uniform building, fire, safety,
16 electrical, plumbing, or mechanical codes adopted by a recognized
17 national code organization or local amendments to such codes so long as
18 such amendments are not in conflict with the Small Wireless Facilities
19 Deployment Act and to the extent such codes have been adopted by the
20 authority and are generally applicable in the jurisdiction.

21 Sec. 6. Applicant means any person who submits an application and
22 is a wireless provider.

23 Sec. 7. Application means a written request submitted by an
24 applicant to an authority (1) for a permit to collocate small wireless
25 facilities on an existing utility pole or wireless support structure or
26 (2) for a permit for approval for the installation, modification, or
27 replacement of a utility pole to support the installation of a small
28 wireless facility.

29 Sec. 8. Authority means the State of Nebraska or any agency,
30 county, city, village, or other political subdivision thereof, except as
31 otherwise excluded herein. Authority does not include public power

1 suppliers, state courts having jurisdiction over an authority, or an
2 entity that does not have zoning or permit-granting authority.

3 Sec. 9. Authority pole means a utility pole owned, managed, or
4 operated by or on behalf of an authority.

5 Sec. 10. Collocate or collocation means to install, mount,
6 maintain, modify, operate, or replace small wireless facilities on or
7 adjacent to a wireless support structure or utility pole. Collocate or
8 collocation does not include the installation of a new utility pole or
9 new wireless support structure in the right-of-way.

10 Sec. 11. Communications facility means the set of equipment and
11 network components including wires, cables, and associated facilities
12 used by a cable operator as defined in 47 U.S.C. 522(5), as such section
13 existed on January 1, 2019, a telecommunications carrier as defined in 47
14 U.S.C. 153(51), as such section existed on January 1, 2019, a provider of
15 information service as defined in 47 U.S.C. 153(24), as such section
16 existed on January 1, 2019, or a wireless services provider, to provide
17 communications services, including cable service as defined in 47 U.S.C.
18 153(8), as such section existed on January 1, 2019, an information
19 service as defined in 47 U.S.C. 153(24), as such section existed on
20 January 1, 2019, wireless services, or other one-way or two-way
21 communications service.

22 Sec. 12. Communications network means a network used to provide
23 communications service.

24 Sec. 13. Communications service means a cable service as defined in
25 47 U.S.C. 522, as such section existed on January 1, 2019, an information
26 service as defined in 47 U.S.C. 153, as such section existed on January
27 1, 2019, a telecommunications service as defined in 47 U.S.C. 153, as
28 such section existed on January 1, 2019, or a wireless service.

29 Sec. 14. Communications service provider means a cable operator as
30 defined in 47 U.S.C. 522, a provider of information service as defined in
31 47 U.S.C. 153, or a telecommunications carrier as defined in 47 U.S.C.

1 153, as such sections existed on January 1, 2019. Communications service
2 provider includes a wireless provider.

3 Sec. 15. Decorative pole means an authority pole that is specially
4 designed and placed for aesthetic purposes.

5 Sec. 16. Fee means a one-time, nonrecurring charge.

6 Sec. 17. Historic district means any prehistoric or historic
7 district, site, building, structure, or object included in, or eligible
8 for inclusion in, the National Register of Historic Places, in accordance
9 with Stipulation VI.D.1.a (i)-(v) of the Nationwide Programmatic
10 Agreement for Review of Effects on Historic Properties for Certain
11 Undertakings Approved by the Federal Communications Commission codified
12 at 47 C.F.R. part 1, Appendix C, as such regulation existed on January 1,
13 2019, or designated pursuant to state historic preservation law if such
14 designation exists at the time of application.

15 Sec. 18. Law means federal, state, or local law, statute, common
16 law, code, rule, regulation, order, or ordinance.

17 Sec. 19. Microwireless facility means a small wireless facility
18 that is not larger in dimension than twenty-four inches in length,
19 fifteen inches in width, and twelve inches in height and with any
20 exterior antenna no longer than eleven inches.

21 Sec. 20. Permit means a written authorization required by an
22 authority to perform an action, initiate, continue, or complete
23 installation of a small wireless facility on an existing utility pole or
24 attached to an existing wireless support structure, or to install,
25 modify, or replace a utility pole to support installation of a small
26 wireless facility.

27 Sec. 21. Person means an individual, a corporation, a limited
28 liability company, a partnership, an association, a trust, or any other
29 entity or organization, including an authority.

30 Sec. 22. Public power supplier means a public power district or any
31 other governmental entity providing electric service. Public power

1 supplier includes a municipal electric utility or a rural public power
2 supplier.

3 Sec. 23. Rate means a recurring charge.

4 Sec. 24. Right-of-way means the area on, below, or above a public
5 roadway, highway, street, sidewalk, alley, dedicated utility easement, or
6 similar property, but not including a freeway as defined in section
7 39-1302, the National System of Interstate and Defense Highways, or a
8 private easement.

9 Sec. 25. Rural public power supplier means a public power district,
10 a public power and irrigation district, an electric cooperative, or an
11 electric membership association, that does not provide electric service
12 to any city of the metropolitan class, city of the primary class, or city
13 of the first class.

14 Sec. 26. Small wireless facility means a wireless facility that
15 meets each of the following conditions: (1) The facilities (a) are
16 mounted on structures fifty feet or less in height including the antennas
17 or (b) are mounted on structures no more than ten percent taller than
18 other adjacent structures; (2) each antenna associated with the
19 deployment is no more than three cubic feet in volume; (3) all other
20 equipment associated with the structure, whether ground-mounted or pole-
21 mounted, is no more than twenty-eight cubic feet in volume; (4) the
22 facilities do not require antenna structure registration under 47 C.F.R.
23 part 17, as such regulation existed on January 1, 2019; (5) the
24 facilities are not located on tribal lands, as defined in 36 C.F.R.
25 800.16(x), as such regulation existed on January 1, 2019; and (6) the
26 facilities do not result in human exposure to radio frequency radiation
27 in excess of the applicable safety standards specified in 47 C.F.R.
28 1.1307(b), as such regulation existed on January 1, 2019.

29 Sec. 27. Technically feasible means that by virtue of engineering
30 or spectrum usage, the proposed placement for a small wireless facility,
31 or its design or site location, can be implemented without a reduction in

1 the functionality of the small wireless facility.

2 Sec. 28. Utility pole means a pole located in the right-of-way that
3 is used for wireline communications, lighting, the vertical portion of
4 support structures for traffic control signals or devices or a similar
5 function, or for the collocation of small wireless facilities and located
6 in the right-of-way. Utility pole does not include (1) wireless support
7 structures, (2) any transmission infrastructure owned or operated by a
8 public power supplier or rural public power supplier, and (3) any
9 distribution or communications infrastructure owned or operated by a
10 rural public power supplier.

11 Sec. 29. (1) Wireless facility means equipment at a fixed location
12 that enables wireless communications between user equipment and a
13 communications network, including (a) equipment associated with wireless
14 communications and (b) radio transceivers, antennas, coaxial or fiber-
15 optic cable, regular power supply, and small back-up battery, regardless
16 of technological configuration. Wireless facility includes small wireless
17 facilities.

18 (2) Wireless facility does not include (a) the structure or
19 improvements on, under, or within the equipment which is collocated, (b)
20 coaxial or fiber-optic cable that is between wireless structures or
21 utility poles or that is otherwise not immediately adjacent to, or
22 directly associated with, a particular antenna, or (c) a wireline
23 backhaul facility.

24 Sec. 30. Wireless infrastructure provider means any person,
25 including a person authorized to provide telecommunications service in
26 the State of Nebraska, when acting to build or install wireless
27 communication transmission equipment, wireless facilities, or wireless
28 support structures, but that is not a wireless services provider.

29 Sec. 31. Wireless provider means a wireless services provider or a
30 wireless infrastructure provider when acting as a coapplicant for a
31 wireless services provider.

1 Sec. 32. Wireless services means any services using licensed or
2 unlicensed spectrum, including the use of Wi-Fi, whether mobile or at a
3 fixed location, provided to the public using wireless facilities.

4 Sec. 33. Wireless services provider means a person who provides
5 wireless services.

6 Sec. 34. Wireless support structure means a structure such as a
7 guyed or self-supporting tower, billboard, building, or other existing or
8 proposed structure designed to support or capable of supporting wireless
9 facilities other than a structure designed solely for the collocation of
10 small wireless facilities. Wireless support structure does not include a
11 utility pole.

12 Sec. 35. Wireline backhaul facility means an above-ground or
13 underground facility used to transport communications services from a
14 wireless facility to a communications network.

15 Sec. 36. (1) This section applies only to activities of a wireless
16 provider within the right-of-way to deploy small wireless facilities and
17 associated utility poles.

18 (2) An authority shall not enter into an exclusive arrangement with
19 any person for use of the right-of-way.

20 (3) Subject to the exception in subsection (7) of section 37 of this
21 act, an authority may only charge a wireless provider on a
22 nondiscriminatory basis the rate or fee provided in section 39 of this
23 act for the use of any right-of-way for the collocation of small wireless
24 facilities or the installation, maintenance, modification, operation, or
25 replacement of a utility pole in the right-of-way if the authority
26 charges other entities for the use of the right-of-way. An authority may,
27 on a nondiscriminatory basis, refrain from charging any rate to a
28 wireless provider for the use of the right-of-way.

29 (4) Except as provided in this section, a wireless provider shall
30 have the right, as a permitted use not subject to zoning review or
31 approval, to collocate small wireless facilities and install, maintain,

1 modify, operate, and replace utility poles along, across, upon, and under
2 the right-of-way so long as such facilities and poles do not obstruct or
3 hinder the usual travel or public safety on such right-of-way or obstruct
4 the legal use of such right-of-way by utilities or the safe operation of
5 their systems or provision of service.

6 (5)(a) Any new or modified utility pole installed in a right-of-way
7 shall not exceed the greater of (i) five feet in height above the tallest
8 existing utility pole in place as of the effective date of this act
9 located within five hundred feet of the new utility pole in the same
10 right-of-way or (ii) fifty feet above ground level.

11 (b) New small wireless facilities in a right-of-way shall not extend
12 more than the greater of (i) fifty feet in height, including antenna, or
13 (ii) more than five feet above an existing utility pole in place as of
14 the effective date of this act and located within five hundred feet in
15 the same right-of-way.

16 (c) An authority shall have the right, at its sole discretion and
17 subject to applicable nondiscriminatory regulations, to consider and
18 approve an application to install a utility pole or wireless support
19 structure that exceeds the height limits in this subsection for the right
20 to collocate a small wireless facility and install, maintain, modify,
21 operate, and replace a utility pole that exceeds such height limits
22 along, across, upon, and under a right-of way.

23 (6) An applicant may request approval from an authority, as part of
24 the application process, to replace a decorative pole when necessary to
25 collocate a small wireless facility. Any replacement decorative pole
26 shall conform to the nondiscriminatory design aesthetics of the
27 decorative pole being replaced.

28 (7) Except for facilities excluded from evaluation for effects on
29 historic properties under 47 C.F.R. 1.1307(a)(4), as such regulation
30 existed on January 1, 2019, an authority shall have the right to require
31 design or concealment measures in a historic district established prior

1 to January 1, 2019. Such design or concealment measures shall be
2 objective and directed to avoid or remedy the intangible public harm of
3 unsightly or out-of-character wireless facilities deployed at the
4 proposed location within the authority's jurisdiction. Any such design or
5 concealment measures shall be reasonable, nondiscriminatory, and
6 published in advance, and shall not be considered a part of the small
7 wireless facility for purposes of the size restrictions of a small
8 wireless facility.

9 (8) An authority may require a wireless provider to repair all
10 damage to a right-of-way directly caused by the activities of the
11 wireless provider in the right-of-way and return the right-of-way to
12 equal or better condition to that before the damage occurred pursuant to
13 the competitively neutral and reasonable requirements and specifications
14 of the authority. If the applicant fails to make the repairs that are
15 reasonably required by the authority within fourteen days after written
16 notice, the authority may undertake such repairs and charge the wireless
17 provider the reasonable, documented cost of such repairs. An authority
18 shall grant an extension of up to ten days to complete such repairs if
19 the wireless provider requests such extension within the original
20 fourteen-day period. In the event of immediate threat to life, safety, or
21 to prevent serious injury, the authority may immediately undertake to
22 restore the site and then notify the applicant and charge the applicant
23 for all reasonable restoration costs.

24 Sec. 37. (1) This section applies to the issuance of a permit for a
25 small wireless facility within the right-of-way as specified in
26 subsection (4) of this section and to the issuance of a permit for the
27 installation, modification, and replacement of a utility pole by an
28 applicant within a right-of-way.

29 (2) Except as provided in the Small Wireless Facilities Deployment
30 Act, an authority shall not prohibit, regulate, or charge for the
31 collocation of small wireless facilities or the installation,

1 modification, or replacement of utility poles to support small wireless
2 facilities.

3 (3)(a) An applicant that collocates a small wireless facility within
4 an authority right-of-way or on a utility pole assumes the risk of loss,
5 damage to, or loss of use of such facility when such pole is damaged,
6 destroyed, or taken out of service on authority property, except to the
7 extent that such loss or damage is due to or caused by the negligence or
8 willful misconduct of the authority or its employees, contractors, or
9 agents. This subdivision does not preclude claims against entities other
10 than the authority.

11 (b) The construction, operation, maintenance, collocation, or
12 placement of wireless facilities, utility poles, or wireless support
13 structures shall occur at no cost from an applicant to an authority
14 unless otherwise agreed to in advance between an applicant and the
15 authority.

16 (c) If the future maintenance or construction of an authority road
17 requires the moving or relocating of wireless facilities, utility poles,
18 or wireless support structures currently located within a right-of-way,
19 such facilities, poles, or structures shall be removed or relocated by
20 the owner of such small wireless facilities, poles, or structures at the
21 owner's expense and as directed by the authority.

22 (4) Small wireless facilities shall be classified as a permitted use
23 and not subject to zoning review or approval if collocated within the
24 right-of-way. Small wireless facilities to be located in an airport
25 hazard area as defined by section 3-301 shall comply with any regulations
26 governing such area.

27 (5) An authority may require an applicant to apply for and obtain
28 one or more permits to collocate a small wireless facility or install a
29 new, modified, or replacement utility pole associated with a small
30 wireless facility. Such permits shall be of general applicability and not
31 apply exclusively to wireless facilities. An authority shall receive

1 applications for, process, and issue such permits subject to the
2 following requirements:

3 (a) Except as otherwise provided in subdivision (b) of this
4 subsection, an authority shall not directly or indirectly require an
5 applicant to perform services or provide goods unrelated to the permit,
6 such as in-kind contributions to the authority, including reserving
7 fiber, conduit, or utility pole space for the authority;

8 (b) An authority shall be allowed to reserve space on authority
9 poles and the applicant shall cooperate with the authority in any such
10 reservation, except that the authority shall first notify the applicant
11 in writing that it is interested in reserving such pole space or sharing
12 the trenches or bores in the area where the collocation is to occur. The
13 applicant shall allow the authority to place its infrastructure in the
14 applicant's trenches or bores or on the utility pole as requested by the
15 authority, except that the authority shall incur the incremental costs of
16 placing the conduit or infrastructure as requested. The authority shall
17 be responsible for maintaining its facilities in the trenches and bores
18 and on the authority pole;

19 (c) An applicant shall not be required to provide more information
20 to obtain a permit than a communications service provider that is not a
21 wireless provider, except as directly related to the impairment of
22 wireless service in the immediate area of the proposed small wireless
23 facility and except that an applicant may be required to include
24 construction and engineering drawings and information demonstrating
25 compliance with the criteria in subdivision (j) of this subsection;

26 (d) An authority may propose a technically feasible alternate
27 utility pole location. The wireless provider shall cooperate with the
28 authority to address the authority's reasonable proposal. The authority
29 shall not require the placement of small wireless facilities on any
30 specific utility pole or category of poles or require multiple antenna
31 systems on a single utility pole;

1 (e) An authority shall not limit the placement of small wireless
2 antennas by minimum horizontal separation distances;

3 (f) An authority may require an applicant to include an attestation
4 that the small wireless facilities will be operational for use by a
5 wireless services provider within nine months after the later of the
6 completion of all make-ready work or the permit issuance date unless a
7 delay is caused by lack of commercial power or communications transport
8 facilities to the site. In such case the applicant shall have an
9 extension not to exceed nine months. The authority and applicant may
10 mutually agree to an additional extension;

11 (g) Within twenty days after receiving an application, an authority
12 shall determine and notify the applicant in writing whether the
13 application is complete. If an application is incomplete, the authority
14 shall specifically identify the missing information in writing. The
15 processing deadline in subdivision (h) of this subsection shall restart
16 upon the first finding of incompleteness. The applicant may resubmit the
17 completed application within thirty days without additional charge.
18 Subsequent findings of incompleteness shall toll the application
19 processing deadline in subdivision (h) of this subsection. The subsequent
20 review shall be limited to the specifically identified information
21 subsequently completed except to the extent material changes have been
22 made by the applicant, other than those required by the authority, in
23 which case a new application and application fee shall be submitted.
24 Subsequent findings of incompleteness will toll the deadline from the
25 time the authority sends notice of incompleteness to the time the
26 applicant provides the missing information. The application processing
27 deadline also may be tolled by agreement of the applicant and the
28 authority;

29 (h) An application shall be processed on a nondiscriminatory basis
30 and deemed approved if the authority fails to approve or deny the
31 application within ninety days after receipt of the application. An

1 authority may extend the application processing deadline described in
2 subdivision (g) of this subsection for a single period of ten business
3 days if the authority notifies the applicant in advance before the day on
4 which approval or denial is originally due. Upon mutual agreement between
5 the applicant and the authority, the authority may extend the period for
6 consideration of an application for thirty days;

7 (i) A permit shall authorize an applicant to undertake only certain
8 activities in accordance with this section and does not create a property
9 right or grant authority to the applicant to infringe upon the rights of
10 others who may own or have other interests in a right-of-way, utility
11 easement, or other privately owned property;

12 (j) An authority may deny a proposed collocation of a small wireless
13 facility or installation, modification, or replacement of a utility pole
14 that meets the requirements of section 36 of this act only if the
15 proposed application:

16 (i) Materially and demonstrably interferes with the safe operation
17 of traffic control equipment or the right-of-way;

18 (ii) Materially interferes with sight lines or clear zones for air
19 or land transportation or pedestrians;

20 (iii) Materially interferes with compliance with the federal
21 Americans with Disabilities Act of 1990 or similar federal or state
22 standards regarding pedestrian access or movement;

23 (iv) Fails to comply with reasonable and nondiscriminatory spacing
24 requirements of general application adopted by ordinance or resolution
25 that concern the location of ground-mounted equipment and new utility
26 poles. Such spacing requirements shall not prevent a wireless provider
27 from serving any location;

28 (v) Fails to comply with applicable codes if they are of general
29 applicability and do not apply exclusively to wireless facilities;

30 (vi) Fails to comply with the authority's aesthetic requirements
31 that are reasonable, objective, and published in advance; or

1 (vii) Designates the location of a new utility pole within seven
2 feet in any direction of an electrical conductor unless the wireless
3 provider obtains the written consent of the public power supplier that
4 owns or manages the electrical conductor;

5 (k) An authority shall document the basis for a permit application
6 denial, including any specific code provisions on which the denial was
7 based, and send such documentation to the applicant on or before the day
8 the authority denies the application. The applicant may cure the
9 deficiencies identified by the authority and resubmit the application
10 within thirty days after the denial without paying an additional
11 application fee. The authority shall approve or deny the resubmitted
12 application within thirty days. Any subsequent review shall be limited to
13 the deficiencies cited in the denial;

14 (l) An applicant seeking to collocate small wireless facilities
15 within the jurisdiction of a single authority may, at the applicant's
16 discretion, file a consolidated application for up to thirty individual
17 small wireless facilities if the population within the jurisdiction of
18 the authority is fifty thousand people or more, or up to five individual
19 small wireless facilities if the population within the jurisdiction of
20 the authority is less than fifty thousand people, instead of filing a
21 separate application for each individual small wireless facility. Each
22 small wireless facility within a consolidated application is subject to
23 individual review, except that the denial of one or more small wireless
24 facilities in a consolidated application shall not delay processing of
25 any other small wireless facilities in the same application or be a basis
26 upon which to deny the consolidated application as a whole. If an
27 applicant applies to construct or collocate several small wireless
28 facilities within the jurisdiction of a single authority, the authority
29 shall:

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

1 wireless facilities; and

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

6 (m) Installation or collocation for which a permit is granted
7 pursuant to this section shall be completed within one year of the later
8 of the completion of all make-ready work or permit issuance date unless a
9 delay is caused by the lack of commercial power or communications
10 transport facilities at the site. In such case the applicant shall have
11 an extension up to nine months. The authority and applicant may mutually
12 agree to an additional extension. Approval of an application authorizes
13 the applicant to maintain and operate the small wireless facilities and
14 any associated utility pole covered by the permit for a period of not
15 less than five years, subject to applicable relocation requirements and
16 the applicant's right to terminate at any time. The authority shall renew
17 such permit for an equivalent duration so long as the applicant is in
18 compliance with the criteria set forth in subdivision (j) of this
19 subsection as such criteria existed at the time the permit was granted;

20 (n) An authority shall not institute a moratorium on filing,
21 receiving, or processing applications or issuing permits or other
22 approvals, if any, for the collocation of small wireless facilities or
23 the installation, modification, or replacement of utility poles to
24 support small wireless facilities; and

25 (o) Nothing in the Small Wireless Facilities Deployment Act shall be
26 construed to allow any entity to provide communications services without
27 complying with all laws applicable to such providers. Nothing in the act
28 shall be construed to authorize the collocation, installation, placement,
29 maintenance, or operation of any communications facility, including a
30 wireline backhaul facility, other than a small wireless facility or a
31 utility pole, in a right-of-way.

1 (6)(a) Notwithstanding any other provision of the Small Wireless
2 Facilities Deployment Act, for any construction, operation, collocation,
3 maintenance, management, relocation, or placement of wireless facilities,
4 utility poles, decorative poles, or wireless support structures that
5 occurs above, across, under, or upon a state or federal highway right-of-
6 way, as such term is defined in section 39-1302, or upon a state-owned
7 utility pole, decorative pole, or wireless support structure, the
8 application process, location, and installation of such facilities,
9 poles, or structures, as such pertain to the present and future use of
10 the right-of-way or state-owned poles or wireless support structures for
11 highway purposes, shall be subject to the rules and regulations, guidance
12 documents, and usual and customary permitting requirements of the State
13 of Nebraska and the Department of Transportation, including, but not
14 limited to, requirements, fees, rates, and deadlines for location and
15 engineering review and response, liability and automobile insurance,
16 indemnification of the Department of Transportation from liability,
17 protection of public safety and property interests, and compliance with
18 federal transportation funding requirements. Nothing in this subdivision
19 affects, modifies, expands, or narrows the application or effect of any
20 federal law, statute, rule, regulation, or order.

21 (b) Traffic signal utility poles and traffic control devices owned
22 by the Department of Transportation shall not be used for the collocation
23 of small wireless facilities under the Small Wireless Facilities
24 Deployment Act. State highway lighting utility poles or decorative poles
25 may be used for collocation of small wireless facilities only if:

26 (i) There are insufficient reasonable alternative collocation
27 options at or near the requested location;

28 (ii) The small wireless facilities can be safely installed,
29 operated, and maintained; and

30 (iii) The collocation of the small wireless facilities will not
31 violate reasonable wind, ice, weight, and seismic load requirements on

1 state highway lighting utility poles or decorative poles.

2 (c) Applicants that collocate small wireless facilities on state
3 highway lighting utility poles or decorative poles assume the risk of
4 loss or damage to, or loss of use of, such facilities when such poles are
5 damaged, destroyed, or taken out of service on state property, except to
6 the extent that such loss or damage is due to or caused by the negligence
7 or willful misconduct of the Department of Transportation or its
8 employees, contractors, or agents. This subdivision does not preclude
9 claims against entities other than the Department of Transportation.

10 (d) The construction, operation, maintenance, collocation, or
11 placement of wireless facilities, utility poles, decorative poles, or
12 wireless support structures shall occur at no cost to the Department of
13 Transportation unless otherwise agreed in advance between an applicant
14 and the department.

15 (e) The Department of Transportation may set and collect a
16 reasonable application fee to cover its costs in administering the
17 activities described in this subsection, a uniform and nondiscriminatory
18 system of annual occupancy rates for the use and occupancy of state-owned
19 property, and a uniform and nondiscriminatory system for setting fees,
20 rates, terms, and conditions for make-ready work.

21 (f) If the future maintenance or construction of a state or federal
22 highway by the Department of Transportation requires the moving or
23 relocating of wireless facilities, utility poles, decorative poles, or
24 wireless support structures located within the right-of-way, such
25 facilities, poles, or structures shall be removed or relocated by the
26 owner of the facilities, poles, or structures at the owner's expense and
27 as directed by the department.

28 (g) Nothing in the Small Wireless Facilities Deployment Act affects
29 or prevents the Department of Transportation from imposing its usual and
30 customary permitting requirements for the deployment of wireless
31 facilities that are not small wireless facilities.

1 (7) An authority shall not require an application, permit, or other
2 approval or charge fees or rates for routine maintenance of small
3 wireless facilities, replacement of small wireless facilities with small
4 wireless facilities that are substantially similar in weight or windage
5 or the same size or smaller, or for the installation, placement,
6 maintenance, operation, or replacement of microwireless facilities that
7 are strung on cables between existing utility poles in compliance with
8 the National Electrical Safety Code. An authority may require a permit
9 for work that exceeds original weight or windage or requires excavation
10 or closing of sidewalks or vehicular lanes within the right-of-way for
11 such activities.

12 (8) Any small wireless facility that is not operated for a
13 continuous period of ninety days after completion of initial
14 installation, excluding nonoperation due to a natural disaster or other
15 unforeseeable circumstance or temporary equipment failure, shall be
16 considered abandoned. If a small wireless facility is abandoned, the
17 small wireless facility owner shall notify the authority within thirty
18 days of the abandoned status of such facility and such owner shall remove
19 the abandoned facility. The related utility pole shall also be removed
20 unless such pole is otherwise being used by another utility or is owned
21 by a party other than the owner of the removed small wireless facility.

22 Sec. 38. (1) This section applies to the activities of a wireless
23 provider within the right-of-way.

24 (2) A person owning, managing, or controlling authority poles in a
25 right-of-way may enter into an exclusive arrangement with any person for
26 the management of an attachment to such poles. A person who manages
27 attachments to authority poles or who manages, purchases, or otherwise
28 acquires an authority pole is subject to the requirements of the Small
29 Wireless Facilities Deployment Act.

30 (3) An authority shall allow the collocation of small wireless
31 facilities on authority poles using the process in section 37 of this

1 act.

2 (4) The rates provided under section 39 of this act to collocate on
3 authority poles shall be nondiscriminatory regardless of the services
4 provided by the collocating person.

5 (5)(a) The rates, fees, terms, and conditions for make-ready work to
6 collocate on an authority pole shall be nondiscriminatory, competitively
7 neutral, and commercially reasonable and shall reimburse all reasonable
8 costs incurred by an authority in compliance with the Small Wireless
9 Facilities Deployment Act.

10 (b) An authority shall provide a good faith estimate for any make-
11 ready work necessary to enable the authority pole to support the
12 requested collocation by an applicant, including pole replacement if
13 necessary, within one hundred twenty days after receipt of a completed
14 application. Make-ready work, including any pole replacement, shall be
15 completed within ninety days after written acceptance of the good faith
16 estimate by the applicant. An authority may require replacement of the
17 authority pole only if it determines and provides details indicating that
18 the collocation would make the authority pole structurally unsound.

19 (c) The person owning, managing, or controlling the authority pole
20 shall not require more make-ready work than required to meet applicable
21 codes or industry standards. Fees for make-ready work shall not include
22 costs related to known preexisting or prior damage or noncompliance. Fees
23 for make-ready work, including any pole replacement, shall not exceed
24 actual costs or the amount charged to other communications service
25 providers for reasonably similar work and may include reasonable
26 consultant fees or expenses.

27 (d) For purposes of this subsection, make-ready work generally
28 refers to the modification of utility poles or lines or the installation
29 of guys and anchors to accommodate additional facilities.

30 Sec. 39. (1) An authority shall not require a wireless provider to
31 pay any rate, fee, or compensation to the authority or other person other

1 than what is expressly authorized by section 86-704, or, where
2 applicable, section 14-109, 15-203, 16-205, or 17-525, or the Small
3 Wireless Facilities Deployment Act for the right to use or occupy a
4 right-of-way for collocation of small wireless facilities on wireless
5 support structures or utility poles in the right-of-way or for the
6 installation, maintenance, modification, operation, and replacement of
7 utility poles in the right-of-way.

8 (2)(a) An authority that charges occupation taxes under section
9 86-704 shall not charge a wireless services provider any additional
10 amount for the use of a right-of-way. An authority may charge a wireless
11 provider that does not pay the authority's occupation tax under section
12 86-704 either a rate of two hundred fifty dollars for each small wireless
13 facility each year, or a fee equal to the occupation tax charged by the
14 authority under section 14-109, 15-203, 16-205, or 17-525.

15 (b) The application fees for collocation of small wireless
16 facilities on an existing or replacement authority pole shall not exceed
17 five hundred dollars for up to five small wireless facilities on the same
18 application and one hundred dollars for each additional small wireless
19 facility on the same application.

20 (c) The application fees for the installation, modification, or
21 replacement of a utility pole and the collocation of an associated small
22 wireless facility that are a permitted use in accordance with the
23 specifications in subsection (5) of section 36 of this act shall not
24 exceed two hundred fifty dollars per pole.

25 (d) In the case of coapplicants for a single site, only one
26 application fee may be charged for the site.

27 (3) The rate for collocation of a small wireless facility on an
28 authority pole in the right-of-way shall be no more than twenty dollars
29 per authority pole per year.

30 Sec. 40. Nothing in the Small Wireless Facilities Deployment Act
31 shall be interpreted to allow any entity to provide services regulated

1 under 47 U.S.C. 521 to 573, as such sections existed on January 1, 2019,
2 without compliance with all laws applicable to providers of such
3 services. The Small Wireless Facilities Deployment Act shall not be
4 interpreted to impose any new requirements on cable operators for the
5 provision of cable service in this state.

6 Sec. 41. (1) Except as provided by the Small Wireless Facilities
7 Deployment Act or applicable federal law, an authority shall continue to
8 exercise zoning, land-use, planning, and permit-granting authority within
9 its territorial boundaries, including with respect to wireless support
10 structures and utility poles, except that no authority shall have or
11 exercise any jurisdiction or authority over the design, engineering,
12 construction, installation, or operation of any small wireless facility
13 located in an interior structure or upon the site of any college or
14 university campus, stadium, or athletic facility not owned or controlled
15 by the authority, other than to comply with applicable codes. An
16 authority shall evaluate the structure classification for wireless
17 support structures under the standard of the American National Standards
18 Institute found in ANSI/TIA-222, as such standard existed on January 1,
19 2019. Nothing in the Small Wireless Facilities Deployment Act shall
20 authorize the State of Nebraska or any agency or political subdivision
21 thereof, including an authority, to require wireless facility deployment
22 or to regulate wireless services.

23 (2) Except as provided in the Small Wireless Facilities Deployment
24 Act or as otherwise specifically authorized by state or federal law, an
25 authority may not impose or collect a tax, fee, or rate on a
26 communications service provider authorized to operate in a right-of-way
27 by federal, state, or local law for the provision of communications
28 service over the communications service provider's communications
29 facilities in the right-of-way, adopt or enforce any regulations or
30 requirements on the placement or operation of communications facilities
31 in the right-of-way by the communications service provider, or regulate

1 any communications services.

2 Sec. 42. A court of competent jurisdiction shall have jurisdiction
3 to determine all disputes arising under the Small Wireless Facilities
4 Deployment Act. Pending resolution of a dispute concerning rates for
5 collocation of small wireless facilities on authority poles, the rates
6 listed in section 39 of this act shall apply.

7 Sec. 43. The Small Wireless Facilities Deployment Act does not
8 apply to the University of Nebraska system and its affiliates, the
9 Nebraska state college system, the community college system, and all
10 campuses, areas, and property of such systems.

11 Sec. 44. (1) A public power supplier shall not be required to allow
12 the collocation of small wireless facilities on utility poles owned,
13 operated, or managed by a public power supplier except pursuant to a
14 negotiated pole attachment agreement containing reasonable and
15 nondiscriminatory terms and conditions, including, but not limited to,
16 applicable rates, and the permit, operational, and safety requirements of
17 the public power supplier.

18 (2) The annual pole attachment rate for the collocation of a small
19 wireless facility supported by or installed on a utility pole owned,
20 operated, or managed by a public power supplier shall be fair,
21 reasonable, nondiscriminatory, cost-based, and set by the board of such
22 public power supplier in accordance with section 70-655.

23 (3) Except for the findings and declarations set forth in section 2
24 of this act, the definitions set forth in sections 4 to 35 of this act,
25 and subsections (1) and (2) of this section, the Small Wireless
26 Facilities Deployment Act shall not apply to public power suppliers or to
27 the collocation of small wireless facilities on utility poles owned,
28 operated, or managed by a public power supplier.