

AMENDMENTS TO LB389

Introduced by Friesen, 34.

1 1. Strike the original sections and insert the following new
2 sections:

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

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

6 (1) There is a need for statewide uniformity in the regulation of
7 the deployment of facilities for providing wireless service;

8 (2) Wireless facilities are critical to public safety and to
9 increase access to advanced wireless technology and information services;

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

12 (4) The permitting, construction, modification, maintenance,
13 installation, replacement, and operation of wireless facilities are
14 matters of statewide concern and interest.

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

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

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

20 (3) Confirm that wireless service providers and communications
21 facility providers have a right to occupy and utilize public rights-of-
22 way as set forth in the act for the efficient conduct of their business.

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

25 Sec. 5. Applicant means a wireless service provider or
26 communications facilities provider that submits an application to an
27 authority for approval of the collocation of one or more wireless

1 facilities or placement of a pole for the collocation of small wireless
2 facilities.

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

6 Sec. 7. Authority right-of-way means the area on, below, or above a
7 public highway, street, sidewalk, utility easement, alley, or similar
8 property under the jurisdiction of an authority, but does not include a
9 federal interstate highway.

10 Sec. 8. (1) Collocate or collocation means mounting, installation,
11 maintenance, modification, replacement, or operation of small wireless
12 facilities on or adjacent to a tower, building, pole, or structure for
13 the purpose of transmitting or receiving radio frequency signals for
14 communications purposes.

15 (2) Collocate or collocation does not include (a) routine
16 maintenance, (b) replacement of facilities that are substantially similar
17 or smaller in size, weight, height, and structural loading, or (c) the
18 installation, placement, maintenance, operation, or replacement of
19 wireless facilities that (i) are suspended on cables that are strung
20 between existing poles in compliance with national safety codes and (ii)
21 are no larger in dimension than twenty-four inches long, fifteen inches
22 wide, and twelve inches high, and that have an exterior antenna, if any,
23 no longer than eleven inches.

24 (3) The activities described in subsection (2) of this section do
25 not require applications or permits under subsection (2) of section 20 of
26 this act or the payment of any fees.

27 Sec. 9. Communications facility means any facility used to provide
28 wireless service, unlicensed wireless service, or fixed wireless service,
29 including microwave backhaul, and includes an antenna, vertical cable
30 runs and related conduit on a pole for the connection of power and other
31 services, pipes, radio transceivers, microwave devices, power supplies,

1 and all other equipment used to provide communications service.
2 Communications facility also includes wireless facilities.

3 Sec. 10. Communications facility provider means a person or entity
4 that installs or constructs facilities or structures used to provide
5 communications services.

6 Sec. 11. Communications service means service provided over a
7 communications facility, including cable service as defined in 47 U.S.C.
8 522(6), information service as defined in 47 U.S.C. 153(24), and
9 telecommunications service as defined in 47 U.S.C. 153(53), as such
10 sections existed on January 1, 2017, including, but not limited to,
11 wireline backhaul service. Communications service also includes wireless
12 service as defined in section 16 of this act.

13 Sec. 12. Communications service provider means any entity that
14 provides communications service.

15 Sec. 13. Pole means a utility pole, pole, light pole, light
16 standard, or structure that is used in whole or in part for
17 communications service, lighting, traffic control, signage, or a similar
18 function, but does not include any distribution, transmission, or
19 communications infrastructure owned or operated by a supplier of
20 electricity which includes public power districts, public power and
21 irrigation districts, individual municipalities, registered groups of
22 municipalities, electric membership cooperatives, and cooperatives
23 serving customers at retail.

24 Sec. 14. Small wireless facility means a wireless facility that
25 meets the following qualifications:

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

30 (2) All other wireless equipment associated with the structure is
31 cumulatively no more than twenty-eight cubic feet in volume. The

1 following types of associated ancillary equipment are not included in the
2 calculation of equipment volume: Electric meters, concealment material,
3 telecommunications demarcation boxes, ground-based enclosures, backup
4 power systems, grounding equipment, power transfer switches, cutoff
5 switches, and vertical cable runs and related conduit on a pole for
6 connection of power and other services.

7 Sec. 15. Wireless facility means equipment at a fixed location that
8 enables the provision of wireless services between user equipment and a
9 communications network, including radio transceivers, antennas, regular
10 and backup power supplies, and comparable equipment regardless of
11 technological configuration. Wireless facility includes small wireless
12 facilities but does not include wireline backhaul service facilities or
13 coaxial or fiber-optic cable that is between poles or wireless support
14 structures or that is otherwise not immediately adjacent to or directly
15 associated with a particular collocation.

16 Sec. 16. Wireless service means any service using licensed or
17 unlicensed wireless spectrum, including the use of Wi-Fi, whether fixed
18 or mobile and provided using wireless facilities and includes personal
19 wireless service as defined in 47 U.S.C. 332 and mobile service as
20 defined in 47 U.S.C. 153(33), as such sections existed on January 1,
21 2017.

22 Sec. 17. Wireless service provider means a person who provides
23 wireless services.

24 Sec. 18. Wireless support structure means a pole or other
25 freestanding structure capable of supporting the attachment or
26 installation of small wireless facilities in compliance with applicable
27 codes, including, but not limited to, water towers, buildings, and other
28 structures whether within or outside the authority right-of-way.

29 Sec. 19. Wireline backhaul service means the transport of
30 communications service by wire from wireless facilities to a network.

31 Sec. 20. (1) Wireless service providers and communications facility

1 providers may place small wireless facilities and poles for collocation
2 of small wireless facilities in an authority right-of-way. Such
3 structures and facilities shall not obstruct or hinder the usual travel
4 or public safety on such authority right-of-way or obstruct the legal use
5 of such authority right-of-way by other utilities. Any modified,
6 replacement, or new pole or wireless support structure in the right-of-
7 way for the collocation of small wireless facilities shall not exceed the
8 greater of (a) ten feet in height above the tallest existing pole in
9 place as of the effective date of this act located within five hundred
10 feet of the new pole in the same right-of-way or (b) fifty feet above
11 ground level, except that a wireless service provider shall have the
12 right to construct, modify, and maintain a pole, wireless support
13 structure, or wireless facility that exceeds such size limits along,
14 across, upon, and under the right-of-way, subject to applicable zoning
15 and other regulations.

16 (2)(a) Except as otherwise provided in this section, an authority
17 may require an application for a permit to collocate small wireless
18 facilities on wireless support structures and poles, including authority
19 poles.

20 (b) An application for the collocation of small wireless facilities
21 shall be processed on a nondiscriminatory basis and deemed approved if
22 the authority fails to approve or deny the application within ninety days
23 after submission of a complete application. Upon mutual agreement between
24 the applicant and the authority, an authority may extend the period of
25 consideration of an application for thirty days.

26 (c) Consolidated applications may be made for projects involving
27 multiple individual small wireless facilities within the jurisdiction of
28 a single authority. The authority shall allow the applicant, at the
29 applicant's discretion, to file a consolidated application for multiple
30 individual small wireless facilities instead of filing separate
31 applications for each individual small wireless facility. Each small

1 wireless facility within a consolidated application is subject to review.
2 When processing a consolidated application, the authority may approve the
3 application as to certain included small wireless facilities but deny
4 approval for other included facilities. The authority's denial of one or
5 more but not all of the small wireless facilities within a consolidated
6 application shall not be a basis upon which to deny the consolidated
7 application as a whole. If an applicant applies to construct or collocate
8 several small wireless facilities within the jurisdiction of a single
9 authority, the authority shall:

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

13 (ii) Render a decision regarding all the applicant's small wireless
14 facilities in a single administrative proceeding unless local
15 requirements require an elected or appointed body to render such
16 decision.

17 (d) An authority shall approve an application unless it does not
18 meet the authority's applicable industry construction and operational
19 safety standards in the authority right-of-way or its building,
20 electrical, or pole attachment codes, standards, or regulations, if they
21 are of general applicability and do not apply exclusively to wireless
22 facilities.

23 (e) The authority shall document the basis for a denial, including
24 the specific code provisions, standards, or regulations on which the
25 denial was based, and send documentation to the applicant on or before
26 the day the authority denies an application. The applicant may cure the
27 deficiencies identified by the authority and resubmit the application
28 within thirty days after the denial without paying an additional
29 application fee. The authority shall approve or deny the revised
30 application within thirty days after resubmission.

31 (f) Once an application is approved, a permit authorizing the

1 collocation or collocations shall remain valid for at least ten years and
2 shall be approved automatically for at least two five-year renewal
3 periods unless the applicant provides at least ninety days' notice
4 requesting that the permit be terminated.

5 (g) Beginning with applications filed on or after the effective date
6 of this act, an authority shall accept and process an application and
7 issue a permit as provided under this subsection. An applicant shall not
8 be required to provide more information or pay a higher application fee,
9 consulting fee, or other fee associated with processing or issuing a
10 permit than the amount charged to a communications service provider that
11 is not a wireless service provider. The total amount of fees for
12 processing or issuing a permit, including any fees charged by third
13 parties, shall not exceed five hundred dollars for an application
14 addressing no more than five small wireless facilities and an additional
15 fifty dollars for each small wireless facility addressed in an
16 application in excess of five small wireless facilities.

17 (h) All costs of construction shall be borne by the applicant with
18 no additional fees, taxes, lease payments, or in-kind consideration paid
19 or provided to the authority for the use of the authority's right-of-way
20 or land, except that the applicant shall be responsible for all costs to
21 improve or maintain its own small wireless facility. An applicant shall
22 commence the construction of a small wireless facility no later than two
23 years following the date a permit is issued under this section or two
24 years after any appeals are final. Any small wireless facility that is
25 not operated for a continuous period of twelve months, excluding
26 nonoperation due to a natural disaster or other unforeseeable
27 circumstance, shall be considered abandoned and the owner of the facility
28 must remove such facility within ninety days after receipt of written
29 notice from the authority notifying the owner of such abandonment unless
30 cured within ninety days. The authority shall send such notice by
31 certified or registered mail, return receipt requested, to such owner at

1 the last-known address of such owner.

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

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

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

30 (l) Make-ready work shall not require more work than required to
31 meet applicable codes or industry standards. Charges for make-ready work,

1 including any pole replacement, shall not exceed actual reasonable and
2 necessary costs for the amount charged to other communications service
3 providers for similar work and shall not include third-party fees,
4 charges, or expenses except for amounts charged by licensed contractors
5 actually performing the make-ready work.

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

9 (n) No approval for the installation, placement, maintenance, or
10 operation of a small wireless facility pursuant to this section shall be
11 construed to confer authorization for the provision of cable television
12 service or for the installation, placement, maintenance, or operation of
13 a communications facility other than a small wireless facility in the
14 right-of-way.

15 (3) For a pole placed or a small wireless facility collocated in
16 whole or in part under this section, an authority shall only impose
17 nondiscriminatory, competitively neutral, and commercially reasonable
18 application requirements and shall not:

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

21 (b) Institute a moratorium on the collocation of small wireless
22 facilities, either directly through a written policy, resolution,
23 ordinance, rule, or regulation or indirectly through action or inaction
24 on filing, receiving, or processing applications for small wireless
25 facilities;

26 (c) Impose discriminatory permitting standards for the collocation
27 of small wireless facilities or discriminatory licensing standards for
28 persons performing the work of collocating small wireless facilities, and
29 shall receive and process applications for collocating small wireless
30 facilities and for licenses for persons performing the work of
31 collocating small wireless in a manner substantially comparable to the

1 permitting of other applications and licensing of persons performing work
2 within the jurisdiction of the authority;

3 (d) Require a communications service provider to provide (i) space
4 on or near the small wireless facility for authority services at less
5 than the market rate for space, (ii) services by use of the structure or
6 small wireless facilities at less than the market rate for such services,
7 or (iii) any services unrelated to the small wireless facility; and

8 (e) Except as such relates to small wireless facilities pursuant to
9 this section, adopt or enforce any regulations or requirements that would
10 require a holder of a cable franchise to obtain additional authorization
11 or to pay additional fees for the provision of communications service
12 over such holder's communications facilities in the rights-of-way.

13 Sec. 21. For purposes of zoning regulation, small wireless
14 facilities shall be a permitted use in all zoning districts other than
15 areas outside the authority right-of-way that are zoned and used for
16 single family residential use. An authority shall not impose a specific
17 or conditional use permit requirement or any similar requirement or
18 prohibition on small wireless facilities, and the authority shall not
19 impose more restrictive requirements on placement, height, setbacks, or
20 spacing than those of general applicability in the zoning district,
21 except that small wireless facilities to be located in an airport hazard
22 area as defined by section 3-301 shall comply with regulations
23 established for such area.

24 Sec. 22. The Small Wireless Facilities Act shall not nullify,
25 modify, amend, or prohibit a mutual agreement made prior to the effective
26 date of this act between an authority and any communications service
27 provider for the placement of small wireless facilities that were
28 installed or approved for installation prior to the effective date of
29 this act.

30 Sec. 23. (1) For any construction, operation, collocation, or
31 placement of communications facilities, small wireless facilities,

1 wireless facilities, or wireless support structures that occurs along,
2 upon, across, or under a state or federal highway or upon a state-owned
3 wireless support structure, the application process, location, and
4 installation of such facilities and structures, as such pertain to the
5 present and future use of the right-of-way or state-owned poles or
6 wireless support structures for highway purposes, are subject to the
7 rules and regulations, guidance documents, and usual and customary
8 permitting requirements of the State of Nebraska and the Department of
9 Transportation, including, but not limited to, requirements for location
10 and design review, liability and automobile insurance, indemnification of
11 the department from liability, protection of public safety and property
12 interests, and compliance with federal transportation funding
13 requirements.

14 (2) The construction, operation, collocation, or placement of
15 communications facilities, small wireless facilities, wireless
16 facilities, or wireless support structures shall occur at no cost to the
17 department unless otherwise agreed in advance between an applicant and
18 the department.

19 (3) The department may set and collect a reasonable application fee
20 to cover its costs in administering the activities described in this
21 section, as well as a uniform and nondiscriminatory system of occupancy
22 fees for the use and occupancy of state-owned property.

23 (4) If the future use of the state or federal highway requires the
24 moving or relocating of communications facilities, small wireless
25 facilities, wireless facilities, or wireless support structures, such
26 facilities or structures shall be removed or relocated by the owner at
27 the owner's expense and as directed by the department.

28 Sec. 24. The Revisor of Statutes shall assign sections 1 to 22 of
29 this act to Chapter 86 and section 23 of this act to Chapter 39.