

LEGISLATURE OF NEBRASKA
ONE HUNDRED SIXTH LEGISLATURE
FIRST SESSION

LEGISLATIVE BILL 184

Introduced by Friesen, 34; Lowe, 37.

Read first time January 11, 2019

Committee: Transportation and Telecommunications

1 A BILL FOR AN ACT relating to telecommunications and technology; to adopt

2 the Small Wireless Facilities Deployment Act.

3 Be it enacted by the people of the State of Nebraska,

1 Section 1. Sections 1 to 41 of this act shall be known and may be
2 cited as the Small Wireless Facilities Deployment Act.

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

4 (1) The deployment of small wireless facilities and other next-
5 generation wireless facilities is a matter of statewide concern and
6 interest and public policy;

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

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

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

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

25 (6) Uniform procedures, rates, and fees for the permitting and
26 deployment of small wireless facilities in public rights-of-way and on
27 authority infrastructure, including poles, throughout the state are
28 reasonable and will encourage the development of robust next-generation
29 wireless networks for the benefit of residents throughout the state; and

30 (7) The procedures, rates, and fees in the Small Wireless Facilities
31 Deployment Act, together with any taxes, fees, or charges imposed under

1 section 86-704, are fair and reasonable when viewed from the perspective
2 of the state's residents and the state's interest in having robust,
3 reliable, and technologically advanced wireless networks, and reflect a
4 balancing of the interests of the wireless providers deploying new
5 facilities and the interests of authorities in receiving fair value by
6 recovering their costs of managing access to the public rights-of-way and
7 the attachment space provided on authority infrastructure.

8 Sec. 3. For purposes of the Small Wireless Facilities Deployment
9 Act, the definitions in sections 4 to 31 of this act apply.

10 Sec. 4. Antenna means communications equipment that transmits or
11 receives electromagnetic radio frequency signals used in the provision of
12 wireless services.

13 Sec. 5. Applicable codes means uniform building, fire, electrical,
14 plumbing, or mechanical codes adopted by a recognized national code
15 organization or local amendments to those codes enacted solely to address
16 imminent threats of destruction of property or injury to persons.

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

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

23 Sec. 8. Authority means the State of Nebraska or any agency,
24 county, city, village, or other political subdivision thereof, except as
25 otherwise excluded herein. Authority does not include public power
26 suppliers, rural public power suppliers, or state courts having
27 jurisdiction over an authority.

28 Sec. 9. Authority pole means a utility pole owned, managed, or
29 operated by or on behalf of an authority.

30 Sec. 10. Collocate or collocation means to install, mount,
31 maintain, modify, operate, or replace wireless facilities on or adjacent

1 to a wireless support structure or utility pole.

2 Sec. 11. Communications service provider means a cable operator as
3 defined in 47 U.S.C. 522, a provider of information service as defined in
4 47 U.S.C. 153, or a telecommunications carrier as defined in 47 U.S.C.
5 153, as such sections existed on January 1, 2019. Communications service
6 provider includes a wireless provider.

7 Sec. 12. Decorative pole means an authority pole that is specially
8 designed and placed for aesthetic purposes and on which no appurtenances
9 or attachments other than a small wireless facility, specially designed
10 informational or directional signage, or temporary holiday or special
11 event attachments have been placed or are permitted to be placed
12 according to nondiscriminatory municipal rules or codes.

13 Sec. 13. Fee means a one-time, nonrecurring charge.

14 Sec. 14. Historic district means a group of buildings, properties,
15 or sites that are either listed in the National Register of Historic
16 Places or formally determined eligible for listing by the Keeper of the
17 National Register, in accordance with the Nationwide Programmatic
18 Agreement codified at 47 C.F.R. part 1, Appendix C, as such regulation
19 existed on January 1, 2019.

20 Sec. 15. Law means federal, state, or local law, statute, common
21 law, code, rule, regulation, order, or ordinance.

22 Sec. 16. Microwireless facility means a small wireless facility
23 that is not larger in dimension than twenty-four inches in length,
24 fifteen inches in width, and twelve inches in height and any exterior
25 antenna is no longer than eleven inches.

26 Sec. 17. Permit means a written authorization required by an
27 authority to perform an action or initiate, continue, or complete a
28 project.

29 Sec. 18. Person means an individual, a corporation, a limited
30 liability company, a partnership, an association, a trust, or any other
31 entity or organization, including an authority.

1 Sec. 19. Public power supplier means a public power district or any
2 other governmental entity providing electric service. Public power
3 supplier does not include a municipality, a municipal electric utility or
4 system, or a rural public power supplier.

5 Sec. 20. Rate means a recurring charge.

6 Sec. 21. Right-of-way means the area on, below, or above a public
7 roadway, highway, street, sidewalk, alley, dedicated utility easement, or
8 similar property, but not including a freeway as defined in section
9 39-1302, the National System of Interstate and Defense Highways, or a
10 private easement. Right-of-way does not include any easement, right-of-
11 way, or other property right owned or acquired by a public power supplier
12 for which the public power supplier does not have the legal or
13 contractual right to install, replace, and maintain a wireless support
14 structure, a wireless facility, or a small wireless facility.

15 Sec. 22. Rural public power supplier means a public power district,
16 a public power and irrigation district, an electric cooperative, or an
17 electric membership association, that does not provide electric service
18 to any city of the metropolitan, primary, or first class.

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

30 Sec. 24. Technically feasible means that by virtue of engineering
31 or spectrum usage, the proposed placement for a small wireless facility,

1 or its design or site location, can be implemented without a reduction in
2 the functionality of the small wireless facility.

3 Sec. 25. Utility pole means a pole or similar structure that is or
4 may be used, in whole or in part, by or for wireline communications,
5 lighting, traffic control, signage, or a similar function, or for the
6 collocation of small wireless facilities, except that utility pole does
7 not include (1) wireless support structures, (2) any transmission
8 infrastructure owned or operated by a public power supplier or a rural
9 public power supplier, and (3) any distribution or communications
10 infrastructure owned or operated by a rural public power supplier.

11 Sec. 26. (1) Wireless facility means equipment at a fixed location
12 that enables wireless communications between user equipment and a
13 communications network, including (a) equipment associated with wireless
14 communications and (b) radio transceivers, antennas, coaxial or fiber-
15 optic cable, regular and backup power supplies, and comparable equipment,
16 regardless of technological configuration. Wireless facility includes
17 small wireless facilities.

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

23 Sec. 27. Wireless infrastructure provider means any person,
24 including a person authorized to provide telecommunications service in
25 the State of Nebraska, that builds or installs wireless communication
26 transmission equipment, wireless facilities, or wireless support
27 structures, but that is not a wireless services provider.

28 Sec. 28. Wireless provider means a wireless infrastructure provider
29 or a wireless services provider.

30 Sec. 29. Wireless services means any services, whether mobile or at
31 a fixed location, provided to the public using wireless facilities.

1 Sec. 30. Wireless services provider means a person who provides
2 wireless services.

3 Sec. 31. Wireless support structure means a structure such as a
4 guyed or self-supporting tower, billboard, building, or other existing or
5 proposed structure designed to support or capable of supporting wireless
6 facilities other than a structure designed solely for the collocation of
7 small wireless facilities. Wireless support structure does not include a
8 utility pole.

9 Sec. 32. (1) This section applies only to activities of a wireless
10 provider within the right-of-way to deploy small wireless facilities and
11 associated utility poles.

12 (2) An authority shall not enter into an exclusive arrangement with
13 any person for use of the right-of-way for the collocation of small
14 wireless facilities or the installation, maintenance, marketing,
15 modification, operation, or replacement of utility poles.

16 (3) An authority may only charge a wireless provider the rate or fee
17 provided in section 35 of this act for the use of the right-of-way for
18 the collocation of small wireless facilities or the installation,
19 maintenance, modification, operation, or replacement of a utility pole in
20 the right-of-way if the authority charges other entities for use of the
21 right-of-way. An authority may, on a nondiscriminatory basis, refrain
22 from charging any rate to a wireless provider for the use of the right-
23 of-way.

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

1 (5) Each new or modified utility pole installed in the right-of-way
2 shall not exceed the greater of ten feet in height above the tallest
3 existing utility pole in place as of the effective date of this act
4 located within five hundred feet of the new pole in the same right-of-way
5 or fifty feet above ground level. New small wireless facilities in the
6 right-of-way shall not extend more than ten feet above an existing
7 utility pole in place as of the effective date of this act or, for small
8 wireless facilities on a new utility pole, above the height permitted for
9 a new utility pole under this subsection. A wireless provider shall have
10 the right to collocate a small wireless facility and install, maintain,
11 modify, operate, and replace a utility pole that exceeds these height
12 limits along, across, upon, and under the right-of-way, subject to this
13 section and applicable zoning regulations.

14 (6) A wireless provider may replace a decorative pole when necessary
15 to collocate a small wireless facility, except that any replacement pole
16 shall reasonably conform to the design aesthetics of the decorative pole
17 being replaced.

18 (7) Except as provided in subsections (4) and (5) of section 33 of
19 this act and except for facilities excluded from evaluation for effects
20 on historic properties under 47 C.F.R. 1.1307(a)(4), as such regulation
21 existed on January 1, 2019, an authority may require reasonable,
22 technically feasible, nondiscriminatory, and technologically neutral
23 design or concealment measures in a historic district established prior
24 to January 1, 2019. Any such design or concealment measures shall not
25 have the effect of prohibiting any wireless provider's technology or be
26 considered a part of the small wireless facility for purposes of the size
27 restrictions of a small wireless facility.

28 (8) The authority shall be competitively neutral in its
29 administration and regulation related to the management of the right-of-
30 way with regard to users of the right-of-way, including ensuring that
31 terms of use are reasonable, nondiscriminatory, and compliant with

1 applicable law.

2 (9) The authority may require a wireless provider to repair all
3 damage to the right-of-way directly caused by the activities of the
4 wireless provider in the right-of-way and to return the right-of-way to
5 its functional equivalence before the damage pursuant to the
6 competitively neutral and reasonable requirements and specifications of
7 the authority. If the wireless provider fails to make the repairs
8 required by the authority within a reasonable time after written notice,
9 the authority may effect those repairs and charge the applicable party
10 the reasonable, documented cost of such repairs.

11 Sec. 33. (1) This section applies to the permitting of small
12 wireless facilities within or outside the right-of-way as specified in
13 subsection (3) of this section and to the permitting of the installation,
14 modification, and replacement of utility poles by a wireless provider
15 within the right-of-way.

16 (2) Except as provided in the Small Wireless Facilities Deployment
17 Act, an authority shall not prohibit, regulate, or charge for the
18 collocation of small wireless facilities.

19 (3) Small wireless facilities shall be classified as permitted uses
20 and not subject to zoning review or approval if they are collocated
21 within the right-of-way in any zone, or outside the right-of-way in
22 property not zoned and used exclusively for single-family residential
23 use. Small wireless facilities to be located in an airport hazard area as
24 defined by section 3-301 shall comply with any regulations governing such
25 area.

26 (4) An authority may require an applicant to obtain one or more
27 permits to collocate a small wireless facility or install a new,
28 modified, or replacement utility pole associated with a small wireless
29 facility as provided in section 32 of this act. Such permits shall be of
30 general applicability and not apply exclusively to wireless facilities.
31 An authority shall receive applications for, process, and issue such

1 permits subject to the following requirements:

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

6 (b) An applicant shall not be required to provide more information
7 to obtain a permit than a communications service provider that is not a
8 wireless provider, except that an applicant may be required to include
9 construction and engineering drawings and information demonstrating
10 compliance with the criteria in subdivision (h) of this subsection;

11 (c) An authority may propose a technically feasible alternate
12 utility pole location but shall not require the placement of small
13 wireless facilities on any specific utility pole or category of poles or
14 require multiple antenna systems on a single utility pole;

15 (d) An authority shall not limit the placement of small wireless
16 facilities by minimum horizontal separation distances;

17 (e) An authority may require an applicant to include an attestation
18 that the small wireless facilities will be operational for use by a
19 wireless services provider within one year after the permit issuance date
20 unless the authority and the applicant agree to extend this period or a
21 delay is caused by lack of commercial power or communications transport
22 facilities to the site;

23 (f) Within ten days after receiving an application, an authority
24 shall determine and notify the applicant in writing whether the
25 application is complete. If an application is incomplete, the authority
26 shall specifically identify the missing information in writing. The
27 processing deadline in subdivision (g) of this subsection is tolled from
28 the time the authority sends the notice of incompleteness to the time the
29 applicant provides the missing information. The processing deadline also
30 may be tolled by agreement of the applicant and the authority;

31 (g) An application shall be processed on a nondiscriminatory basis

1 and deemed approved if the authority fails to approve or deny the
2 application within ninety days after receipt of the application. Upon
3 mutual agreement between the applicant and the authority, an authority
4 may extend the period for consideration of an application for thirty
5 days;

6 (h) An authority may deny a proposed collocation of a small wireless
7 facility or installation, modification, or replacement of a utility pole
8 that meets the requirements of section 32 of this act only if the
9 proposed application:

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

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

14 (iii) Materially interferes with compliance with the federal
15 Americans with Disabilities Act of 1990 or similar federal or state
16 standards regarding pedestrian access or movement;

17 (iv) Fails to comply with reasonable and nondiscriminatory spacing
18 requirements of general application adopted by ordinance that concern the
19 location of ground-mounted equipment and new utility poles. Such spacing
20 requirements shall not prevent a wireless provider from serving any
21 location;

22 (v) Fails to comply with applicable codes if they are of general
23 applicability and do not apply exclusively to wireless facilities; or

24 (vi) Designates the location of a new utility pole within seven feet
25 in any direction of an electrical conductor unless the wireless provider
26 obtains the written consent of the public power supplier that owns or
27 manages the electrical conductor;

28 (i) The authority shall document the basis for a denial, including
29 the specific code provisions on which the denial was based, and send the
30 documentation to the applicant on or before the day the authority denies
31 the application. The applicant may cure the deficiencies identified by

1 the authority and resubmit the application within thirty days after the
2 denial without paying an additional application fee. The authority shall
3 approve or deny the revised application within thirty days. Any
4 subsequent review shall be limited to the deficiencies cited in the
5 denial;

6 (j) An applicant seeking to collocate small wireless facilities
7 within the jurisdiction of a single authority may, at the applicant's
8 discretion, file a consolidated application for multiple individual small
9 wireless facilities instead of filing a separate application for each
10 individual small wireless facility. Each small wireless facility within a
11 consolidated application is subject to review, except that the denial of
12 one or more small wireless facilities in a consolidated application shall
13 not delay processing of any other small wireless facilities in the same
14 application or be a basis to deny the consolidated application as a
15 whole. If an applicant applies to construct or collocate several small
16 wireless facilities within the jurisdiction of a single authority, the
17 authority shall:

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

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

25 (k) Installation or collocation for which a permit is granted
26 pursuant to this section shall be completed within one year of the permit
27 issuance date unless the authority and the applicant agree to extend this
28 period or a delay is caused by the lack of commercial power or
29 communications transport facilities at the site. Approval of an
30 application authorizes the applicant to:

31 (i) Undertake the installation or collocation; and

1 (ii) Subject to applicable relocation requirements and the
2 applicant's right to terminate at any time, maintain and operate the
3 small wireless facilities and any associated utility pole covered by the
4 permit for a period of not less than ten years. An authority shall renew
5 such permit for an equivalent duration so long as the applicant is in
6 compliance with the criteria set forth in subdivision (h) of this
7 subsection; and

8 (1) An authority shall not institute a moratorium on filing,
9 receiving, or processing applications or issuing permits or other
10 approvals, if any, for the collocation of small wireless facilities or
11 the installation, modification, or replacement of utility poles to
12 support small wireless facilities.

13 (5)(a) Notwithstanding any other provision of the Small Wireless
14 Facilities Deployment Act, for any construction, operation, collocation,
15 or placement of wireless facilities, utility poles, or wireless support
16 structures that occurs above, across, under, or upon a state or federal
17 highway or upon a state-owned utility pole or wireless support structure,
18 the application process, location, and installation of such facilities,
19 poles, or structures, as such pertain to the present and future use of
20 the right-of-way or state-owned poles or wireless support structures for
21 highway purposes, shall be subject to the rules and regulations, guidance
22 documents, and usual and customary permit requirements of the State of
23 Nebraska and the Department of Transportation, including, but not limited
24 to, requirements for location and design review, liability and automobile
25 insurance, indemnification of the department from liability, protection
26 of public safety and property interests, and compliance with federal
27 transportation funding requirements.

28 (b) Traffic signal utility poles and traffic control devices owned
29 by the Department of Transportation shall not be used for the collocation
30 of small wireless facilities under the Small Wireless Facilities
31 Deployment Act. State highway lighting utility poles may be used for

1 collocation of small wireless facilities only if:

2 (i) There are insufficient reasonable alternative collocation
3 options at or near the requested location;

4 (ii) The small wireless facilities can be safely installed,
5 operated, and maintained; and

6 (iii) The collocation of the small wireless facilities will not
7 violate reasonable wind, ice, weight, and seismic load requirements on
8 state highway lighting utility poles.

9 (c) Applicants that collocate small wireless facilities on state
10 highway lighting utility poles assume the risk of loss or damage to, or
11 loss of use of, such facilities when such poles are damaged, destroyed,
12 or taken out of service on state property, except to the extent that such
13 loss or damage is due to or caused by the negligence or willful
14 misconduct of the Department of Transportation or its employees,
15 contractors, or agents. This subdivision does not preclude claims against
16 entities other than the Department of Transportation.

17 (d) The construction, operation, maintenance, collocation, or
18 placement of wireless facilities, utility poles, or wireless support
19 structures shall occur at no cost to the Department of Transportation
20 unless otherwise agreed in advance between an applicant and the
21 department.

22 (e) The Department of Transportation may set and collect a
23 reasonable application fee to cover its costs in administering the
24 activities described in this subsection, as well as a uniform and
25 nondiscriminatory system of annual occupancy rates for the use and
26 occupancy of state-owned property.

27 (f) If the future maintenance or construction of a state or federal
28 highway by the Department of Transportation requires the moving or
29 relocating of wireless facilities, utility poles, or wireless support
30 structures currently located within the right-of-way, such facilities,
31 poles, or structures shall be removed or relocated by the owner of the

1 facilities, poles, or structures at the owner's expense and as directed
2 by the department.

3 (6) An authority shall not require an application for routine
4 maintenance of small wireless facilities, replacement of small wireless
5 facilities with small wireless facilities that are substantially similar
6 or the same size or smaller, or the installation, placement, maintenance,
7 operation, or replacement of microwireless facilities that are strung on
8 cables between existing utility poles in compliance with the National
9 Electrical Safety Code. An authority may require a permit for work that
10 requires excavation or closing of sidewalks or vehicular lanes within the
11 right-of-way for such activities.

12 (7) Any small wireless facility that is not operated for a
13 continuous period of twelve months, excluding nonoperation due to a
14 natural disaster or other unforeseeable circumstance or temporary
15 equipment failure, shall be considered abandoned, and the owner of the
16 facility shall remove such facility and related utility pole, unless such
17 pole is otherwise being used by another utility or is owned by a party
18 other than the owner of the removed small wireless facility, within
19 ninety days after receipt of written notice from the authority notifying
20 the owner of such abandonment unless cured within ninety days. The
21 authority shall send such notice by certified or registered mail, return
22 receipt requested, to such owner at the owner's last-known address.

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

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

30 (3) An authority shall allow the collocation of small wireless
31 facilities on authority poles using the process in section 33 of this

1 act.

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

5 (5)(a) The rates, fees, terms, and conditions for make-ready work to
6 collocate on an authority pole shall be nondiscriminatory, competitively
7 neutral, and commercially reasonable and shall comply with the Small
8 Wireless Facilities Deployment Act.

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

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

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

28 Sec. 35. (1) An authority shall not require a wireless provider to
29 pay any rate, fee, or compensation to the authority or other person other
30 than what is expressly authorized by section 86-704 or the Small Wireless
31 Facilities Deployment Act for the right to use or occupy a right-of-way

1 for collocation of small wireless facilities on wireless support
2 structures or utility poles in the right-of-way or for the installation,
3 maintenance, modification, operation, and replacement of utility poles in
4 the right-of-way.

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

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

9 (b) If costs to be recovered by an application fee are already
10 recovered by existing fees, rates, licenses, or taxes paid by a wireless
11 provider, no application fee shall be assessed;

12 (c) An application fee shall not include travel expenses incurred by
13 a third party in its review of an application or direct payment or
14 reimbursement of third-party rates or fees charged on a contingency basis
15 or a result-based arrangement;

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

24 (e) The application fees for the installation, modification, or
25 replacement of a utility pole and the collocation of an associated small
26 wireless facility that are permitted uses in accordance with the
27 specifications in section 32 of this act shall not exceed two hundred
28 fifty dollars per pole for access to the right-of-way.

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

1 Sec. 36. Nothing in the Small Wireless Facilities Deployment Act
2 shall be interpreted to allow any entity to provide services regulated
3 under 47 U.S.C. 521 to 573, as such sections existed on January 1, 2019,
4 without compliance with all laws applicable to providers of such
5 services. The Small Wireless Facilities Deployment Act shall not be
6 interpreted to impose any new requirements on cable operators for the
7 provision of cable service in this state.

8 Sec. 37. Except as provided by the Small Wireless Facilities
9 Deployment Act or applicable federal law, an authority may continue to
10 exercise zoning, land-use, and planning and permitting authority within
11 its territorial boundaries, including with respect to wireless support
12 structures and utility poles, except that no authority shall have or
13 exercise any jurisdiction or authority over the design, engineering,
14 construction, installation, or operation of any small wireless facility
15 located in an interior structure or upon the site of any campus, stadium,
16 or athletic facility not owned or controlled by the authority, other than
17 to comply with applicable codes. An authority shall evaluate the
18 structure classification for wireless support structures under the
19 standard of the American National Standards Institute found in ANSI/
20 TIA-222, as such standard existed on January 1, 2019. Nothing in the
21 Small Wireless Facilities Deployment Act shall authorize the state or any
22 political subdivision thereof, including an authority, to require
23 wireless facility deployment or to regulate wireless services.

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

1 implementing the Small Wireless Facilities Deployment Act, but an
2 authority shall not require a wireless provider to enter into such an
3 agreement.

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

28 (3) An agreement or ordinance that applies to small wireless
29 facilities that become operational on or after the effective date of this
30 act is invalid and unenforceable beginning on the effective date of this
31 act unless it fully complies with the Small Wireless Facilities

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

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

16 Sec. 40. The Small Wireless Facilities Deployment Act does not
17 apply to the University of Nebraska system, the Nebraska state college
18 system, the community college system, and all campuses, area, and
19 property of such systems.

20 Sec. 41. (1) A public power supplier shall not be required to allow
21 the collocation of small wireless facilities on utility poles owned,
22 operated, or managed by a public power supplier except pursuant to a
23 negotiated pole attachment agreement containing reasonable and
24 nondiscriminatory terms and conditions, including, but not limited to,
25 applicable rates, and the permit, operational, and safety requirements of
26 the public power supplier.

27 (2) The annual pole attachment rate for the collocation of a small
28 wireless facility supported by or installed on a utility pole owned,
29 operated, or managed by a public power supplier shall be fair,
30 reasonable, nondiscriminatory, cost-based, and set by the board of such
31 public power supplier in accordance with section 70-655.

1 (3) Except for the findings and declarations set forth in section 2
2 of this act, the definitions set forth in sections 4 to 31 of this act,
3 and subsections (1) and (2) of this section, the Small Wireless
4 Facilities Deployment Act shall not apply to public power suppliers or to
5 the collocation of small wireless facilities on utility poles owned,
6 operated, or managed by a public power supplier.