

LEGISLATURE OF NEBRASKA
ONE HUNDRED EIGHTH LEGISLATURE
FIRST SESSION

LEGISLATIVE BILL 134

Introduced by Cavanaugh, J., 9.

Read first time January 06, 2023

Committee: Transportation and Telecommunications

1 A BILL FOR AN ACT relating to the Small Wireless Facilities Deployment
2 Act; to amend section 86-1236, Revised Statutes Cumulative
3 Supplement, 2022; to provide duties for an authority and
4 requirements for a wireless provider as prescribed; and to repeal
5 the original section.
6 Be it enacted by the people of the State of Nebraska,

1 Section 1. Section 86-1236, Revised Statutes Cumulative Supplement,
2 2022, is amended to read:

3 86-1236 (1) This section applies only to activities of a wireless
4 provider within the right-of-way to deploy small wireless facilities and
5 associated utility poles.

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

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

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

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

30 (b) New small wireless facilities in a right-of-way shall not extend
31 more than the greater of (i) fifty feet in height, including antenna, or

1 (ii) more than five feet above an existing utility pole in place as of
2 September 1, 2019, and located within five hundred feet in the same
3 right-of-way.

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

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

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

28 (8) An authority may require a wireless provider to repair all
29 damage to a right-of-way directly caused by the activities of the
30 wireless provider in the right-of-way and return the right-of-way to
31 equal or better condition to that before the damage occurred pursuant to

1 the competitively neutral and reasonable requirements and specifications
2 of the authority. If the applicant fails to make the repairs that are
3 reasonably required by the authority within fourteen days after written
4 notice, the authority may undertake such repairs and charge the wireless
5 provider the reasonable, documented cost of such repairs. An authority
6 shall grant an extension of up to ten days to complete such repairs if
7 the wireless provider requests such extension within the original
8 fourteen-day period. In the event of immediate threat to life, safety, or
9 to prevent serious injury, the authority may immediately undertake to
10 restore the site and then notify the applicant and charge the applicant
11 for all reasonable restoration costs.

12 (9) An authority shall provide reasonable notification to adjacent
13 property owners or residents prior to installation of a small wireless
14 facility.

15 (10)(a) An authority shall, prior to installation of any new or
16 modified utility pole in a right-of-way, determine whether such
17 installation:

18 (i) Complies with the federal Americans with Disabilities Act of
19 1990 and the federal regulations adopted in response to such act, as such
20 act and regulations existed on January 1, 2023;

21 (ii) Does not obstruct or hinder usual travel or public safety in or
22 on such right-of-way; and

23 (iii) Does not obstruct the legal use of such right-of-way by any
24 utility or impede the safe operation of such utility's system or
25 provision of its service.

26 (b) If an authority determines that such installation does not
27 comply with the criteria in subdivision (a) of this subsection, the
28 authority shall not permit such installation.

29 Sec. 2. Original section 86-1236, Revised Statutes Cumulative
30 Supplement, 2022, is repealed.