

LEGISLATURE OF NEBRASKA
ONE HUNDRED SEVENTH LEGISLATURE
FIRST SESSION

LEGISLATIVE BILL 520

Introduced by Friesen, 34.

Read first time January 19, 2021

Committee: Transportation and Telecommunications

1 A BILL FOR AN ACT relating to telecommunications and technology; to
2 define terms; and to provide for applications for the collocation of
3 certain wireless facilities.

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

1 Section 1. (1) For purposes of this section:

2 (a) Authority means any county, city, or village whose authorization
3 is necessary prior to the deployment of a wireless facility;

4 (b) Collocate or collocation means to install or place a wireless
5 facility on or adjacent to existing structures, including, but not
6 limited to, buildings, electrical transmission towers, poles, towers,
7 water towers, and other structures capable of supporting the attachment
8 of wireless facilities in compliance with applicable codes;

9 (c) Eligible facilities request means a request (i) to modify an
10 existing tower or wireless support structure that hosts a wireless
11 facility and (ii) that does not substantially change the physical
12 dimensions of such tower or wireless support structure involving
13 collocation of equipment, removal of equipment, replacement of equipment,
14 or modification to a tower site that would include ground excavation or
15 deployment of up to thirty feet in any direction outside a tower's site;

16 (d) Site means towers other than towers in the public rights-of-way,
17 the current boundaries of the leased or owned property surrounding the
18 tower and any access or utility easements currently related to the site,
19 and, for other eligible support structures, further restricted to that
20 area in proximity to the structure and to other transmission equipment
21 already deployed on the ground. The current boundaries of a site are the
22 boundaries that existed as of the date that the original support
23 structure or a modification to that structure was last reviewed and
24 approved by a state or local government, if the approval of the
25 modification occurred prior to the federal Middle Class Tax Relief and
26 Job Creation Act of 2012, as such act existed on January 1, 2021, or
27 otherwise outside of the section 6409(a) process of such act;

28 (e) Substantially change means to modify the physical dimensions of
29 an existing tower or wireless support structure that hosts a wireless
30 facility if such modification:

31 (i) Increases the height of a tower outside the public right-of-way

1 by more than ten percent or the height of one additional antenna array
2 with a separation not to exceed twenty feet, whichever is greater, or
3 increases the height of a tower inside the public right-of-way by more
4 than ten percent or ten feet, whichever is greater. Such increases shall
5 be measured from the existing tower's approved height;

6 (ii) Involves adding an appurtenance to a tower not in the public
7 right-of-way that would protrude from the edge of the tower more than
8 twenty feet or the width of the tower at the level of the appurtenance,
9 whichever is greater, or involves adding an appurtenance to the body of a
10 tower in the public right-of-way that would protrude by more than six
11 feet;

12 (iii) Involves the installation of more than the standard number of
13 new equipment cabinets, not to exceed four equipment cabinets; or

14 (iv) It entails any excavation or deployment outside of the current
15 site, except that for towers other than towers in the public rights-of-
16 way, it entails any excavation or deployment of transmission equipment
17 outside of the current site by more than thirty feet in any direction.
18 The site boundary from which the thirty feet is measured excludes any
19 access or utility easements currently related to the site;

20 (f) Tower means any structure built for the sole or primary purpose
21 of supporting any licensed or authorized antennas and associated
22 facilities, including structures constructed for wireless communications;

23 (g)(i) Wireless facility means equipment at a fixed location that
24 enables wireless communications between user equipment and a
25 communications network, including (A) equipment associated with wireless
26 communications and (B) radio transceivers, antennas, coaxial or fiber-
27 optic cable, regular power supply, and small back-up battery, regardless
28 of technological configuration. Wireless facility does not include a
29 small wireless facility.

30 (ii) Wireless facility does not include (A) the structure or
31 improvements on, under, or within the equipment which is collocated, (B)

1 coaxial or fiber-optic cable that is between wireless structures or
2 utility poles or that is otherwise not immediately adjacent to, or
3 directly associated with, a particular antenna, or (C) a wireline
4 backhaul facility;

5 (h) Wireless support structure means a structure, such as a tower or
6 other existing or proposed structure designed to support or capable of
7 supporting wireless facilities other than a structure designed solely for
8 the collocation of a small wireless facility.

9 (2) Subject to the limitations in this section, an authority may fix
10 and charge an application fee for the submission, processing, and review
11 of an eligible facilities request to collocate a new wireless facility,
12 site a new wireless support structure, or substantially change an
13 existing wireless facility or wireless support structure. The application
14 fee shall be based on the authority's actual, direct, and objectively
15 reasonable costs incurred for all aspects of an application review
16 process. Any costs incurred by an authority for review by an outside
17 consultant shall be included in the application fee, shall be based on
18 objectively reasonable costs, and shall not exceed the usual and
19 customary fee charged for the services provided. The charges included in
20 the application fee or amended application fee shall be itemized and
21 separately identified and disclosed to the applicant. The application fee
22 imposed by an authority shall not be used for:

23 (a) Travel time or expenses, meals, or overnight accommodations
24 incurred in the review of an application by an outside consultant; or

25 (b) Reimbursement for a consultant that is based on a contingent fee
26 or a results-based arrangement.

27 (3) An application fee under this section shall not exceed:

28 (a) Five hundred dollars for the review of an eligible facilities
29 request or collocation application on an existing wireless support
30 structure; or

31 (b) One thousand dollars for the review of an application to place a

1 new tower and associated wireless facility.

2 (4) Nothing in this section shall be construed to apply to an
3 application submitted to an authority pursuant to the Small Wireless
4 Facilities Deployment Act.

5 (5) A reviewing authority shall be subject to the sixty-day shot
6 clock to review and approve an application for an eligible facilities
7 request or modification. The shot-clock commences when (a) the applicant
8 takes the first procedural step that the local jurisdiction requires as
9 part of its applicable regulatory review process and (b) the applicant
10 submits documentation showing that the modification qualifies for
11 streamlined review.

12 (6)(a) A reviewing authority shall approve any eligible facility's
13 request for modification of an eligible support structure that does not
14 substantially change the physical dimensions of such structure.

15 (b) When an applicant asserts in writing that a request for
16 modification is covered by this section, the reviewing authority may
17 require the applicant to provide documentation or information only to the
18 extent reasonably related to determining whether the request meets the
19 requirements of this section. A reviewing authority may not require an
20 applicant to submit any other documentation, including, but not limited
21 to, documentation intended to illustrate the need for such wireless
22 facilities or to justify the business decision to modify such wireless
23 facilities.

24 (c) Within sixty days of the date after which an applicant submits a
25 request seeking approval under this section, the reviewing authority
26 shall approve the application unless it determines that the application
27 is not covered by this section.

28 (d)(i) The sixty-day period begins to run when the application is
29 filed, and may be tolled only by mutual agreement or in cases where the
30 reviewing authority determines that the application is incomplete. The
31 timeframe for review is not tolled by a moratorium on the review of

1 applications.

2 (ii) The reviewing authority shall provide written notice to the
3 applicant within thirty days of receipt of the application, clearly and
4 specifically delineating all missing documents or information. Such
5 delineated information is limited to documents or information meeting the
6 standard under subdivision (6)(b) of this section.

7 (iii) The timeframe for review begins running again when the
8 applicant makes a supplemental submission in response to the reviewing
9 authority's notice of incompleteness.

10 (iv) Following a supplemental submission, the reviewing authority
11 will have ten days to notify the applicant that the supplemental
12 submission did not provide the information identified in the original
13 notice delineating missing information. The timeframe is tolled in the
14 case of second or subsequent notices pursuant to the procedures
15 identified in subdivision (6)(d)(i) of this section. Second or subsequent
16 notices of incompleteness may not specify missing documents or
17 information that were not delineated in the original notice of
18 incompleteness.

19 (e) In the event the reviewing authority fails to approve or deny a
20 request seeking approval under this section within the timeframe for
21 review, accounting for any tolling, the request shall be deemed granted.
22 The deemed grant does not become effective until the applicant notifies
23 the applicable reviewing authority in writing after the review period has
24 expired, accounting for any tolling, that the application has been deemed
25 granted.