

LEGISLATURE OF NEBRASKA  
ONE HUNDRED NINTH LEGISLATURE  
FIRST SESSION

**LEGISLATIVE BILL 18**

Introduced by Cavanaugh, J., 9.

Read first time January 09, 2025

Committee: Transportation and Telecommunications

- 1 A BILL FOR AN ACT relating to the Small Wireless Facilities Deployment
- 2 Act; to amend section 86-1236, Reissue Revised Statutes of Nebraska;
- 3 to provide duties for an authority and requirements for a wireless
- 4 provider as prescribed; and to repeal the original section.
- 5 Be it enacted by the people of the State of Nebraska,

1           **Section 1.** Section 86-1236, Reissue Revised Statutes of Nebraska, is  
2 amended to read:

3           86-1236 (1) This section applies only to activities of a wireless  
4 provider within the right-of-way to deploy small wireless facilities and  
5 associated utility poles.

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

8           (3) Subject to the exception in subsection (7) of section 86-1237,  
9 an authority may only charge a wireless provider on a nondiscriminatory  
10 basis the rate or fee provided in section 86-1239 for the use of any  
11 right-of-way for the collocation of small wireless facilities or the  
12 installation, maintenance, modification, operation, or replacement of a  
13 utility pole in the right-of-way if the authority charges other entities  
14 for the use of the right-of-way. An authority may, on a nondiscriminatory  
15 basis, refrain from charging any rate to a wireless provider for the use  
16 of the right-of-way.

17           (4) Except as provided in this section, a wireless provider shall  
18 have the right, as a permitted use not subject to zoning review or  
19 approval, to collocate small wireless facilities and install, maintain,  
20 modify, operate, and replace utility poles along, across, upon, and under  
21 the right-of-way so long as such facilities and poles do not obstruct or  
22 hinder the usual travel or public safety on such right-of-way or obstruct  
23 the legal use of such right-of-way by utilities or the safe operation of  
24 their systems or provision of service.

25           (5)(a) Any new or modified utility pole installed in a right-of-way  
26 shall not exceed the greater of (i) five feet in height above the tallest  
27 existing utility pole in place as of September 1, 2019, located within  
28 five hundred feet of the new utility pole in the same right-of-way or  
29 (ii) fifty feet above ground level.

30           (b) New small wireless facilities in a right-of-way shall not extend  
31 more than the greater of (i) fifty feet in height, including antenna, or

1 (ii) more than five feet above an existing utility pole in place as of  
2 September 1, 2019, and located within five hundred feet in the same  
3 right-of-way.

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

11 (6) An applicant may request approval from an authority, as part of  
12 the application process, to replace a decorative pole when necessary to  
13 collocate a small wireless facility. Any replacement decorative pole  
14 shall conform to the nondiscriminatory design aesthetics of the  
15 decorative pole being replaced.

16 (7) Except for facilities excluded from evaluation for effects on  
17 historic properties under 47 C.F.R. 1.1307(a)(4), as such regulation  
18 existed on January 1, 2019, an authority shall have the right to require  
19 design or concealment measures in a historic district established prior  
20 to January 1, 2019. Such design or concealment measures shall be  
21 objective and directed to avoid or remedy the intangible public harm of  
22 unsightly or out-of-character wireless facilities deployed at the  
23 proposed location within the authority's jurisdiction. Any such design or  
24 concealment measures shall be reasonable, nondiscriminatory, and  
25 published in advance, and shall not be considered a part of the small  
26 wireless facility for purposes of the size restrictions of a small  
27 wireless facility.

28 (8) An authority may require a wireless provider to repair all  
29 damage to a right-of-way directly caused by the activities of the  
30 wireless provider in the right-of-way and return the right-of-way to  
31 equal or better condition to that before the damage occurred pursuant to

1 the competitively neutral and reasonable requirements and specifications  
2 of the authority. If the applicant fails to make the repairs that are  
3 reasonably required by the authority within fourteen days after written  
4 notice, the authority may undertake such repairs and charge the wireless  
5 provider the reasonable, documented cost of such repairs. An authority  
6 shall grant an extension of up to ten days to complete such repairs if  
7 the wireless provider requests such extension within the original  
8 fourteen-day period. In the event of immediate threat to life, safety, or  
9 to prevent serious injury, the authority may immediately undertake to  
10 restore the site and then notify the applicant and charge the applicant  
11 for all reasonable restoration costs.

12 (9)(a) An authority shall, prior to installation of any new or  
13 modified utility pole in a right-of-way, determine whether such  
14 installation:

15 (i) Complies with the federal Americans with Disabilities Act of  
16 1990 and the federal regulations adopted in response to such act, as such  
17 act and regulations existed on January 1, 2025;

18 (ii) Does not obstruct or hinder usual travel or public safety in or  
19 on such right-of-way; and

20 (iii) Does not obstruct the legal use of such right-of-way by any  
21 utility or impede the safe operation of such utility's system or  
22 provision of its service.

23 (b) If an authority determines that such installation does not  
24 comply with the criteria in subdivision (a) of this subsection, the  
25 authority shall not permit such installation.

26 **Sec. 2.** Original section 86-1236, Reissue Revised Statutes of  
27 Nebraska, is repealed.