

AMENDMENTS TO LB389

Introduced by Transportation and Telecommunications.

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

3 Section 1. Sections 1 to 39 of this act shall be known and may be
4 cited as the Small Wireless Facilities Deployment Act.

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

6 (1) The deployment of small wireless facilities and other next-
7 generation wireless facilities is a matter of statewide concern and
8 interest;

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

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

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

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

26 (6) Uniform procedures, rates, and fees for the permitting and
27 deployment of small wireless facilities in public rights-of-way and on

1 authority infrastructure, including poles, throughout the state are
2 reasonable and will encourage the development of robust next-generation
3 wireless networks for the benefit of residents throughout the state; and

4 (7) The procedures, rates, and fees in the Small Wireless Facilities
5 Deployment Act are fair and reasonable when viewed from the perspective
6 of the state's residents and the state's interest in having robust,
7 reliable, and technologically advanced wireless networks, and reflect a
8 balancing of the interests of the wireless providers deploying new
9 facilities and the interests of authorities in receiving fair value by
10 recovering their costs of managing access to the public rights-of-way and
11 the attachment space provided on authority infrastructure.

12 Sec. 3. For purposes of the Small Wireless Facilities Deployment
13 Act, the definitions in sections 4 to 30 of this act apply.

14 Sec. 4. Antenna means communications equipment that transmits or
15 receives electromagnetic radio frequency signals used in the provision of
16 wireless services.

17 Sec. 5. Applicable codes means uniform building, fire, electrical,
18 plumbing, or mechanical codes adopted by a recognized national code
19 organization or local amendments to those codes enacted solely to address
20 imminent threats of destruction of property or injury to persons to the
21 extent not inconsistent with the Small Wireless Facilities Deployment
22 Act.

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

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

29 Sec. 8. Authority means the State of Nebraska or any agency,
30 county, city, village, or other political subdivision thereof, including,
31 but not limited to, public power districts, public power and irrigation

1 districts, and municipal electric utilities. The term does not include
2 state courts having jurisdiction over an 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. Authority wireless support structure means a wireless
6 support structure owned, managed, or operated by or on behalf of an
7 authority.

8 Sec. 11. Collocate or collocation means to install, mount,
9 maintain, modify, operate, or replace wireless facilities on or adjacent
10 to a wireless support structure or utility pole.

11 Sec. 12. Communications service provider means a cable operator as
12 defined in 47 U.S.C. 522(5), a provider of information service as defined
13 in 47 U.S.C. 153(24), or a telecommunications carrier as defined in 47
14 U.S.C. 153(51), as such sections existed on January 1, 2018. The term
15 also includes a wireless provider.

16 Sec. 13. Decorative pole means an authority pole that is specially
17 designed and placed for aesthetic purposes and on which no appurtenances
18 or attachments other than a small wireless facility, specially designed
19 informational or directional signage, or temporary holiday or special
20 event attachments have been placed or are permitted to be placed
21 according to nondiscriminatory municipal rules or codes.

22 Sec. 14. Fee means a one-time, nonrecurring charge.

23 Sec. 15. Historic district means a group of buildings, properties,
24 or sites that are either listed in the National Register of Historic
25 Places or formally determined eligible for listing by the Keeper of the
26 National Register, in accordance with the Nationwide Programmatic
27 Agreement codified at 47 C.F.R. part 1, Appendix C, as such regulation
28 existed on January 1, 2018.

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

31 Sec. 17. Micro-wireless facility means a small wireless facility

1 that (1) is not larger in dimension than twenty-four inches in length,
2 fifteen inches in width, and twelve inches in height, and (2) any
3 exterior antenna is no longer than eleven inches.

4 Sec. 18. Permit means a written authorization required by an
5 authority to perform an action or initiate, continue, or complete a
6 project.

7 Sec. 19. Person means an individual, corporation, limited liability
8 company, partnership, association, trust, or other entity or
9 organization, including an authority.

10 Sec. 20. Rate means a recurring charge.

11 Sec. 21. Rights-of-way means the area on, below, or above a public
12 roadway, highway, street, sidewalk, alley, utility easement, or similar
13 property, but not including a federal interstate highway.

14 Sec. 22. Small wireless facility means a wireless facility that
15 meets both of the following qualifications: (1) Each wireless provider's
16 antenna could fit within an enclosure of no more than six cubic feet in
17 volume and (2) all other wireless equipment associated with the wireless
18 facility, whether ground-mounted or pole-mounted, is cumulatively no more
19 than twenty-eight cubic feet in volume. The following types of associated
20 ancillary equipment are not included in the calculation of equipment
21 volume: Electric meters, concealment elements, telecommunications
22 demarcation boxes, grounding equipment, power transfer switches, cut-off
23 switches, and vertical cable runs for the connection of power and other
24 services.

25 Sec. 23. Technically feasible means that by virtue of engineering
26 or spectrum usage, the proposed placement for a small wireless facility,
27 or its design or site location, can be implemented without a reduction in
28 the functionality of the small wireless facility.

29 Sec. 24. Utility pole means a pole or similar structure that is or
30 may be used, in whole or in part, by or for wireline communications,
31 lighting, traffic control, signage, or a similar function, or for the

1 collocation of small wireless facilities, except that such term shall not
2 include wireless support structures or any distribution, transmission, or
3 communications infrastructure owned by a supplier of electricity and
4 located in a rural area as defined in section 70-802.

5 Sec. 25. (1) Wireless facility means equipment at a fixed location
6 that enables wireless communications between user equipment and a
7 communications network, including (a) equipment associated with wireless
8 communications and (b) radio transceivers, antennas, coaxial or fiber-
9 optic cable, regular and backup power supplies, and comparable equipment,
10 regardless of technological configuration. The term includes small
11 wireless facilities.

12 (2) Wireless facility does not include (a) the structure or
13 improvements on, under, or within which the equipment is collocated or
14 (b) coaxial or fiber-optic cable that is between wireless structures or
15 utility poles or that is otherwise not immediately adjacent to, or
16 directly associated with, a particular antenna.

17 Sec. 26. Wireless infrastructure provider means any person,
18 including a person authorized to provide telecommunications service in
19 the State of Nebraska, that builds or installs wireless communication
20 transmission equipment, wireless facilities, or wireless support
21 structures, but that is not a wireless services provider.

22 Sec. 27. Wireless provider means a wireless infrastructure provider
23 or a wireless services provider.

24 Sec. 28. Wireless services means any services, whether mobile or at
25 a fixed location, provided to the public using wireless facilities.

26 Sec. 29. Wireless services provider means a person who provides
27 wireless services.

28 Sec. 30. Wireless support structure means a structure such as a
29 guyed or self-supporting tower, billboard, building, or other existing or
30 proposed structure designed to support or capable of supporting wireless
31 facilities other than a structure designed solely for the collocation of

1 small wireless facilities. Such term shall not include a utility pole.

2 Sec. 31. (1) This section applies only to activities of a wireless
3 provider within the right-of-way to deploy small wireless facilities and
4 associated utility poles.

5 (2) An authority may not enter into an exclusive arrangement with
6 any person for use of the right-of-way for the collocation of small
7 wireless facilities or the installation, operation, marketing,
8 modification, maintenance, or replacement of utility poles.

9 (3) An authority may only charge a wireless provider the rate or fee
10 provided in section 35 of this act for the use of the right-of-way with
11 respect to 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 use of the right-of-way. An authority is permitted, on a
15 nondiscriminatory basis, to refrain from charging any rate to a wireless
16 provider for the use 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. Such structures and facilities shall be so installed
22 and maintained as not to obstruct or hinder the usual travel or public
23 safety on such right-of-way or obstruct the legal use of such right-of-
24 way by utilities.

25 (5) Each new or modified utility pole installed in the right-of-way
26 shall not exceed the greater of ten feet in height above the tallest
27 existing utility pole in place as of the effective date of this act
28 located within five hundred feet of the new pole in the same right-of-way
29 or fifty feet above ground level. New small wireless facilities in the
30 right-of-way may not extend more than ten feet above an existing utility
31 pole in place as of the effective date of this act or for small wireless

1 facilities on a new utility pole, above the height permitted for a new
2 utility pole under this subsection. A wireless provider shall have the
3 right to collocate a small wireless facility and install, maintain,
4 modify, operate, and replace a utility pole that exceeds these height
5 limits along, across, upon, and under the right-of-way, subject to this
6 section and applicable zoning regulations.

7 (6) A wireless provider shall be permitted to replace a decorative
8 pole when necessary to collocate a small wireless facility, except that
9 any replacement pole shall reasonably conform to the design aesthetics of
10 the decorative pole being replaced.

11 (7) Except as provided in subsection (4) of section 32 of this act,
12 and except for facilities excluded from evaluation for effects on
13 historic properties under 47 C.F.R. section 1.1307(a)(4), as such section
14 existed on January 1, 2018, an authority may require reasonable,
15 technically feasible, nondiscriminatory, and technologically neutral
16 design or concealment measures in a historic district. Any such design or
17 concealment measures shall not have the effect of prohibiting any
18 provider's technology or be considered a part of the small wireless
19 facility for purposes of the size restrictions of a small wireless
20 facility.

21 (8) The authority must be competitively neutral in its
22 administration and regulation related to the management of the right-of-
23 way with regard to other users of the right-of-way, including that terms
24 of use are reasonable, nondiscriminatory, and compliant with applicable
25 law.

26 (9) The authority may require a wireless provider to repair all
27 damage to the right-of-way directly caused by the activities of the
28 wireless provider in the right-of-way and to return the right-of-way to
29 its functional equivalence before the damage pursuant to the
30 competitively neutral and reasonable requirements and specifications of
31 the authority. If the wireless provider fails to make the repairs

1 required by the authority within a reasonable time after written notice,
2 the authority may effect those repairs and charge the applicable party
3 the reasonable, documented cost of such repairs.

4 Sec. 32. (1) This section applies to the permitting of small
5 wireless facilities in or outside the right-of-way as specified in
6 subsection (3) of this section and to the permitting of the installation,
7 modification, and replacement of utility poles by a wireless provider
8 inside the right-of-way.

9 (2) Except as provided in the Small Wireless Facilities Deployment
10 Act, an authority may not prohibit, regulate, or charge for the
11 collocation of small wireless facilities.

12 (3) Small wireless facilities shall be classified as permitted uses
13 and not subject to zoning review or approval if they are collocated in
14 the right-of-way in any zone or outside the right-of-way in property not
15 zoned exclusively for single family residential use. Small wireless
16 facilities to be located in an airport hazard area as defined by section
17 3-301 shall comply with any regulations governing such areas.

18 (4) An authority may require an applicant to obtain one or more
19 permits to collocate a small wireless facility or install a new,
20 modified, or replacement utility pole associated with a small wireless
21 facility as provided in section 31 of this act. Such permits shall be of
22 general applicability and not apply exclusively to wireless facilities.
23 An authority shall receive applications for, process, and issue such
24 permits subject to the following requirements:

25 (a) An authority shall not directly or indirectly require an
26 applicant to perform services or provide goods unrelated to the permit,
27 such as in-kind contributions to the authority including reserving fiber,
28 conduit, or pole space for the authority;

29 (b) An applicant shall not be required to provide more information
30 to obtain a permit than communications service providers that are not
31 wireless providers, except that an applicant may be required to include

1 construction and engineering drawings and information demonstrating
2 compliance with the criteria in subdivision (h) of this subsection;

3 (c) An authority may propose a technically feasible alternate
4 utility pole location but may not require the placement of small wireless
5 facilities on any specific utility pole or category of poles or require
6 multiple antenna systems on a single utility pole;

7 (d) An authority may not limit the placement of small wireless
8 facilities by minimum separation distances;

9 (e) An authority may require an applicant to include an attestation
10 that the small wireless facilities will be operational for use by a
11 wireless services provider within one year after the permit issuance
12 date, unless the authority and the applicant agree to extend this period
13 or a delay is caused by lack of commercial power or communications
14 transport facilities to the site;

15 (f) Within ten days after receiving an application, an authority
16 must determine and notify the applicant in writing whether the
17 application is complete. If an application is incomplete, the authority
18 must specifically identify the missing information in writing. The
19 processing deadline in subdivision (g) of this subsection is tolled from
20 the time the authority sends the notice of incompleteness to the time the
21 applicant provides the missing information. That processing deadline also
22 may be tolled by agreement of the applicant and the authority;

23 (g) An application shall be processed on a nondiscriminatory basis
24 and deemed approved if the authority fails to approve or deny the
25 application within ninety days after receipt of the application. Upon
26 mutual agreement between the applicant and the authority, an authority
27 may extend the period for consideration of an application for thirty
28 days;

29 (h) An authority may deny a proposed collocation of a small wireless
30 facility or installation, modification, or replacement of a utility pole
31 that meets the requirements of section 31 of this act only if the

1 proposed application:

2 (i) Materially and demonstrably interferes with the safe operation
3 of traffic control equipment;

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

6 (iii) Materially interferes with compliance with the federal
7 Americans with Disabilities Act of 1990 or similar federal or state
8 standards regarding pedestrian access or movement;

9 (iv) Fails to comply with reasonable and nondiscriminatory spacing
10 requirements of general application adopted by ordinance that concern the
11 location of ground-mounted equipment and new utility poles. Such spacing
12 requirements shall not prevent a wireless provider from serving any
13 location; or

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

16 (i) The authority must document the basis for a denial, including
17 the specific code provisions on which the denial was based, and send the
18 documentation to the applicant on or before the day the authority denies
19 an application. The applicant may cure the deficiencies identified by the
20 authority and resubmit the application within thirty days of the denial
21 without paying an additional application fee. The authority shall approve
22 or deny the revised application within thirty days. Any subsequent review
23 shall be limited to the deficiencies cited in the denial;

24 (j) An applicant seeking to collocate small wireless facilities
25 within the jurisdiction of a single authority may, at the applicant's
26 discretion, file a consolidated application for multiple individual small
27 wireless facilities instead of filing a separate application for each
28 individual small wireless facility. Each small wireless facility within a
29 consolidated application is subject to review except that, the denial of
30 one or more small wireless facilities in a consolidated application shall
31 not delay processing of any other small wireless facilities in the same

1 application or be a basis to deny the consolidated application as a
2 whole. If an applicant applies to construct or collocate several small
3 wireless facilities within the jurisdiction of a single authority, the
4 authority shall:

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

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

12 (k) Installation or collocation for which a permit is granted
13 pursuant to this section shall be completed within one year of the permit
14 issuance date unless the authority and the applicant agree to extend this
15 period or a delay is caused by the lack of commercial power or
16 communications facilities at the site. Approval of an application
17 authorizes the applicant to:

18 (i) Undertake the installation or collocation; and

19 (ii) Subject to applicable relocation requirements and the
20 applicant's right to terminate at any time, operate and maintain the
21 small wireless facilities and any associated utility pole covered by the
22 permit for a period of not less than ten years, which permit must be
23 renewed for an equivalent duration so long as the applicant is in
24 compliance with the criteria set forth in subdivision (h) of this
25 subsection;

26 (l) An authority may not institute a moratorium on filing,
27 receiving, or processing applications or issuing permits or other
28 approvals, if any, for the collocation of small wireless facilities or
29 the installation, modification, or replacement of utility poles to
30 support small wireless facilities; and

31 (m)(i) For any construction, operation, collocation, or placement of

1 wireless facilities or wireless support structures that occurs upon,
2 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, shall be 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, public safety, protection of property, and
12 compliance with federal transportation funding requirements;

13 (ii) The construction, operation, collocation, or placement of
14 wireless facilities or wireless support structures shall occur at no cost
15 to the Department of Transportation unless otherwise agreed in advance
16 between an applicant and the department;

17 (iii) The Department of Transportation may set and collect a
18 reasonable application fee to cover its costs in administering the
19 activities described in this subsection, as well as a uniform and
20 nondiscriminatory system of occupancy fees for the use and occupancy of
21 state-owned property; and

22 (iv) If the Department of Transportation's future maintenance or
23 construction of a state or federal highway requires the moving or
24 relocating of wireless facilities or wireless support structures, such
25 facilities or structures shall be removed or relocated by the owner at
26 the owner's expense and as directed by the Department of Transportation.

27 (5) An authority shall not require an application for routine
28 maintenance, replacement of small wireless facilities with small wireless
29 facilities that are substantially similar or the same size or smaller, or
30 the installation, placement, maintenance, operation, or replacement of
31 micro-wireless facilities that are strung on cables between existing

1 utility poles in compliance with the National Electrical Safety Code. An
2 authority may require a permit to work within the right-of-way for such
3 activities, if applicable. Any such permits shall be subject to the
4 requirements provided in subsections (3) and (4) of this section.

5 (6) Any small wireless facility that is not operated for a
6 continuous period of twelve months, excluding nonoperation due to a
7 natural disaster or other unforeseeable circumstance or temporary
8 equipment failure, shall be considered abandoned and the owner of the
9 facility must remove such facility within ninety days after receipt of
10 written notice from the authority notifying the owner of such abandonment
11 unless cured within ninety days. The authority shall send such notice by
12 certified or registered mail, return receipt requested, to such owner at
13 the owner's last-known address.

14 Sec. 33. (1) Except as provided in section 38 of this act, this
15 section applies only to collocations on authority poles and authority
16 wireless support structures that are located on authority property
17 outside the right-of-way.

18 (2) An authority shall authorize the collocation of small wireless
19 facilities on authority poles that do not exceed fifty feet above ground
20 level using the process under section 32 of this act, charging only fees
21 allowed under section 35 of this act and reasonable and nondiscriminatory
22 rates, and requiring only reasonable and nondiscriminatory terms.

23 (3) Subject to subsection (4) of this section, an authority shall
24 authorize the collocation of small wireless facilities on authority
25 wireless support structures and authority poles that exceed fifty feet
26 above ground level to the same extent, if any, that the authority permits
27 access to such structures for other commercial projects or uses. Such
28 collocations shall be subject to reasonable and nondiscriminatory rates,
29 fees, and terms as provided in an agreement between the authority or its
30 agent and the wireless provider.

31 (4) An authority may not enter into an exclusive agreement with a

1 wireless provider concerning authority poles that exceed fifty feet above
2 ground level, or authority wireless support structures, including
3 stadiums and enclosed arenas, unless the agreement meets either of the
4 following requirements:

5 (a) The wireless provider provides service using a shared network of
6 wireless facilities that it makes available for access by other wireless
7 providers on reasonable and nondiscriminatory rates and terms that may
8 include use of the entire shared network as to itself, an affiliate, or
9 any other entity; or

10 (b) The wireless provider allows other wireless providers to
11 collocate small wireless facilities on reasonable and nondiscriminatory
12 rates and terms as to itself, an affiliate, or any other entity.

13 (5) When determining whether a rate, fee, or term is reasonable and
14 nondiscriminatory for the purposes of this section, consideration may be
15 given to any relevant facts, including alternative financial or service
16 remuneration, characteristics of the proposed equipment or installation,
17 structural limitations, or other commercial or unique features or
18 components.

19 Sec. 34. (1) This section applies to activities of the wireless
20 provider within the right-of-way.

21 (2) A person owning, managing, or controlling authority poles in the
22 right-of-way may not enter into an exclusive arrangement with any person
23 for the right to attach to such poles. A person who purchases or
24 otherwise acquires an authority pole is subject to the requirements of
25 this section.

26 (3) An authority shall allow the collocation of small wireless
27 facilities on authority poles using the process in section 32 of this
28 act.

29 (4) The rates provided under section 35 of this act to collocate on
30 authority poles shall be nondiscriminatory regardless of the services
31 provided by the collocating person.

1 (5)(a) The rates, fees, and terms and conditions for make-ready work
2 to collocate on an authority pole must be nondiscriminatory,
3 competitively neutral, and commercially reasonable and must comply with
4 the Small Wireless Facilities Deployment Act;

5 (b) The authority shall provide a good faith estimate for any make-
6 ready work necessary to enable the pole to support the requested
7 collocation by a wireless provider, including pole replacement if
8 necessary, within ninety days after receipt of a completed application.
9 Make-ready work, including any pole replacement, shall be completed
10 within sixty days of written acceptance of the good faith estimate by the
11 applicant. An authority may require replacement of the authority pole
12 only if it demonstrates that the collocation would make the authority
13 pole structurally unsound;

14 (c) The person owning, managing, or controlling the authority pole
15 shall not require more make-ready work than required to meet applicable
16 codes or industry standards. Fees for make-ready work shall not include
17 costs related to pre-existing or prior damage or noncompliance. Fees for
18 make-ready work, including any pole replacement, shall not exceed actual
19 costs or the amount charged to other communications service providers for
20 similar work and shall not include any consultant fees or expenses; and

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

24 Sec. 35. (1) An authority may not require a wireless provider to
25 pay any rates, fees, or compensation to the authority or other person
26 other than what is expressly authorized by section 86-704 or the Small
27 Wireless Facilities Deployment Act for the right to use or occupy a
28 right-of-way for collocation of small wireless facilities on wireless
29 support structures or utility poles in the right-of-way, or for the
30 installation, maintenance, modification, operation, and replacement of
31 utility poles in the right-of-way.

1 (2) Application fees shall be subject to the following requirements:

2 (a) An authority may charge an application fee only if such fee is
3 required for similar types of commercial development or construction
4 within the authority's jurisdiction;

5 (b) Where costs to be recovered by an application fee are already
6 recovered by existing fees, rates, licenses, or taxes paid by a wireless
7 provider, no application fee shall be assessed;

8 (c) An application fee may not include travel expenses incurred by a
9 third party in its review of an application or direct payment or
10 reimbursement of third party rates or fees charged on a contingency basis
11 or a result-based arrangement;

12 (d) An application fee for a collocation shall be limited to the
13 cost of granting a building permit for similar types of commercial
14 development or construction within the authority's jurisdiction. The
15 application fees for collocation of small wireless facilities on an
16 existing or replacement authority pole shall not exceed one hundred
17 dollars each for the first five small wireless facilities on the same
18 application and fifty dollars for each additional small wireless facility
19 on the same application;

20 (e) 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 permitted uses in accordance with the
23 specifications in section 31 of this act shall not exceed two hundred
24 fifty dollars per pole for access to the right-of-way; and

25 (f) An application fee for the installation, modification, or
26 replacement of a new utility pole associated with a small wireless
27 facility that is not a permitted use in accordance with the
28 specifications in section 31 of this act shall not exceed one thousand
29 dollars.

30 (3) The rate for collocation of a small wireless facility to an
31 authority pole in the right-of-way shall be no more than twenty dollars

1 per authority pole per year.

2 Sec. 36. Nothing in the Small Wireless Facilities Deployment Act
3 shall be interpreted to allow any entity to provide services regulated
4 under 47 U.S.C. sections 521 to 573, as such sections existed on January
5 1, 2018, without compliance with all laws applicable to providers of such
6 services. The Small Wireless Facilities Deployment Act shall not be
7 interpreted to impose any new requirements on cable operators for the
8 provision of cable service in this state.

9 Sec. 37. Except as provided by the Small Wireless Facilities
10 Deployment Act or applicable federal law, an authority may continue to
11 exercise zoning, land use, and planning and permitting authority within
12 its territorial boundaries, including with respect to wireless support
13 structures and utility poles, except that no authority shall have or
14 exercise any jurisdiction or authority over the design, engineering,
15 construction, installation, or operation of any small wireless facility
16 located in an interior structure or upon the site of any campus, stadium,
17 or athletic facility not owned or controlled by the authority, other than
18 to comply with applicable codes. An authority shall evaluate the
19 structure classification for wireless support structures under the
20 standard of the American National Standards Institute found in ANSI/
21 TIA-222, as such standard existed on January 1, 2018. Nothing in the
22 Small Wireless Facilities Deployment Act shall authorize the state or any
23 political subdivision thereof, including an authority, to require
24 wireless facility deployment or to regulate wireless services.

25 Sec. 38. (1) An authority may adopt an ordinance that makes
26 available to wireless providers rates, fees, and other terms that comply
27 with the Small Wireless Facilities Deployment Act. In the absence of an
28 ordinance that fully complies with the Small Wireless Facilities
29 Deployment Act and until such a compliant ordinance may be adopted,
30 wireless providers may install and operate small wireless facilities and
31 utility poles under the requirements of the Small Wireless Facilities

1 Deployment Act. An authority and a wireless provider may enter into an
2 agreement implementing the provisions of the Small Wireless Facilities
3 Deployment Act, but an authority may not require a wireless provider to
4 enter into such an agreement.

5 (2) Agreements between an authority and a wireless provider for the
6 deployment of small wireless facilities in the right-of-way under the
7 terms of the Small Wireless Facilities Deployment Act are public-private
8 agreements. Such agreements, and any ordinances implementing the Small
9 Wireless Facilities Deployment Act, are matters of legitimate and
10 significant statewide concern. An agreement or ordinance that does not
11 fully comply with the Small Wireless Facilities Deployment Act may apply
12 only to small wireless facilities and utility poles that became
13 operational or were installed before the effective date of this act,
14 which shall not nullify, modify, amend, or prohibit a mutual agreement
15 made prior to the effective date of this act between an authority and any
16 wireless provider for the placement of small wireless facilities that
17 were installed or approved for installation prior to the effective date
18 of this act. Such an agreement or ordinance may not be renewed, extended,
19 or made to apply to any other small wireless facility, unless it is
20 modified to fully comply with the Small Wireless Facilities Deployment
21 Act. If an agreement or ordinance is invalid in accordance with this
22 subsection, in the absence of an agreement or ordinance that fully
23 complies with the Small Wireless Facilities Deployment Act and until such
24 a compliant agreement or ordinance is entered or adopted, small wireless
25 facilities and utility poles that become operational or were constructed
26 before the effective date of this act may remain installed and be
27 operated under the requirements of the Small Wireless Facilities
28 Deployment Act.

29 (3) An agreement or ordinance that applies to small wireless
30 facilities that become operational on or after the effective date of this
31 act is invalid and unenforceable beginning on the effective date of this

1 act unless it fully complies with the Small Wireless Facilities
2 Deployment Act, except as provided in subsection (2) of this section. If
3 an agreement or ordinance is invalid in accordance with this subsection,
4 in the absence of an agreement or ordinance that fully complies with the
5 Small Wireless Facilities Deployment Act and until such a compliant
6 agreement or ordinance is entered or adopted, small wireless facilities
7 and utility poles may be installed and operated in the right-of-way or
8 become operational under the requirements of the Small Wireless
9 Facilities Deployment Act.

10 Sec. 39. A court of competent jurisdiction shall have jurisdiction
11 to determine all disputes arising under the Small Wireless Facilities
12 Deployment Act. Pending resolution of a dispute concerning rates for
13 collocation of small wireless facilities on authority poles, the person
14 owning or controlling the authority pole shall allow the collocating
15 person to collocate on its poles at an annual rate of no more than twenty
16 dollars with rates to be reconciled upon final resolution of the dispute.
17 Complaints shall be resolved no later than one hundred eighty days after
18 a complain or petition is filed.