Introduced by Friesen, 34.

Read first time January 13, 2017

Committee: Transportation and Telecommunications

1 A BILL FOR AN ACT relating to telecommunications and technology; to adopt
2 the Small Wireless Facilities Act; to provide a duty for the Revisor
3 of Statutes; and to provide an operative date.
4 Be it enacted by the people of the State of Nebraska,
Section 1. Sections 1 to 22 of this act shall be known and may be cited as the Small Wireless Facilities Act.

Sec. 2. The Legislature finds and declares that:

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

(2) Communications facilities are critical to public safety and to increase access to advanced technology and information;

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

(4) The permitting, construction, modification, maintenance, and operation of communications facilities are matters of statewide concern and interest.

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

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

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

(3) Confirm that communications service providers and communications facilities providers have a right to occupy and utilize public rights-of-way on a competitively neutral basis for the efficient conduct of their business.

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

Sec. 5. Applicant means a communications service provider or communications facilities provider that submits an application to an authority.

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

Sec. 7. Authority lands means lands owned by an authority.
Sec. 8. Authority right-of-way means a public highway, street, or alley under the jurisdiction of the authority.

Sec. 9. Collocate or collocation means mounting, installation, maintenance, modification, replacement, or operation of wireless facilities on or adjacent to a tower, building, pole, or structure for the purpose of transmitting or receiving radio frequency signals for communications purposes, but does not include routine maintenance or replacement of facilities that are substantially similar or smaller in size, weight, height, and structural loading.

Sec. 10. Communications facilities provider means a person or entity that installs or constructs facilities or structures used to provide communications service.

Sec. 11. Communications facility means any freestanding tower, monopole, pole, small wireless facility, or similar structure used to provide wireless service, unlicensed wireless service, or fixed wireless service, including microwave backhaul, and includes a base station, an antenna, coaxial cables, fiber optic cables, wires, conduit, pipes, radio transceivers, microwave devices, power supplies, and all other equipment used to provide communications service. The term also includes a personal wireless services facility as defined in 47 U.S.C. 332, as such section existed on January 1, 2017, and wireless facilities.

Sec. 12. Communications service means cable service as defined in 47 U.S.C. 522(6), information service as defined in 47 U.S.C. 153(24), telecommunications service as defined in 47 U.S.C. 153(53), mobile service as defined in 47 U.S.C. 153(33), or personal wireless service as defined in 47 U.S.C. 332, as such sections existed on January 1, 2017. The term also means wireless service other than mobile service.

Sec. 13. Communications service provider means a cable operator as defined in 47 U.S.C. 522(5), a provider of information service as defined in 47 U.S.C. 153(24), or a telecommunications carrier as defined in 47 U.S.C. 153(51), as such sections existed on January 1, 2017. The term
also means a wireless service provider.

Sec. 14. Pole means a utility pole, pole, light pole, light standard, or structure that is used in whole or in part for communications service, electric service, lighting, traffic control, signage, or a similar function.

Sec. 15. Small wireless facility means a wireless facility that meets the following qualifications:

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

(2) All other wireless equipment associated with the structure is cumulatively no more than twenty-eight cubic feet in volume. The following types of associated ancillary equipment are not included in the calculation of equipment volume: Electric meters, concealment material, telecommunications demarcation boxes, ground-based enclosures, backup power systems, grounding equipment, power transfer switches, cutoff switches, and vertical cable runs for connection of power and other services.

Sec. 16. Wireless facility means equipment at a fixed location that enables wireless communications between user equipment and a communications network, including, but not limited to: (a) Equipment associated with wireless service such as private, broadcast, and public safety services, as well as unlicensed wireless service and fixed wireless service such as microwave backhaul; and (b) radio transceivers, antennas, coaxial or fiber optic cables, regular and backup power supplies, and comparable equipment regardless of technological configuration. The term includes communications facilities and small wireless facilities.

Sec. 17. Wireless service means a fixed or mobile wireless service provided using wireless facilities and includes personal wireless service
and communications service.

Sec. 18. Wireless service provider means a provider of wireless service including personal wireless service under 47 U.S.C. 332, as such section existed on January 1, 2017.

Sec. 19. Wireless support structure means a structure capable of supporting the attachment or installation of communications facilities in compliance with applicable codes, including, but not limited to, water towers, buildings, and other structures whether within or outside the authority right-of-way.

Sec. 20. (1) Communications service providers and communications facilities providers may place poles and wireless facilities in an authority right-of-way.

(2)(a) An authority may require an application for a permit to collocate small wireless facilities on wireless support structures and poles, including authority poles.

(b) An application for the collocation of small wireless facilities shall be processed on a nondiscriminatory basis and deemed approved if the authority fails to approve or deny the application within sixty days after submission of a complete application.

(c) Batched applications may be made for projects involving multiple individual small wireless facilities within the jurisdiction of a single authority. The authority shall allow the applicant, at the applicant's discretion, to file a consolidated application and receive a single permit for multiple individual small wireless facilities instead of filing separate applications for each individual small wireless facility. If an applicant applies to construct or collocate several small wireless facilities within the jurisdiction of a single authority, the authority shall:

(i) Allow the applicant, at the applicant's discretion, to file a single set of documents that apply to all the applicant's small wireless facilities; and
(ii) Render a decision regarding all the applicant's small wireless
facilities in a single administrative proceeding unless local
requirements call for an elected or appointed body to render such
decision.

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

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

(f) Once an application is approved, a permit authorizing the
collocation or collocations shall remain valid for at least ten years and
shall be approved automatically for at least three five-year periods
unless the applicant requests that the permit be terminated.

(g) An authority shall only charge an application fee reasonably
related to the costs directly incurred by the authority in the granting
or administration of permits. Such fee shall be reasonably related in
time to the occurrence of such costs and shall not exceed two hundred
fifty dollars inclusive of any third-party fees, charges, or expenses.
All costs of construction shall be borne by the applicant with no
additional fees, taxes, lease payments, or in-kind consideration paid or
provided to the authority for use of the authority's right-of-way or
land, except that the applicant shall be responsible for any costs to
improve or maintain its own small wireless facility. An applicant shall not be required to pay the occupation tax authorized under section 86-704 for projects undertaken pursuant to the Small Wireless Facilities Act.

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

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

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

(k) Make-ready work shall not require more work than required to meet applicable codes or industry standards. Charges for make-ready work, including any pole replacement, shall not exceed actual costs for the amount charged to other communications service providers for similar work and shall not include third-party fees, charges, or expenses.

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

(3) For a pole placed or a small wireless facility collocated in whole or in part under either subsection (1) or (2) of this section, an authority shall only impose nondiscriminatory, competitively neutral, and commercially reasonable application requirements and shall not:

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

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

(c) Impose discriminatory licensing standards for persons collocating small wireless facilities but shall receive and process applications and issue licenses for persons constructing or collocating small wireless facility applications in a manner substantially comparable to the licensing of other contractors within the jurisdiction of the authority; and

(d) Require a communications service provider to provide (i) space on or near the wireless facility for authority services at less than the market rate for space, (ii) services by use of the structure or facilities at less than the market rate for such services, or (iii) any services unrelated to the wireless facility.
Sec. 21. For purposes of zoning regulation, small wireless facilities shall be a permitted use in all zoning districts other than areas outside the authority right-of-way that are zoned and used for single family residential use. An authority shall not impose a specific or conditional use permit requirement or any similar requirement or prohibition on small wireless facilities, and the authority shall not impose more restrictive requirements on placement, height, setbacks, or spacing than what are of general applicability in the zoning district.

Sec. 22. An authority shall not require a communications service provider or communications facilities provider to indemnify and hold harmless the authority from such authority's own negligence, or require a communications service provider or communications facilities provider to obtain insurance naming the authority and its officers and employees as an additional insured party. No communications service provider or communications facilities provider may avoid responsibility for its own negligence in installing, repairing, or maintaining poles and wireless facilities in an authority right-of-way.

Sec. 23. The Revisor of Statutes shall assign sections 1 to 22 of this act to Chapter 86.

Sec. 24. This act becomes operative on XXX XX, XXXX.