

ONE HUNDRED SEVENTH LEGISLATURE - SECOND SESSION - 2022
COMMITTEE STATEMENT
LB520

Hearing Date: Monday February 08, 2021
Committee On: Transportation and Telecommunications
Introducer: Friesen
One Liner: Provide for applications for the collocation of certain wireless facilities

Roll Call Vote - Final Committee Action:
Advanced to General File with amendment(s)

Vote Results:

Aye:	6	Senators Albrecht, Bostelman, Cavanaugh, M., DeBoer, Friesen, Hughes
Nay:	1	Senator Moser
Absent:		
Present Not Voting:	1	Senator Geist

Oral Testimony:

Proponents:
Senator Kurt Friesen
Kent Rogert
Katie Zulkoski
Mary Jacobson
Burke Brown

Representing:
Introducer
AT&T, NTA
Viaero Wireless
US Cellular
NSEA

Opponents:
Lash Chaffin
Shelley Sahling-Zart
Don Wesely

Representing:
League of NE Municipalities
NE Power Assoc & City of Lincoln
Greater NE Cities

Neutral:

Representing:

Summary of purpose and/or changes:

LB 520 relates to permitting authority of counties, cities, and villages with respect to wireless facilities that are not small wireless facilities (small cells). The bill would limit application fees that could be charged by counties, cities, and villages and would provide for a shot clock for the authority to review and approve an application for an eligible facilities request or modification. In the event of failure to act in a timely basis, the application would be deemed approved.

LB 520 is substantially similar to LB898, which was considered by this committee in 2020.

LB520 changes from LB898 (2020) include:

* Narrows the definition of "authority."

* Authority now means any county, city, or village whose authorization is necessary prior to the deployment of a wireless facility (removes the State of Nebraska or any agency or other political subdivision).

* Modifies definition of eligible facilities request.

* Eligible facilities request means a request to modify an existing tower or wireless support structure that hosts a wireless facility and (ii) that does not substantially change the physical dimensions of such tower or wireless support structure involving collocation of equipment, removal of equipment, replacement of equipment, or modification to a tower site that would include ground excavation or deployment of up to thirty feet in any direction outside a tower's site. (New to LB520)

* Adds definition for "site."

* Modifies definition for "substantially change" to be consistent with FCC language.

* Adds 60-day shot clock provision consistent with FCC order.

Under this act, eligible facility requests are requests to modify an existing tower or wireless support structure that hosts a wireless facility that does not substantially change the physical dimensions of such tower or wireless support structure involving collocation of equipment, removal of equipment, replacement of equipment, or modification of a tower site that would include ground excavation or deployment of up to thirty feet in any direction outside a tower's site.

Modifications are deemed to not substantially change a facility if they do not:

I. Increases the height of a tower outside the public right-of-way by more than ten percent or the height of one additional antenna array with a separation not to exceed twenty feet, whichever is greater, or increases the height of a tower inside the public right-of-way by more than ten percent or ten feet, whichever is greater. Such increases shall be measured from the existing tower's approved height;

II. Involves adding an appurtenance to a tower not in the public right-of-way that would protrude from the edge of the tower more than twenty feet or the width of the tower at the level of the appurtenance, whichever is greater, or involves adding an appurtenance to the body of a tower in the public right-of-way that would protrude by more than six feet;

III. Involves the installation of more than the standard number of new equipment cabinets, not to exceed four equipment cabinets; or

IV. It entails any excavation or deployment outside of the current site, except that for towers other than towers in the public rights-of way, it entails any excavation or deployment of transmission equipment outside of the current site by more than thirty feet in any direction. The site boundary from which the thirty feet is measured excludes any access or utility easements currently related to the site.

Authorities may fix and charge an application fee for submission, processing, and review of an eligible facilities request to collocate a new wired facility, site a new wireless support structure, or substantially change an existing wireless facility or support structure, subject to certain limitations. This application fee would have to be actual, direct, and objectively reasonable. An authority would be required to prepare an itemized fee statement.

An application fee for review shall not exceed (a) \$500 for an eligible facilities request or collocation application on an existing wireless structure; or (b) \$1,000 for an application to place a new tower and associated wireless facility.

If the reviewing authority fails to approve or deny a request made under this section within the timeframe for review, the request shall be deemed granted. The grant does not become effective until the applicant notifies the reviewing authority in writing after the review period that the application has been deemed granted.

Nothing in this act shall be construed to apply to an application submitted to an authority pursuant to the Small Wireless Facilities Deployment Act.

Explanation of amendments:

Explanation of Standing Committee Amendment- LB 520

The Committee considered and adopted an amendment which accomplishes the following:

The Committee Amendment substitutes and replaces the bill.

The amendment provides that an authority may fix and charge an application fee for the submission, processing, and review of an eligible facilities request to collocate a new wireless facility, site a new wireless support structure, or substantially change an existing wireless facility, or wireless support structure. The amendment provides that the act shall terminate on September 30, 2026.

"Authority" is defined as any county, city of the first or second class or village.

"Eligible Facilities Request" is defined as a request for modification of an existing tower or base station involving collocation, removal, or replacement of transmission equipment.

"Eligible Support Structure" means any tower or base station that exists at the time of the application.

"Wireless Facility" means equipment at a fixed location enables wireless communications between user equipment and a communications network. It does not include a small wireless facility.

An application fee shall be based upon an authority's actual, direct, and objectively reasonable costs as determined by the authority. All costs incurred by an authority for outside consultants shall be included in the application fee. Charges shall be itemized and separately identified and disclosed. In lieu of an application fee the authority may require an escrow to cover costs to be incurred. The application fee shall not be used to reimburse outside consultant expenses or for reimbursement for a consultant that is based on a contingent fee or result-based arrangement. Nothing provided for in the act shall be construed to limit, alter, or expand an authority's ability to charge an applicant a rate or fee for the use of or access to a public right-of-way for the utilization of cabling or conduit to support Personal Wireless facilities and equipment.

Curt Friesen, Chairperson