

# Legislation Streamlining Wireless Small Cell Deployment Enacted in 25 States



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Over the last few years, the wireless industry has actively pursued state legislation enacted to constrain the broad authority of local governments over the deployment of wireless small cell equipment in public right-of-way. Nebraska recently became the 25<sup>th</sup> state to adopt such legislation. The 24 other states which have legislated are: Arizona, Arkansas, Colorado, Delaware, Florida, Georgia, Hawaii, Illinois, Indiana, Iowa, Kansas, Michigan, Minnesota, Missouri, New Mexico, North Carolina, Ohio, Oklahoma, Rhode Island, Tennessee, Texas, Utah, Virginia, and West Virginia.

These state laws usually limit the authority of local governments to decide where wireless small cell equipment can be installed in the right-of-way; limit the time for action on applications to install small cell equipment; and limit the amounts that can be charged for applications and use of the right-of-way. The new Nebraska law reflects the conclusion that “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.”

The new state law defines a small wireless facility as “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.”

The new Nebraska law is quite detailed with over 20 pages of definitions and operative provisions. Some of the key provisions include:

- One-time and recurring charges to wireless service providers must be non-discriminatory compared to charges to any other users of the right-of-way.
- A wireless provider has the right as a permitted 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 as long as such facilities or poles they do not obstruct or hinder the usual travel or public safety on such right-of-way or obstruct the legal use by utilities or the safe operation of their systems or provision of service.
- A new small wireless facility (including antennas) or a new or modified utility pole installed in the right-of-way is limited to the greater of five feet above the tallest existing utility pole in place located within 500 feet of the new pole in the same right-of-way or 50 feet above ground level. Local authorities have discretion to permit taller heights.
- 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.

- 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 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 be allowed to reserve space on local 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.
- 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.
- The law spells out specific reasons for which an application can be denied and maximum processing times for an application. It provides "deemed granted" relief if a complete application is not granted or denied within the required timeline.

Also of note, small cell legislation has just passed the Senate and Assembly of Wisconsin. It is now pending consideration by the Governor of Wisconsin.

Many of the state laws that have been enacted have provisions that are similar to

and/or draw upon FCC actions regarding wireless small cell facilities. However, each state law is unique and must be read fully and carefully to determine its detailed provisions and impact.

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