

AMENDMENTS TO LB389

(Amendments to Standing Committee amendments, AM1456)

Introduced by McCollister, 20.

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

3 Section 1. Sections 1 to 20 of this act shall be known and may be
4 cited as the Small Wireless Facilities Act.

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

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

8 (2) Wireless facilities are critical to public safety and to
9 increase access to advanced wireless technology and information services;

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

12 (4) The permitting, construction, modification, maintenance,
13 installation, replacement, and operation of wireless facilities are
14 matters of statewide and local concern and interest.

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

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

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

20 (3) Confirm that wireless service providers and communications
21 facility providers have a right to occupy and utilize public rights-of-
22 way as set forth in the act for the efficient conduct of their business.

23 Sec. 4. For purposes of the Small Wireless Facilities Act, the
24 definitions in sections 5 to 18 of this act apply.

25 Sec. 5. Applicant means a wireless service provider that submits an
26 application to an authority for approval of the collocation of one or

1 more wireless facilities or placement of a pole for the collocation of
2 small wireless facilities.

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

5 Sec. 7. Authority right-of-way means the area on, below, or above a
6 public highway, street, sidewalk, alley, or similar property under the
7 jurisdiction of an authority and includes a federal interstate highway.

8 Sec. 8. Collocate or collocation means the mounting, installation,
9 maintenance, modification, replacement, or operation of small wireless
10 facilities on or adjacent to a tower, building, pole, or structure for
11 the purpose of transmitting or receiving radio frequency signals for
12 communications purposes. Collocate or collocation also means the
13 mounting, installation, maintenance, or modification of small wireless
14 facilities-rated pole or streetlight or on a new replacement pole in the
15 same location where a current pole exists.

16 Sec. 9. Communications facility means any facility used to provide
17 wireless service or fixed wireless service, including microwave backhaul,
18 and includes an antenna, vertical cable runs and related conduit on a
19 pole for the connection of power and other services, pipes, radio
20 transceivers, microwave devices, power supplies, and all other equipment
21 used to provide communications service. Communications facility also
22 includes wireless facilities.

23 Sec. 10. Communications facility provider means a person or entity
24 that installs or constructs facilities or structures used to provide
25 communications services.

26 Sec. 11. Communications service means service provided over a
27 communications facility, including cable service as defined in 47 U.S.C.
28 522(6), information service as defined in 47 U.S.C. 153(24), and
29 telecommunications service as defined in 47 U.S.C. 153(53), as such
30 sections existed on January 1, 2018, including, but not limited to,
31 wireline backhaul service. Communications service also includes wireless

1 service as defined in section 15 of this act.

2 Sec. 12. Pole means a utility pole, pole, light pole, light
3 standard, or structure that is used in whole or in part for
4 communications service, lighting, or a similar function.

5 Sec. 13. Small wireless facility means a wireless facility that
6 meets the following qualifications:

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

11 (2) All other wireless equipment associated with the structure is
12 cumulatively no more than seventeen and one half cubic feet in volume.
13 The following types of associated ancillary equipment are included in the
14 calculation of equipment volume: Electric meters, concealment material,
15 telecommunications demarcation boxes, ground-based enclosures, backup
16 power systems, grounding equipment, power transfer switches, cutoff
17 switches, and vertical cable runs and related conduit on a pole for
18 connection of power and other services.

19 Sec. 14. Wireless facility means equipment at a fixed location that
20 enables the provision of wireless services between user equipment and a
21 communications network, including radio transceivers, antennas, regular
22 and backup power supplies, and comparable equipment regardless of
23 technological configuration. Wireless facility includes small wireless
24 facilities but does not include wireline backhaul service facilities or
25 coaxial or fiber-optic cable that is between poles or wireless support
26 structures or that is otherwise not immediately adjacent to or directly
27 associated with a particular collocation.

28 Sec. 15. Wireless service means any service using licensed wireless
29 spectrum whether fixed or mobile and is provided using wireless
30 facilities and includes personal wireless service as defined in 47 U.S.C.
31 332 and mobile service as defined in 47 U.S.C. 153(33), as such sections

1 existed on January 1, 2018.

2 Sec. 16. Wireless service provider means a person who provides
3 wireless services.

4 Sec. 17. Wireless support structure means a pole or other
5 freestanding structure capable of supporting the attachment or
6 installation of small wireless facilities in compliance with applicable
7 codes, including, but not limited to, water towers, buildings, and other
8 structures whether within or outside the authority right-of-way.

9 Sec. 18. Wireline backhaul service means the transport of
10 communications service by wire from wireless facilities to a network.

11 Sec. 19. (1) For any construction, operation, collocation, or
12 placement of communications facilities, small wireless facilities,
13 wireless facilities, or wireless support structures that occur along,
14 upon, across, or under a state or federal highway or upon a state-owned
15 wireless support structure, the application process, location, and
16 installation of such facilities and structures, as such pertain to the
17 present and future use of the right-of-way or state-owned poles or
18 wireless support structures for highway purposes, are subject to the
19 rules and regulations, guidance documents, and usual and customary
20 permitting requirements of the State of Nebraska and the Department of
21 Transportation, including, but not limited to, requirements for location
22 and design review, liability and automobile insurance, indemnification of
23 the department from liability, protection of public safety and property
24 interests, and compliance with federal transportation funding
25 requirements.

26 (2) The construction, operation, collocation, or placement of
27 communications facilities, small wireless facilities, wireless
28 facilities, or wireless support structures shall occur at no cost to the
29 department unless otherwise agreed in advance between an applicant and
30 the department.

31 (3) The department may set and collect a reasonable application fee

1 to cover its costs in administering the activities described in this
2 section, as well as a uniform and nondiscriminatory system of occupancy
3 fees for the use and occupancy of state-owned property.

4 (4) If the future use of the state or federal highway requires the
5 moving or relocating of communications facilities, small wireless
6 facilities, wireless facilities, or wireless support structures, such
7 facilities or structures shall be removed or relocated by the owner at
8 the owner's expense and as directed by the department.

9 Sec. 20. (1) For any construction, operation, collocation, or
10 placement of communications facilities, small wireless facilities,
11 wireless facilities, or wireless support structures that occur within an
12 authority right-of-way, the application process, location, and
13 installation of such facilities and structures, as such pertain to the
14 present and future use of the authority right-of-way or authority-owned
15 poles or wireless support structures, are subject to the contractual
16 requirements, rules and regulations, guidance documents, and usual and
17 customary permitting requirements of the authority, including, but not
18 limited to, requirements for location and design review, third-party
19 technical review, liability and insurance, indemnification of the
20 authority from liability, protection of public safety and property
21 interests, and compliance with federal, state, and local requirements.

22 (2) The construction, operation, collocation, or placement of
23 communications facilities, small wireless facilities, wireless
24 facilities, or wireless support structures shall occur at no cost to the
25 authority unless otherwise agreed in advance between an applicant and the
26 authority.

27 (3) The authority may set and collect a reasonable application fee
28 to cover its costs in administering the activities described in this
29 section, as well as a uniform and nondiscriminatory system of occupancy
30 fees for the use and occupancy of authority-owned property, including
31 rights-of-way.

1 (4) If the future use of the authority right-of-way requires the
2 moving or relocating of communications facilities, small wireless
3 facilities, wireless facilities, or wireless support structures, such
4 facilities or structures shall be removed or relocated by the
5 communications facility provider or wireless service provider at such
6 provider's expense and as directed by the authority.