LEGISLATIVE BILL 731

Introduced by Cavanaugh, J., 9; Hunt, 8.
Read first time January 05, 2022
Committee: Transportation and Telecommunications

A BILL FOR AN ACT relating to the Small Wireless Facilities Deployment Act; to amend section 86-1236, Revised Statutes Cumulative Supplement, 2020; to provide requirements for a wireless provider as prescribed; and to repeal the original section.

Be it enacted by the people of the State of Nebraska,
Section 1. Section 86-1236, Revised Statutes Cumulative Supplement, 2020, is amended to read:

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

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

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

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

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

(b) New small wireless facilities in a right-of-way shall not extend more than the greater of (i) fifty feet in height, including antenna, or
(ii) more than five feet above an existing utility pole in place as of
September 1, 2019, and located within five hundred feet in the same
right-of-way.

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

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

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

(8) An authority may require a wireless provider to repair all
damage to a right-of-way directly caused by the activities of the
wireless provider in the right-of-way and return the right-of-way to
equal or better condition to that before the damage occurred pursuant to
the competitively neutral and reasonable requirements and specifications of the authority. If the applicant fails to make the repairs that are reasonably required by the authority within fourteen days after written notice, the authority may undertake such repairs and charge the wireless provider the reasonable, documented cost of such repairs. An authority shall grant an extension of up to ten days to complete such repairs if the wireless provider requests such extension within the original fourteen-day period. In the event of immediate threat to life, safety, or to prevent serious injury, the authority may immediately undertake to restore the site and then notify the applicant and charge the applicant for all reasonable restoration costs.

(9) An authority may require that a wireless provider provide reasonable notification to adjacent property owners or residents prior to installation of a small wireless facility.

(10) An authority shall require, prior to installation of any new or modified utility pole in a right-of-way, certification from the wireless provider that such installation (a) complies with the federal Americans With Disabilities Act of 1990 and the federal regulations adopted in response to such act, as such act and regulations existed on January 1, 2022, (b) does not obstruct or hinder usual travel or public safety in or on such right-of-way, and (c) does not obstruct the legal use of such right-of-way by any utility or impede the safe operation of such utility's system or provision of its service.

Sec. 2. Original section 86-1236, Revised Statutes Cumulative Supplement, 2020, is repealed.