

LEGISLATIVE BILL 184

Approved by the Governor May 17, 2019

Introduced by Friesen, 34; Lowe, 37.

A BILL FOR AN ACT relating to telecommunications and technology; to adopt the Small Wireless Facilities Deployment Act.

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

Section 1. Sections 1 to 44 of this act shall be known and may be cited as the Small Wireless Facilities Deployment Act.

Sec. 2. The Legislature finds and declares that:

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

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

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

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

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

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

(7) The procedures, rates, and fees in the Small Wireless Facilities Deployment Act, together with any taxes, fees, or charges imposed under section 86-704, (a) are fair and reasonable when viewed from the perspective of the state's residents and the state's interest in having robust, reliable, and technologically advanced wireless networks and (b) reflect a balancing of the interests of the wireless providers deploying new facilities and the interests of authorities in receiving fair value by recovering their costs of managing access to the public rights-of-way and the attachment space provided on authority infrastructure and reviewing and processing applications for the installation of small wireless facilities within the rights-of-way.

Sec. 3. For purposes of the Small Wireless Facilities Deployment Act, the definitions in sections 4 to 35 of this act apply.

Sec. 4. Antenna means communications equipment that transmits or receives electromagnetic radio frequency signals used in providing wireless services.

Sec. 5. Applicable codes means uniform building, fire, safety, electrical, plumbing, or mechanical codes adopted by a recognized national code organization or local amendments to such codes so long as such amendments are not in conflict with the Small Wireless Facilities Deployment Act and to the extent such codes have been adopted by the authority and are generally applicable in the jurisdiction.

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

Sec. 7. Application means a written request submitted by an applicant to an authority (1) for a permit to collocate small wireless facilities on an existing utility pole or wireless support structure or (2) for a permit for approval for the installation, modification, or replacement of a utility pole to support the installation of a small wireless facility.

Sec. 8. Authority means the State of Nebraska or any agency, county, city, village, or other political subdivision thereof, except as otherwise excluded herein. Authority does not include public power suppliers, state courts having jurisdiction over an authority, or an entity that does not have zoning or permit-granting authority.

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

Sec. 10. Collocate or collocation means to install, mount, maintain, modify, operate, or replace small wireless facilities on or adjacent to a wireless support structure or utility pole. Collocate or collocation does not include the installation of a new utility pole or new wireless support structure in the right-of-way.

Sec. 11. Communications facility means the set of equipment and network

components including wires, cables, and associated facilities used by a cable operator as defined in 47 U.S.C. 522(5), as such section existed on January 1, 2019, a telecommunications carrier as defined in 47 U.S.C. 153(51), as such section existed on January 1, 2019, a provider of information service as defined in 47 U.S.C. 153(24), as such section existed on January 1, 2019, or a wireless services provider, to provide communications services, including cable service as defined in 47 U.S.C. 153(8), as such section existed on January 1, 2019, an information service as defined in 47 U.S.C. 153(24), as such section existed on January 1, 2019, wireless services, or other one-way or two-way communications service.

Sec. 12. Communications network means a network used to provide communications service.

Sec. 13. Communications service means a cable service as defined in 47 U.S.C. 522, as such section existed on January 1, 2019, an information service as defined in 47 U.S.C. 153, as such section existed on January 1, 2019, a telecommunications service as defined in 47 U.S.C. 153, as such section existed on January 1, 2019, or a wireless service.

Sec. 14. Communications service provider means a cable operator as defined in 47 U.S.C. 522, a provider of information service as defined in 47 U.S.C. 153, or a telecommunications carrier as defined in 47 U.S.C. 153, as such sections existed on January 1, 2019. Communications service provider includes a wireless provider.

Sec. 15. Decorative pole means an authority pole that is specially designed and placed for aesthetic purposes.

Sec. 16. Fee means a one-time, nonrecurring charge.

Sec. 17. Historic district means any prehistoric or historic district, site, building, structure, or object included in, or eligible for inclusion in, the National Register of Historic Places, in accordance with Stipulation VI.D.1.a (i)-(v) of the Nationwide Programmatic Agreement for Review of Effects on Historic Properties for Certain Undertakings Approved by the Federal Communications Commission codified at 47 C.F.R. part 1, Appendix C, as such regulation existed on January 1, 2019, or designated pursuant to state historic preservation law if such designation exists at the time of application.

Sec. 18. Law means federal, state, or local law, statute, common law, code, rule, regulation, order, or ordinance.

Sec. 19. Microwireless facility means a small wireless facility that is not larger in dimension than twenty-four inches in length, fifteen inches in width, and twelve inches in height and with any exterior antenna no longer than eleven inches.

Sec. 20. Permit means a written authorization required by an authority to perform an action, initiate, continue, or complete installation of a small wireless facility on an existing utility pole or attached to an existing wireless support structure, or to install, modify, or replace a utility pole to support installation of a small wireless facility.

Sec. 21. Person means an individual, a corporation, a limited liability company, a partnership, an association, a trust, or any other entity or organization, including an authority.

Sec. 22. Public power supplier means a public power district or any other governmental entity providing electric service. Public power supplier includes a municipal electric utility or a rural public power supplier.

Sec. 23. Rate means a recurring charge.

Sec. 24. Right-of-way means the area on, below, or above a public roadway, highway, street, sidewalk, alley, dedicated utility easement, or similar property, but not including a freeway as defined in section 39-1302, the National System of Interstate and Defense Highways, or a private easement.

Sec. 25. Rural public power supplier means a public power district, a public power and irrigation district, an electric cooperative, or an electric membership association, that does not provide electric service to any city of the metropolitan class, city of the primary class, or city of the first class.

Sec. 26. Small wireless facility means a wireless facility that meets each of the following conditions: (1) The facilities (a) are mounted on structures fifty feet or less in height including the antennas or (b) are mounted on structures no more than ten percent taller than other adjacent structures; (2) each antenna associated with the deployment is no more than three cubic feet in volume; (3) all other equipment associated with the structure, whether ground-mounted or pole-mounted, is no more than twenty-eight cubic feet in volume; (4) the facilities do not require antenna structure registration under 47 C.F.R. part 17, as such regulation existed on January 1, 2019; (5) the facilities are not located on tribal lands, as defined in 36 C.F.R. 800.16(x), as such regulation existed on January 1, 2019; and (6) the facilities do not result in human exposure to radio frequency radiation in excess of the applicable safety standards specified in 47 C.F.R. 1.1307(b), as such regulation existed on January 1, 2019.

Sec. 27. Technically feasible means that by virtue of engineering or spectrum usage, the proposed placement for a small wireless facility, or its design or site location, can be implemented without a reduction in the functionality of the small wireless facility.

Sec. 28. Utility pole means a pole located in the right-of-way that is used for wireline communications, lighting, the vertical portion of support structures for traffic control signals or devices or a similar function, or for the collocation of small wireless facilities and located in the right-of-way. Utility pole does not include (1) wireless support structures, (2) any transmission infrastructure owned or operated by a public power supplier or

rural public power supplier, and (3) any distribution or communications infrastructure owned or operated by a rural public power supplier.

Sec. 29. (1) Wireless facility means equipment at a fixed location that enables wireless communications between user equipment and a communications network, including (a) equipment associated with wireless communications and (b) radio transceivers, antennas, coaxial or fiber-optic cable, regular power supply, and small back-up battery, regardless of technological configuration. Wireless facility includes small wireless facilities.

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

Sec. 30. Wireless infrastructure provider means any person, including a person authorized to provide telecommunications service in the State of Nebraska, when acting to build or install wireless communication transmission equipment, wireless facilities, or wireless support structures, but that is not a wireless services provider.

Sec. 31. Wireless provider means a wireless services provider or a wireless infrastructure provider when acting as a coapplicant for a wireless services provider.

Sec. 32. Wireless services means any services using licensed or unlicensed spectrum, including the use of Wi-Fi, whether mobile or at a fixed location, provided to the public using wireless facilities.

Sec. 33. Wireless services provider means a person who provides wireless services.

Sec. 34. Wireless support structure means a structure such as a guyed or self-supporting tower, billboard, building, or other existing or proposed structure designed to support or capable of supporting wireless facilities other than a structure designed solely for the collocation of small wireless facilities. Wireless support structure does not include a utility pole.

Sec. 35. Wireline backhaul facility means an above-ground or underground facility used to transport communications services from a wireless facility to a communications network.

Sec. 36. (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 37 of this act, an authority may only charge a wireless provider on a nondiscriminatory basis the rate or fee provided in section 39 of this act 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 the effective date of this act 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 the effective date of this act 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.

Sec. 37. (1) This section applies to the issuance of a permit for a small wireless facility within the right-of-way as specified in subsection (4) of this section and to the issuance of a permit for the installation, modification, and replacement of a utility pole by an applicant within a right-of-way.

(2) Except as provided in the Small Wireless Facilities Deployment Act, an authority shall not prohibit, regulate, or charge for the collocation of small wireless facilities or the installation, modification, or replacement of utility poles to support small wireless facilities.

(3)(a) An applicant that collocates a small wireless facility within an authority right-of-way or on a utility pole assumes the risk of loss, damage to, or loss of use of such facility when such pole is damaged, destroyed, or taken out of service on authority property, except to the extent that such loss or damage is due to or caused by the negligence or willful misconduct of the authority or its employees, contractors, or agents. This subdivision does not preclude claims against entities other than the authority.

(b) The construction, operation, maintenance, collocation, or placement of wireless facilities, utility poles, or wireless support structures shall occur at no cost from an applicant to an authority unless otherwise agreed to in advance between an applicant and the authority.

(c) If the future maintenance or construction of an authority road requires the moving or relocating of wireless facilities, utility poles, or wireless support structures currently located within a right-of-way, such facilities, poles, or structures shall be removed or relocated by the owner of such small wireless facilities, poles, or structures at the owner's expense and as directed by the authority.

(4) Small wireless facilities shall be classified as a permitted use and not subject to zoning review or approval if collocated within the right-of-way. Small wireless facilities to be located in an airport hazard area as defined by section 3-301 shall comply with any regulations governing such area.

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

(a) Except as otherwise provided in subdivision (b) of this subsection, an authority shall not directly or indirectly require an applicant to perform services or provide goods unrelated to the permit, such as in-kind contributions to the authority, including reserving fiber, conduit, or utility pole space for the authority;

(b) An authority shall be allowed to reserve space on authority poles and the applicant shall cooperate with the authority in any such reservation, except that the authority shall first notify the applicant in writing that it is interested in reserving such pole space or sharing the trenches or bores in the area where the collocation is to occur. The applicant shall allow the authority to place its infrastructure in the applicant's trenches or bores or on the utility pole as requested by the authority, except that the authority shall incur the incremental costs of placing the conduit or infrastructure as requested. The authority shall be responsible for maintaining its facilities in the trenches and bores and on the authority pole;

(c) An applicant shall not be required to provide more information to obtain a permit than a communications service provider that is not a wireless provider, except as directly related to the impairment of wireless service in the immediate area of the proposed small wireless facility and except that an applicant may be required to include construction and engineering drawings and information demonstrating compliance with the criteria in subdivision (j) of this subsection;

(d) An authority may propose a technically feasible alternate utility pole location. The wireless provider shall cooperate with the authority to address the authority's reasonable proposal. The authority shall not require the placement of small wireless facilities on any specific utility pole or category of poles or require multiple antenna systems on a single utility pole;

(e) An authority shall not limit the placement of small wireless antennas by minimum horizontal separation distances;

(f) An authority may require an applicant to include an attestation that

the small wireless facilities will be operational for use by a wireless services provider within nine months after the later of the completion of all make-ready work or the permit issuance date unless a delay is caused by lack of commercial power or communications transport facilities to the site. In such case the applicant shall have an extension not to exceed nine months. The authority and applicant may mutually agree to an additional extension;

(g) Within twenty days after receiving an application, an authority shall determine and notify the applicant in writing whether the application is complete. If an application is incomplete, the authority shall specifically identify the missing information in writing. The processing deadline in subdivision (h) of this subsection shall restart upon the first finding of incompleteness. The applicant may resubmit the completed application within thirty days without additional charge. Subsequent findings of incompleteness shall toll the application processing deadline in subdivision (h) of this subsection. The subsequent review shall be limited to the specifically identified information subsequently completed except to the extent material changes have been made by the applicant, other than those required by the authority, in which case a new application and application fee shall be submitted. Subsequent findings of incompleteness will toll the deadline from the time the authority sends notice of incompleteness to the time the applicant provides the missing information. The application processing deadline also may be tolled by agreement of the applicant and the authority;

(h) An application shall be processed on a nondiscriminatory basis and deemed approved if the authority fails to approve or deny the application within ninety days after receipt of the application. An authority may extend the application processing deadline described in subdivision (g) of this subsection for a single period of ten business days if the authority notifies the applicant in advance before the day on which approval or denial is originally due. Upon mutual agreement between the applicant and the authority, the authority may extend the period for consideration of an application for thirty days;

(i) A permit shall authorize an applicant to undertake only certain activities in accordance with this section and does not create a property right or grant authority to the applicant to infringe upon the rights of others who may own or have other interests in a right-of-way, utility easement, or other privately owned property;

(j) An authority may deny a proposed collocation of a small wireless facility or installation, modification, or replacement of a utility pole that meets the requirements of section 36 of this act only if the proposed application:

(i) Materially and demonstrably interferes with the safe operation of traffic control equipment or the right-of-way;

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

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

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

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

(vi) Fails to comply with the authority's aesthetic requirements that are reasonable, objective, and published in advance; or

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

(k) An authority shall document the basis for a permit application denial, including any specific code provisions on which the denial was based, and send such documentation to the applicant on or before the day the authority denies the application. The applicant may cure the deficiencies identified by the authority and resubmit the application within thirty days after the denial without paying an additional application fee. The authority shall approve or deny the resubmitted application within thirty days. Any subsequent review shall be limited to the deficiencies cited in the denial;

(l) An applicant seeking to collocate small wireless facilities within the jurisdiction of a single authority may, at the applicant's discretion, file a consolidated application for up to thirty individual small wireless facilities if the population within the jurisdiction of the authority is fifty thousand people or more, or up to five individual small wireless facilities if the population within the jurisdiction of the authority is less than fifty thousand people, instead of filing a separate application for each individual small wireless facility. Each small wireless facility within a consolidated application is subject to individual review, except that the denial of one or more small wireless facilities in a consolidated application shall not delay processing of any other small wireless facilities in the same application or be a basis upon which to deny the consolidated application as a whole. If an applicant applies to construct or collocate several small wireless facilities within the jurisdiction of a single authority, the authority shall:

(i) Allow the applicant, at the applicant's discretion, to file a single

set of documents that apply to all of the applicant's small wireless facilities; and

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

(m) Installation or collocation for which a permit is granted pursuant to this section shall be completed within one year of the later of the completion of all make-ready work or permit issuance date unless a delay is caused by the lack of commercial power or communications transport facilities at the site. In such case the applicant shall have an extension up to nine months. The authority and applicant may mutually agree to an additional extension. Approval of an application authorizes the applicant to maintain and operate the small wireless facilities and any associated utility pole covered by the permit for a period of not less than five years, subject to applicable relocation requirements and the applicant's right to terminate at any time. The authority shall renew such permit for an equivalent duration so long as the applicant is in compliance with the criteria set forth in subdivision (j) of this subsection as such criteria existed at the time the permit was granted;

(n) An authority shall not institute a moratorium on filing, receiving, or processing applications or issuing permits or other approvals, if any, for the collocation of small wireless facilities or the installation, modification, or replacement of utility poles to support small wireless facilities; and

(o) Nothing in the Small Wireless Facilities Deployment Act shall be construed to allow any entity to provide communications services without complying with all laws applicable to such providers. Nothing in the act shall be construed to authorize the collocation, installation, placement, maintenance, or operation of any communications facility, including a wireline backhaul facility, other than a small wireless facility or a utility pole, in a right-of-way.

(6)(a) Notwithstanding any other provision of the Small Wireless Facilities Deployment Act, for any construction, operation, collocation, maintenance, management, relocation, or placement of wireless facilities, utility poles, decorative poles, or wireless support structures that occurs above, across, under, or upon a state or federal highway right-of-way, as such term is defined in section 39-1302, or upon a state-owned utility pole, decorative pole, or wireless support structure, the application process, location, and installation of such facilities, poles, or structures, as such pertain to the present and future use of the right-of-way or state-owned poles or wireless support structures for highway purposes, shall be subject to the rules and regulations, guidance documents, and usual and customary permitting requirements of the State of Nebraska and the Department of Transportation, including, but not limited to, requirements, fees, rates, and deadlines for location and engineering review and response, liability and automobile insurance, indemnification of the Department of Transportation from liability, protection of public safety and property interests, and compliance with federal transportation funding requirements. Nothing in this subdivision affects, modifies, expands, or narrows the application or effect of any federal law, statute, rule, regulation, or order.

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

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

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

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

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

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

(e) The Department of Transportation may set and collect a reasonable application fee to cover its costs in administering the activities described in this subsection, a uniform and nondiscriminatory system of annual occupancy rates for the use and occupancy of state-owned property, and a uniform and nondiscriminatory system for setting fees, rates, terms, and conditions for make-ready work.

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

or structures at the owner's expense and as directed by the department.

(g) Nothing in the Small Wireless Facilities Deployment Act affects or prevents the Department of Transportation from imposing its usual and customary permitting requirements for the deployment of wireless facilities that are not small wireless facilities.

(7) An authority shall not require an application, permit, or other approval or charge fees or rates for routine maintenance of small wireless facilities, replacement of small wireless facilities with small wireless facilities that are substantially similar in weight or windage or the same size or smaller, or for the installation, placement, maintenance, operation, or replacement of microwireless facilities that are strung on cables between existing utility poles in compliance with the National Electrical Safety Code. An authority may require a permit for work that exceeds original weight or windage or requires excavation or closing of sidewalks or vehicular lanes within the right-of-way for such activities.

(8) Any small wireless facility that is not operated for a continuous period of ninety days after completion of initial installation, excluding nonoperation due to a natural disaster or other unforeseeable circumstance or temporary equipment failure, shall be considered abandoned. If a small wireless facility is abandoned, the small wireless facility owner shall notify the authority within thirty days of the abandoned status of such facility and such owner shall remove the abandoned facility. The related utility pole shall also be removed unless such pole is otherwise being used by another utility or is owned by a party other than the owner of the removed small wireless facility.

Sec. 38. (1) This section applies to the activities of a wireless provider within the right-of-way.

(2) A person owning, managing, or controlling authority poles in a right-of-way may enter into an exclusive arrangement with any person for the management of an attachment to such poles. A person who manages attachments to authority poles or who manages, purchases, or otherwise acquires an authority pole is subject to the requirements of the Small Wireless Facilities Deployment Act.

(3) An authority shall allow the collocation of small wireless facilities on authority poles using the process in section 37 of this act.

(4) The rates provided under section 39 of this act to collocate on authority poles shall be nondiscriminatory regardless of the services provided by the collocating person.

(5)(a) The rates, fees, terms, and conditions for make-ready work to collocate on an authority pole shall be nondiscriminatory, competitively neutral, and commercially reasonable and shall reimburse all reasonable costs incurred by an authority in compliance with the Small Wireless Facilities Deployment Act.

(b) An authority shall provide a good faith estimate for any make-ready work necessary to enable the authority pole to support the requested collocation by an applicant, including pole replacement if necessary, within one hundred twenty days after receipt of a completed application. Make-ready work, including any pole replacement, shall be completed within ninety days after written acceptance of the good faith estimate by the applicant. An authority may require replacement of the authority pole only if it determines and provides details indicating that the collocation would make the authority pole structurally unsound.

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

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

Sec. 39. (1) An authority shall not require a wireless provider to pay any rate, fee, or compensation to the authority or other person other than what is expressly authorized by section 86-704, or, where applicable, section 14-109, 15-203, 16-205, or 17-525, or the Small Wireless Facilities Deployment Act for the right to use or occupy a right-of-way for collocation of small wireless facilities on wireless support structures or utility poles in the right-of-way or for the installation, maintenance, modification, operation, and replacement of utility poles in the right-of-way.

(2)(a) An authority that charges occupation taxes under section 86-704 shall not charge a wireless services provider any additional amount for the use of a right-of-way. An authority may charge a wireless provider that does not pay the authority's occupation tax under section 86-704 either a rate of two hundred fifty dollars for each small wireless facility each year, or a fee equal to the occupation tax charged by the authority under section 14-109, 15-203, 16-205, or 17-525.

(b) The application fees for collocation of small wireless facilities on an existing or replacement authority pole shall not exceed five hundred dollars for up to five small wireless facilities on the same application and one hundred dollars for each additional small wireless facility on the same application.

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

wireless facility that are a permitted use in accordance with the specifications in subsection (5) of section 36 of this act shall not exceed two hundred fifty dollars per pole.

(d) In the case of coapplicants for a single site, only one application fee may be charged for the site.

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

Sec. 40. Nothing in the Small Wireless Facilities Deployment Act shall be interpreted to allow any entity to provide services regulated under 47 U.S.C. 521 to 573, as such sections existed on January 1, 2019, without compliance with all laws applicable to providers of such services. The Small Wireless Facilities Deployment Act shall not be interpreted to impose any new requirements on cable operators for the provision of cable service in this state.

Sec. 41. (1) Except as provided by the Small Wireless Facilities Deployment Act or applicable federal law, an authority shall continue to exercise zoning, land-use, planning, and permit-granting authority within its territorial boundaries, including with respect to wireless support structures and utility poles, except that no authority shall have or exercise any jurisdiction or authority over the design, engineering, construction, installation, or operation of any small wireless facility located in an interior structure or upon the site of any college or university campus, stadium, or athletic facility not owned or controlled by the authority, other than to comply with applicable codes. An authority shall evaluate the structure classification for wireless support structures under the standard of the American National Standards Institute found in ANSI/TIA-222, as such standard existed on January 1, 2019. Nothing in the Small Wireless Facilities Deployment Act shall authorize the State of Nebraska or any agency or political subdivision thereof, including an authority, to require wireless facility deployment or to regulate wireless services.

(2) Except as provided in the Small Wireless Facilities Deployment Act or as otherwise specifically authorized by state or federal law, an authority may not impose or collect a tax, fee, or rate on a communications service provider authorized to operate in a right-of-way by federal, state, or local law for the provision of communications service over the communications service provider's communications facilities in the right-of-way, adopt or enforce any regulations or requirements on the placement or operation of communications facilities in the right-of-way by the communications service provider, or regulate any communications services.

Sec. 42. A court of competent jurisdiction shall have jurisdiction to determine all disputes arising under the Small Wireless Facilities Deployment Act. Pending resolution of a dispute concerning rates for collocation of small wireless facilities on authority poles, the rates listed in section 39 of this act shall apply.

Sec. 43. The Small Wireless Facilities Deployment Act does not apply to the University of Nebraska system and its affiliates, the Nebraska state college system, the community college system, and all campuses, areas, and property of such systems.

Sec. 44. (1) A public power supplier shall not be required to allow the collocation of small wireless facilities on utility poles owned, operated, or managed by a public power supplier except pursuant to a negotiated pole attachment agreement containing reasonable and nondiscriminatory terms and conditions, including, but not limited to, applicable rates, and the permit, operational, and safety requirements of the public power supplier.

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

(3) Except for the findings and declarations set forth in section 2 of this act, the definitions set forth in sections 4 to 35 of this act, and subsections (1) and (2) of this section, the Small Wireless Facilities Deployment Act shall not apply to public power suppliers or to the collocation of small wireless facilities on utility poles owned, operated, or managed by a public power supplier.