

AMENDMENTS TO LB989
(Amendments to AM2787)

Introduced by Friesen, 34.

1 1. Insert the following new sections:

2 Sec. 9. Sections 9 to 50 of this act shall be known and may be
3 cited as the Small Wireless Facilities Deployment Act.

4 Sec. 10. The Legislature finds and declares that:

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

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

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

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

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

26 (6) Uniform procedures, rates, and fees for the permitting and

1 deployment of small wireless facilities in public rights-of-way and on
2 authority infrastructure, including poles, throughout the state are
3 reasonable and will encourage the development of robust next-generation
4 wireless networks for the benefit of residents throughout the state; and

5 (7) The procedures, rates, and fees in the Small Wireless Facilities
6 Deployment Act, together with any taxes, fees, or charges imposed under
7 section 86-704, are fair and reasonable when viewed from the perspective
8 of the state's residents and the state's interest in having robust,
9 reliable, and technologically advanced wireless networks, and reflect a
10 balancing of the interests of the wireless providers deploying new
11 facilities and the interests of authorities in receiving fair value for
12 managing access to the public rights-of-way and the attachment space
13 provided on authority infrastructure.

14 Sec. 11. For purposes of the Small Wireless Facilities Deployment
15 Act, the definitions in sections 12 to 40 of this act apply.

16 Sec. 12. Antenna means communications equipment that transmits or
17 receives electromagnetic radio frequency signals used in the provision of
18 wireless services.

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

23 Sec. 14. Applicant means any person who submits an application and
24 is a wireless provider.

25 Sec. 15. Application means a request submitted by an applicant to
26 an authority (1) for a permit to collocate small wireless facilities or
27 (2) to approve the installation, modification, or replacement of a
28 utility pole or wireless support structure.

29 Sec. 16. Authority means the State of Nebraska or any agency,
30 county, city, village, or other political subdivision thereof. The term
31 does not include any state court having jurisdiction over an authority or

1 any public power supplier or rural public power supplier.

2 Sec. 17. Authority pole means a utility pole owned, managed, or
3 operated by or on behalf of an authority.

4 Sec. 18. Authority wireless support structure means a wireless
5 support structure owned, managed, or operated by or on behalf of an
6 authority.

7 Sec. 19. Collocate or collocation means to install, mount,
8 maintain, modify, operate, or replace wireless facilities on or adjacent
9 to a wireless support structure or utility pole.

10 Sec. 20. Communications service provider means a cable operator as
11 defined in 47 U.S.C. 522(5), a provider of information service as defined
12 in 47 U.S.C. 153(24), or a telecommunications carrier as defined in 47
13 U.S.C. 153(51), as such sections existed on January 1, 2018. The term
14 also includes a wireless provider.

15 Sec. 21. Decorative pole means an authority pole that is specially
16 designed and placed for aesthetic purposes and on which no appurtenances
17 or attachments other than a small wireless facility, specially designed
18 informational or directional signage, or temporary holiday or special
19 event attachments have been placed or are permitted to be placed
20 according to nondiscriminatory municipal rules or codes.

21 Sec. 22. Fee means a one-time, nonrecurring charge.

22 Sec. 23. Historic district means a group of buildings, properties,
23 or sites that are either listed in the National Register of Historic
24 Places or formally determined eligible for listing by the Keeper of the
25 National Register, in accordance with the Nationwide Programmatic
26 Agreement codified at 47 C.F.R. part 1, Appendix C, as such regulation
27 existed on January 1, 2018.

28 Sec. 24. Law means federal, state, or local law, statute, common
29 law, code, rule, regulation, order, or ordinance.

30 Sec. 25. Micro-wireless facility means a small wireless facility
31 that (1) is not larger in dimension than twenty-four inches in length,

1 fifteen inches in width, and twelve inches in height, and (2) any
2 exterior antenna is no longer than eleven inches.

3 Sec. 26. Permit means a written authorization required by an
4 authority to perform an action or initiate, continue, or complete a
5 project.

6 Sec. 27. Person means an individual, corporation, limited liability
7 company, partnership, association, trust, or other entity or
8 organization, including an authority.

9 Sec. 28. Public power supplier means a public power district or any
10 other governmental entity providing electric service. The term does not
11 include a municipality, a municipal electric utility or system, or a
12 rural public power supplier.

13 Sec. 29. Rate means a recurring charge.

14 Sec. 30. Rights-of-way means the area on, below, or above a public
15 roadway, highway, street, sidewalk, alley, dedicated utility easement, or
16 similar property, but not including a freeway as defined in section
17 39-1302 or the National System of Interstate and Defense Highways or
18 private easement. The term does not include any easement, right-of-way,
19 or other property right owned or acquired by a public power supplier for
20 which the public power supplier does not have the legal or contractual
21 right to install, replace, or maintain a wireless support structure,
22 wireless facility, or small wireless facility.

23 Sec. 31. Rural public power supplier means a public power district,
24 a public power and irrigation district, an electric cooperative, an
25 electric membership association, or any other governmental entity which
26 provides electric service in a rural area as defined in section 70-802 or
27 in an unincorporated area or a village or city with a population of less
28 than five thousand inhabitants.

29 Sec. 32. Small wireless facility means a wireless facility that
30 meets both of the following qualifications: (1) Each wireless provider's
31 antenna could fit within an enclosure of no more than six cubic feet in

1 volume and (2) all other wireless equipment associated with the wireless
2 facility, whether ground-mounted or pole-mounted, is cumulatively no more
3 than twenty-eight cubic feet in volume. The following types of associated
4 ancillary equipment are not included in the calculation of equipment
5 volume: Electric meters, concealment elements, telecommunications
6 demarcation boxes, grounding equipment, power transfer switches, cut-off
7 switches, and vertical cable runs for the connection of power and other
8 services.

9 Sec. 33. Technically feasible means that by virtue of engineering
10 or spectrum usage, the proposed placement for a small wireless facility,
11 or its design or site location, can be implemented without a reduction in
12 the functionality of the small wireless facility.

13 Sec. 34. Utility pole means a pole or similar structure that is or
14 may be used, in whole or in part, by or for wireline communications,
15 lighting, traffic control, signage, or a similar function, or for the
16 collocation of small wireless facilities, except that such term shall not
17 include (1) wireless support structures, (2) any transmission
18 infrastructure owned or operated by a public power supplier or rural
19 public power supplier, and (3) any distribution or communications
20 infrastructure owned or operated by a rural public power supplier.

21 Sec. 35. (1) Wireless facility means equipment at a fixed location
22 that enables wireless communications between user equipment and a
23 communications network, including (a) equipment associated with wireless
24 communications and (b) radio transceivers, antennas, coaxial or fiber-
25 optic cable, regular and backup power supplies, and comparable equipment,
26 regardless of technological configuration. The term includes small
27 wireless facilities.

28 (2) Wireless facility does not include (a) the structure or
29 improvements on, under, or within which the equipment is collocated or
30 (b) coaxial or fiber-optic cable that is between wireless structures or
31 utility poles or that is otherwise not immediately adjacent to, or

1 directly associated with, a particular antenna.

2 Sec. 36. Wireless infrastructure provider means any person,
3 including a person authorized to provide telecommunications service in
4 the State of Nebraska, that builds or installs wireless communication
5 transmission equipment, wireless facilities, or wireless support
6 structures, but that is not a wireless services provider.

7 Sec. 37. Wireless provider means a wireless infrastructure provider
8 or a wireless services provider.

9 Sec. 38. Wireless services means any services, whether mobile or at
10 a fixed location, provided to the public using wireless facilities.

11 Sec. 39. Wireless services provider means a person who provides
12 wireless services.

13 Sec. 40. Wireless support structure means a structure such as a
14 guyed or self-supporting tower, billboard, building, or other existing or
15 proposed structure designed to support or capable of supporting wireless
16 facilities other than a structure designed solely for the collocation of
17 small wireless facilities. Such term shall not include a utility pole.

18 Sec. 41. (1) This section applies only to activities of a wireless
19 provider within the right-of-way to deploy small wireless facilities and
20 associated utility poles.

21 (2) An authority may not enter into an exclusive arrangement with
22 any person for use of the right-of-way for the collocation of small
23 wireless facilities or the installation, operation, marketing,
24 modification, maintenance, or replacement of utility poles.

25 (3) An authority may only charge a wireless provider the rate or fee
26 provided in section 44 of this act for the use of the right-of-way with
27 respect to the collocation of small wireless facilities or the
28 installation, maintenance, modification, operation, or replacement of a
29 utility pole in the right-of-way, if the authority charges other entities
30 for use of the right-of-way. An authority is permitted, on a
31 nondiscriminatory basis, to refrain from charging any rate to a wireless

1 provider for the use of the right-of-way.

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

11 (5) Each new or modified utility pole installed in the right-of-way
12 shall not exceed the greater of ten feet in height above the tallest
13 existing utility pole in place as of the operative date of this section
14 located within five hundred feet of the new pole in the same right-of-way
15 or fifty feet above ground level. New small wireless facilities in the
16 right-of-way may not extend more than ten feet above an existing utility
17 pole in place as of the operative date of this section or for small
18 wireless facilities on a new utility pole, above the height permitted for
19 a new utility pole under this subsection. A wireless provider shall have
20 the right to collocate a small wireless facility and install, maintain,
21 modify, operate, and replace a utility pole that exceeds these height
22 limits along, across, upon, and under the right-of-way, subject to this
23 section and applicable zoning regulations.

24 (6) A wireless provider shall be permitted to replace a decorative
25 pole when necessary to collocate a small wireless facility, except that
26 any replacement pole shall reasonably conform to the design aesthetics of
27 the decorative pole being replaced.

28 (7) Except as provided in subsections (4) and (5) of section 42 of
29 this act, and except for facilities excluded from evaluation for effects
30 on historic properties under 47 C.F.R. section 1.1307(a)(4), as such
31 section existed on January 1, 2018, an authority may require reasonable,

1 technically feasible, nondiscriminatory, and technologically neutral
2 design or concealment measures in a historic district. Any such design or
3 concealment measures shall not have the effect of prohibiting any
4 provider's technology or be considered a part of the small wireless
5 facility for purposes of the size restrictions of a small wireless
6 facility.

7 (8) The authority must be competitively neutral in its
8 administration and regulation related to the management of the right-of-
9 way with regard to other users of the right-of-way, including that terms
10 of use are reasonable, nondiscriminatory, and compliant with applicable
11 law.

12 (9) The authority may require a wireless provider to repair all
13 damage to the right-of-way directly caused by the activities of the
14 wireless provider in the right-of-way and to return the right-of-way to
15 its functional equivalence before the damage pursuant to the
16 competitively neutral and reasonable requirements and specifications of
17 the authority. If the wireless provider fails to make the repairs
18 required by the authority within a reasonable time after written notice,
19 the authority may effect those repairs and charge the applicable party
20 the reasonable, documented cost of such repairs.

21 Sec. 42. (1) This section applies to the permitting of small
22 wireless facilities in or outside the right-of-way as specified in
23 subsection (3) of this section and to the permitting of the installation,
24 modification, and replacement of utility poles by a wireless provider
25 inside the right-of-way.

26 (2) Except as provided in the Small Wireless Facilities Deployment
27 Act, an authority may not prohibit, regulate, or charge for the
28 collocation of small wireless facilities.

29 (3) Small wireless facilities shall be classified as permitted uses
30 and not subject to zoning review or approval if they are collocated in
31 the right-of-way in any zone or outside the right-of-way in property not

1 zoned and used for single family residential use. Small wireless
2 facilities to be located in an airport hazard area as defined by section
3 3-301 shall comply with any regulations governing such areas.

4 (4) An authority may require an applicant to obtain one or more
5 permits to collocate a small wireless facility or install a new,
6 modified, or replacement utility pole associated with a small wireless
7 facility as provided in section 41 of this act. Such permits shall be of
8 general applicability and not apply exclusively to wireless facilities.
9 An authority shall receive applications for, process, and issue such
10 permits subject to the following requirements:

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

15 (b) An applicant shall not be required to provide more information
16 to obtain a permit than communications service providers that are not
17 wireless providers, except that an applicant may be required to include
18 construction and engineering drawings and information demonstrating
19 compliance with the criteria in subdivision (h) of this subsection;

20 (c) An authority may propose a technically feasible alternate
21 utility pole location but may not require the placement of small wireless
22 facilities on any specific utility pole or category of poles or require
23 multiple antenna systems on a single utility pole;

24 (d) An authority may not limit the placement of small wireless
25 facilities by minimum horizontal separation distances;

26 (e) An authority may require an applicant to include an attestation
27 that the small wireless facilities will be operational for use by a
28 wireless services provider within one year after the permit issuance
29 date, unless the authority and the applicant agree to extend this period
30 or a delay is caused by lack of commercial power or communications
31 transport facilities to the site;

1 (f) Within ten days after receiving an application, an authority
2 must determine and notify the applicant in writing whether the
3 application is complete. If an application is incomplete, the authority
4 must specifically identify the missing information in writing. The
5 processing deadline in subdivision (g) of this subsection is tolled from
6 the time the authority sends the notice of incompleteness to the time the
7 applicant provides the missing information. That processing deadline also
8 may be tolled by agreement of the applicant and the authority;

9 (g) An application shall be processed on a nondiscriminatory basis
10 and deemed approved if the authority fails to approve or deny the
11 application within ninety days after receipt of the application. Upon
12 mutual agreement between the applicant and the authority, an authority
13 may extend the period for consideration of an application for thirty
14 days;

15 (h) An authority may deny a proposed collocation of a small wireless
16 facility or installation, modification, or replacement of a utility pole
17 that meets the requirements of section 41 of this act only if the
18 proposed application:

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

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

23 (iii) Materially interferes with compliance with the federal
24 Americans with Disabilities Act of 1990 or similar federal or state
25 standards regarding pedestrian access or movement;

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

31 (v) Fails to comply with applicable codes, if they are of general

1 applicability, and do not apply exclusively to wireless facilities; or

2 (vi) Designates the location of a new utility pole within seven feet
3 in any direction of an electrical conductor, unless the wireless provider
4 obtains the written consent of the public power supplier or rural public
5 power supplier that owns or manages the electrical conductor;

6 (i) The authority must document the basis for a denial, including
7 the specific code provisions on which the denial was based, and send the
8 documentation to the applicant on or before the day the authority denies
9 an application. The applicant may cure the deficiencies identified by the
10 authority and resubmit the application within thirty days of the denial
11 without paying an additional application fee. The authority shall approve
12 or deny the revised application within thirty days. Any subsequent review
13 shall be limited to the deficiencies cited in the denial;

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

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

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

1 decision;

2 (k) Installation or collocation for which a permit is granted
3 pursuant to this section shall be completed within one year of the permit
4 issuance date unless the authority and the applicant agree to extend this
5 period or a delay is caused by the lack of commercial power or
6 communications facilities at the site. Approval of an application
7 authorizes the applicant to:

8 (i) Undertake the installation or collocation; and

9 (ii) Subject to applicable relocation requirements and the
10 applicant's right to terminate at any time, operate and maintain the
11 small wireless facilities and any associated utility pole covered by the
12 permit for a period of not less than ten years, which permit must be
13 renewed for an equivalent duration so long as the applicant is in
14 compliance with the criteria set forth in subdivision (h) of this
15 subsection; and

16 (l) An authority may not institute a moratorium on filing,
17 receiving, or processing applications or issuing permits or other
18 approvals, if any, for the collocation of small wireless facilities or
19 the installation, modification, or replacement of utility poles to
20 support small wireless facilities.

21 (5)(a) Notwithstanding any other provision of the Small Wireless
22 Facilities Deployment Act, for any construction, operation, collocation,
23 maintenance, relocation, or placement of wireless facilities, utility
24 poles, or wireless support structures that occurs upon, above, across, or
25 under a state or federal highway or upon a state-owned utility pole or
26 wireless support structure, the application process, location, and
27 installation of such facilities, poles, or structures, as such pertain to
28 the present and future use of the right-of-way or state-owned poles or
29 wireless support structures for highway purposes, shall be subject to the
30 rules and regulations, guidance documents, and usual and customary
31 permitting requirements of the State of Nebraska and the Department of

1 Transportation, including, but not limited to, requirements for location
2 and design review, liability and automobile insurance, indemnification of
3 the department from liability, protection of public safety and property
4 interests, and compliance with federal transportation funding
5 requirements.

6 (b) Traffic signal utility poles and traffic control devices owned
7 by the Department of Transportation shall not be used for the collocation
8 of small wireless facilities under the Small Wireless Facilities
9 Deployment Act. State highway lighting utility poles may be used for
10 collocation of small wireless facilities only if: (i) There are
11 insufficient reasonable alternative collocation options at or near the
12 requested location; (ii) the small wireless facilities can be safely
13 installed, operated, and maintained; and (iii) the collocation of the
14 small wireless facilities will not violate reasonable wind, ice, weight,
15 and seismic loading requirements on state highway lighting utility poles.

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

24 (d) The construction, operation, maintenance, collocation, or
25 placement of wireless facilities, utility poles, or wireless support
26 structures shall occur at no cost to the Department of Transportation
27 unless otherwise agreed in advance between an applicant and the
28 department.

29 (e) The Department of Transportation may set and collect a
30 reasonable application fee to cover its costs in administering the
31 activities described in this subsection, as well as a uniform and

1 nondiscriminatory system of annual occupancy rates for the use and
2 occupancy of state-owned property.

3 (f) If the future maintenance or construction of a state or federal
4 highway by the Department of Transportation requires the moving or
5 relocating of wireless facilities, utility poles, or wireless support
6 structures, such facilities, poles, or structures shall be removed or
7 relocated by the owner at the owner's expense and as directed by the
8 department.

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

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

29 Sec. 43. (1) This section applies to activities of the wireless
30 provider within the right-of-way.

31 (2) A person owning, managing, or controlling authority poles in the

1 right-of-way may not enter into an exclusive arrangement with any person
2 for the right to attach to such poles. A person who purchases or
3 otherwise acquires an authority pole is subject to the requirements of
4 this section.

5 (3) An authority shall allow the collocation of small wireless
6 facilities on authority poles using the process in section 42 of this
7 act.

8 (4) The rates provided under section 44 of this act to collocate on
9 authority poles shall be nondiscriminatory regardless of the services
10 provided by the collocating person.

11 (5)(a) The rates, fees, and terms and conditions for make-ready work
12 to collocate on an authority pole must be nondiscriminatory,
13 competitively neutral, and commercially reasonable and must comply with
14 the Small Wireless Facilities Deployment Act;

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

24 (c) The person owning, managing, or controlling the authority pole
25 shall not require more make-ready work than required to meet applicable
26 codes or industry standards. Fees for make-ready work shall not include
27 costs related to pre-existing or prior damage or noncompliance. Fees for
28 make-ready work, including any pole replacement, shall not exceed actual
29 costs or the amount charged to other communications service providers for
30 similar work and shall not include any consultant fees or expenses; and

31 (d) For purposes of this subsection, make-ready work generally

1 refers to the modification of poles or lines or the installation of guys
2 and anchors to accommodate additional facilities.

3 Sec. 44. (1) An authority may not require a wireless provider to
4 pay any rates, fees, or compensation to the authority or other person
5 other than what is expressly authorized by section 86-704 or the Small
6 Wireless Facilities Deployment Act for the right to use or occupy a
7 right-of-way for collocation of small wireless facilities on wireless
8 support structures or utility poles in the right-of-way, or for the
9 installation, maintenance, modification, operation, and replacement of
10 utility poles in the right-of-way.

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

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

15 (b) Where costs to be recovered by an application fee are already
16 recovered by existing fees, rates, licenses, or taxes paid by a wireless
17 provider, no application fee shall be assessed;

18 (c) An application fee may not include travel expenses incurred by a
19 third party in its review of an application or direct payment or
20 reimbursement of third party rates or fees charged on a contingency basis
21 or a result-based arrangement;

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

30 (e) The application fees for the installation, modification, or
31 replacement of a utility pole and the collocation of an associated small

1 wireless facility that are permitted uses in accordance with the
2 specifications in section 41 of this act shall not exceed two hundred
3 fifty dollars per pole for access to the right-of-way; and

4 (f) An application fee for the installation, modification, or
5 replacement of a new utility pole associated with a small wireless
6 facility that is not a permitted use in accordance with the
7 specifications in section 41 of this act shall not exceed one thousand
8 dollars.

9 (3) The rate for collocation of a small wireless facility to an
10 authority pole in the right-of-way shall be no more than twenty dollars
11 per authority pole per year plus an escalator rate of no more than two
12 percent annually.

13 Sec. 45. Nothing in the Small Wireless Facilities Deployment Act
14 shall be interpreted to allow any entity to provide services regulated
15 under 47 U.S.C. sections 521 to 573, as such sections existed on January
16 1, 2018, without compliance with all laws applicable to providers of such
17 services. The Small Wireless Facilities Deployment Act shall not be
18 interpreted to impose any new requirements on cable operators for the
19 provision of cable service in this state.

20 Sec. 46. Except as provided by the Small Wireless Facilities
21 Deployment Act or applicable federal law, an authority may continue to
22 exercise zoning, land use, and planning and permitting authority within
23 its territorial boundaries, including with respect to wireless support
24 structures and utility poles, except that no authority shall have or
25 exercise any jurisdiction or authority over the design, engineering,
26 construction, installation, or operation of any small wireless facility
27 located in an interior structure or upon the site of any campus, stadium,
28 or athletic facility not owned or controlled by the authority, other than
29 to comply with applicable codes. An authority shall evaluate the
30 structure classification for wireless support structures under the
31 standard of the American National Standards Institute found in ANSI/

1 TIA-222, as such standard existed on January 1, 2018. Nothing in the
2 Small Wireless Facilities Deployment Act shall authorize the state or any
3 political subdivision thereof, including an authority, to require
4 wireless facility deployment or to regulate wireless services.

5 Sec. 47. (1) An authority may adopt an ordinance that makes
6 available to wireless providers rates, fees, and other terms that comply
7 with the Small Wireless Facilities Deployment Act. In the absence of an
8 ordinance that fully complies with the Small Wireless Facilities
9 Deployment Act and until such a compliant ordinance may be adopted,
10 wireless providers may install and operate small wireless facilities and
11 utility poles under the requirements of the Small Wireless Facilities
12 Deployment Act. An authority and a wireless provider may enter into an
13 agreement implementing the provisions of the Small Wireless Facilities
14 Deployment Act, but an authority may not require a wireless provider to
15 enter into such an agreement.

16 (2) Agreements between an authority and a wireless provider for the
17 deployment of small wireless facilities in the right-of-way under the
18 terms of the Small Wireless Facilities Deployment Act are public-private
19 agreements. Such agreements, and any ordinances implementing the Small
20 Wireless Facilities Deployment Act, are matters of legitimate and
21 significant statewide concern. An agreement or ordinance that does not
22 fully comply with the Small Wireless Facilities Deployment Act may apply
23 only to small wireless facilities and utility poles that became
24 operational or were installed before the operative date of this section,
25 which shall not nullify, modify, amend, or prohibit a mutual agreement
26 made prior to the operative date of this section between an authority and
27 any wireless provider for the placement of small wireless facilities that
28 were installed or approved for installation prior to the operative date
29 of this section. Such an agreement or ordinance may not be renewed,
30 extended, or made to apply to any other small wireless facility, unless
31 it is modified to fully comply with the Small Wireless Facilities

1 Deployment Act. If an agreement or ordinance is invalid in accordance
2 with this subsection, in the absence of an agreement or ordinance that
3 fully complies with the Small Wireless Facilities Deployment Act and
4 until such a compliant agreement or ordinance is entered or adopted,
5 small wireless facilities and utility poles that become operational or
6 were constructed before the operative date of this section may remain
7 installed and be operated under the requirements of the Small Wireless
8 Facilities Deployment Act.

9 (3) An agreement or ordinance that applies to small wireless
10 facilities that become operational on or after the operative date of this
11 section is invalid and unenforceable beginning on the operative date of
12 this section unless it fully complies with the Small Wireless Facilities
13 Deployment Act, except as provided in subsection (2) of this section. If
14 an agreement or ordinance is invalid in accordance with this subsection,
15 in the absence of an agreement or ordinance that fully complies with the
16 Small Wireless Facilities Deployment Act and until such a compliant
17 agreement or ordinance is entered or adopted, small wireless facilities
18 and utility poles may be installed and operated in the right-of-way or
19 become operational under the requirements of the Small Wireless
20 Facilities Deployment Act.

21 Sec. 48. A court of competent jurisdiction shall have jurisdiction
22 to determine all disputes arising under the Small Wireless Facilities
23 Deployment Act. Pending resolution of a dispute concerning rates for
24 collocation of small wireless facilities on authority poles, the person
25 owning or controlling the authority pole shall allow the collocating
26 person to collocate on its poles at an annual rate of no more than twenty
27 dollars per authority pole per year, plus an escalator rate of no more
28 than two percent annually, with rates to be reconciled upon final
29 resolution of the dispute.

30 Sec. 49. The Small Wireless Facilities Deployment Act does not
31 apply to the University of Nebraska system, the Nebraska State College

1 System, the community college system, and all campuses, areas, and
2 property of such systems.

3 Sec. 50. (1) A public power supplier or rural public power supplier
4 shall not be required to allow the collocation of small wireless
5 facilities on utility poles owned, operated, or managed by such public
6 power supplier or rural public power supplier except pursuant to a
7 negotiated pole attachment agreement containing reasonable and
8 nondiscriminatory terms and conditions, including, but not limited to,
9 applicable rates and the permitting, operations, and safety requirements
10 of the public power supplier or rural public power supplier.

11 (2) The annual pole attachment rate for the collocation of a small
12 wireless facility supported by or installed on a utility pole owned,
13 operated, or managed by a public power supplier or rural public power
14 supplier shall be fair, reasonable, nondiscriminatory, cost-based, and
15 set by the board of the public power supplier or rural public power
16 supplier in accordance with section 70-655.

17 (3) Except for the findings and declarations set forth in section 10
18 of this act, the definitions set forth in sections 12 to 40 of this act,
19 the dispute resolution process set forth in section 48 of this act, and
20 this section shall not apply to a public power supplier or rural public
21 power supplier or to the collocation of small wireless facilities on
22 utility poles owned, operated, or managed by a public power supplier or
23 rural public power supplier.

24 Sec. 51. Sections 1 to 8 of this act become operative on July 1,
25 2020. The other sections of this act become operative three calendar
26 months after the adjournment of this legislative session.