

Senate File 431

S-3220

1 Amend Senate File 431 as follows:

2 1. By striking everything after the enacting clause and
3 inserting:

4 <Section 1. Section 8C.2, subsections 3 and 14, Code 2017,
5 are amended to read as follows:

6 3. "Authority", used as a noun, means a state, county,
7 or city governing body, board, agency, office, or commission
8 authorized by law to make legislative, quasi-judicial,
9 or administrative decisions relative to an application.

10 "Authority" does not include ~~state~~ any of the following:

11 a. State courts having jurisdiction over land use, planning,
12 or zoning decisions made by an authority,~~the.~~

13 b. The utilities division of the department of commerce,~~or.~~

14 c. Any entities, including municipally owned utilities
15 established under or governed by Title IX, subtitle 4 of
16 the Code, that do not have zoning or permitting authority
17 jurisdiction.

18 14. "Utility pole" means a pole or similar structure owned
19 or operated utilized in whole or in part by a public utility,
20 municipality, wireless service provider, or electric utility
21 that is designed specifically for and used to carry lines,
22 cable, transmission equipment, or wires for telephone, wireless
23 service, cable television, or electricity service, or ~~to~~
24 provide for lighting, traffic control, signage, information
25 kiosks, or other similar functions.

26 Sec. 2. Section 8C.2, Code 2017, is amended by adding the
27 following new subsections:

28 NEW SUBSECTION. 10A. a. "Small wireless facility" means a
29 wireless facility that meets the following requirements:

30 (1) Each antenna is no more than six cubic feet in volume.

31 (2) (a) All other equipment associated with the small
32 wireless facility is cumulatively no more than twenty-eight
33 cubic feet in volume.

34 (b) For purposes of this subparagraph, volume shall be
35 measured by the external displacement of the primary equipment

1 enclosure, not the internal volume of such enclosure. An
2 associated electric meter, concealment, telecommunications
3 demarcation box, ground-based enclosures, battery backup power
4 systems, grounding equipment, power transfer switch, cutoff
5 switch, cable, conduit, and any equipment that is concealed
6 from public view within or behind an existing structure or
7 concealment may be located outside of the primary equipment
8 enclosure and shall not be included in the calculation of the
9 equipment volume.

10 *b. "Small wireless facility"* does not include any structure
11 that supports or houses equipment described in this subsection.

12 NEW SUBSECTION. 14A. *"Wireless facility"* means equipment
13 at a fixed location that enables the transmission of wireless
14 communications or information of any kind between user
15 equipment and a communications network.

16 NEW SUBSECTION. 14B. *"Wireless service"* means any fixed or
17 mobile service using licensed or unlicensed wireless spectrum
18 and provided using a wireless facility.

19 NEW SUBSECTION. 14C. *"Wireless service provider"* means a
20 provider of wireless service.

21 **Sec. 3. NEW SECTION. 8C.7A Uniform rules for small wireless**
22 **facilities — permit approval.**

23 1. *a.* Except as provided in this section, an authority
24 shall not prohibit or restrict the siting of a small wireless
25 facility.

26 *b.* For purposes of this section, *"siting"* means the
27 mounting, installation, maintenance, modification, operation,
28 or replacement of a small wireless facility on or adjacent to
29 any of the following:

30 (1) An existing tower, utility pole, wireless support
31 structure, or other existing structure.

32 (2) A new utility pole of a similar height and appearance
33 as an existing utility pole and which is located within a
34 five-hundred-foot radius of the existing utility pole.

35 (3) A replacement utility pole of a similar height and

1 appearance as an existing utility pole and which is located
2 within a five-hundred-foot radius of the existing utility pole.

3 2. *a.* An authority that has adopted planning and zoning
4 regulations shall authorize the siting of a small wireless
5 facility within its jurisdiction and shall not require a person
6 to obtain a special or conditional land use permit for any of
7 the following:

8 (1) For siting the small wireless facility in a public
9 right-of-way or on an authority structure located outside of
10 a public right-of-way to the extent that such structure is
11 already in use as a wireless support structure or for other
12 communications or utility purposes that involve external
13 attachments, provided that such structure is not listed on the
14 national register of historic places.

15 (2) For siting the small wireless facility on an existing
16 tower, utility pole, or wireless support structure, regardless
17 of the location, except for on property zoned and used
18 exclusively for single-family residential use or within a
19 previously designated area of historical significance pursuant
20 to section 303.34.

21 *b.* A small wireless facility may be classified as a special
22 or conditional land use where such small wireless facility is
23 not sited in a manner as provided in paragraph "a".

24 *c.* A person may install a new utility pole or wireless
25 support structure in a public right-of-way subject to the
26 provisions of this section. However, an authority may require
27 a person to obtain a special or conditional land use permit to
28 install a new utility pole or wireless support structure for
29 the siting of a small wireless facility on property zoned and
30 used exclusively for single-family residential use or within a
31 previously designated area of historical significance pursuant
32 to section 303.34.

33 3. *a.* An authority may require a person to obtain a
34 building, electrical, or public right-of-way use permit for the
35 siting of a small wireless facility to the extent that such

1 permit is of general applicability and does not deny access
2 to site the small wireless facility in a public right-of-way.
3 Notwithstanding this paragraph, an authority shall not require
4 a person to obtain a permit for the routine maintenance of a
5 previously approved small wireless facility or the replacement
6 of a previously approved small wireless facility with a
7 facility of substantially similar height, weight, and wind
8 and structural loading, provided, however, that an authority
9 may require a person to obtain a permit to work in a public
10 right-of-way or on an authority structure located outside
11 of a public right-of-way with the same terms and conditions
12 provided for other commercial projects or uses in the public
13 right-of-way or on the authority structure.

14 *b.* An authority shall not require a person to apply for
15 or enter into an individual license, franchise, or other
16 agreement with the authority or any other entity for the siting
17 of a small wireless facility on a utility pole located in a
18 public right-of-way. However, an authority may, through the
19 conditions set forth in a building permit obtained pursuant to
20 this subsection, do any of the following:

21 (1) Establish nondiscriminatory, competitively neutral and
22 commercially reasonable rates, terms, and conditions for such
23 siting, which rates, terms, and conditions shall comply with
24 the federal pole attachment requirements provided in 47 U.S.C.
25 §224 and any regulations promulgated thereunder.

26 (2) Require compliance with the Iowa electrical safety
27 code.

28 (3) Require that a small wireless facility reasonably match
29 the aesthetics of an existing utility pole or wireless support
30 structure that incorporates decorative elements.

31 (4) Require compliance with section 306.46, subsection 1,
32 and section 306.47.

33 *c.* Beginning with applications filed on or after September
34 1, 2017, an authority shall accept an application for, process,
35 and issue a permit under this subsection as follows:

1 (1) An applicant shall not be required to provide more
2 information or pay a higher application fee, consulting fee,
3 or other fee associated with the processing or issuance of a
4 permit than the amount charged to a telecommunications service
5 provider that is not a wireless service provider. The total
6 amount of fees for processing or issuing a permit, including
7 any fees charged by third parties, shall not exceed five
8 hundred dollars for an application addressing no more than five
9 small wireless facilities, and an additional fifty dollars
10 for each small wireless facility addressed in an application
11 in excess of five small wireless facilities. An applicant
12 shall not be required to pay any additional fees or perform any
13 services relating to the acceptance, processing, or issuance
14 of a permit, nor provide any services unrelated to the siting
15 of the small wireless facility or of a new, replacement, or
16 modified utility pole on which a small wireless facility is
17 sited. For purposes of this subparagraph, engineering and
18 structural review are deemed to be related to the permitting
19 of a small wireless facility. The total amount of fees shall
20 be adjusted every five years to reflect any increases or
21 decreases in the consumer price index, rounded to the nearest
22 five dollars.

23 (2) An authority shall approve or deny a permit application
24 within sixty days following the submission of a completed
25 application. Except as provided herein, an application shall
26 be deemed approved if the authority fails to approve or deny
27 the application within sixty days following the submission of a
28 completed application. This period of time for the processing
29 of an application may be extended upon mutual written agreement
30 between the authority and the applicant. An applicant may
31 address up to twenty-five small wireless facilities in a single
32 application, provided, however, that a single application may
33 only address small wireless facilities within a single two-mile
34 radius. In rendering a decision on an application addressing
35 more than one small wireless facility, an authority may

1 approve the application as to certain individual small wireless
2 facilities while denying it as to others. An authority's
3 denial of an individual small wireless facility or subset of
4 small wireless facilities within an application is not a basis
5 to deny the application as a whole. If an authority receives
6 applications for the approval of more than seventy-five small
7 wireless facilities within a single seven-day period, whether
8 from a single applicant or from multiple applicants, the
9 authority may, upon request, obtain an automatic thirty-day
10 extension for any additional siting application submitted
11 during that seven-day period.

12 (3) (a) An authority may only deny a completed application
13 if any of the following apply:

14 (i) The application fails to include reasonable information
15 required by the authority and in accordance with this
16 subsection.

17 (ii) The application does not meet applicable building
18 or electrical codes or standards, provided such codes and
19 standards are of general applicability.

20 (iii) The application would result in the authority being
21 noncompliant with the federal Americans With Disabilities Act.

22 (iv) A licensed engineer certifies that siting the small
23 wireless facility would compromise the structural safety of, or
24 preclude the essential purpose of, the utility pole or wireless
25 support structure on which it is proposed to be sited and the
26 applicant refuses to reimburse the authority for the costs of
27 modifying or replacing the utility pole or wireless support
28 structure with a utility pole or wireless support structure
29 that would safely support the small wireless facility and
30 preserve the essential purpose of the utility pole or wireless
31 support structure.

32 (v) The application seeks approval of a new utility pole
33 or wireless support structure that would preclude the safe
34 and effective use of facilities already located in a public
35 right-of-way.

1 (vi) The application seeks approval for the siting of a
2 small wireless facility on a wireless support structure used
3 exclusively for emergency communications equipment.

4 (b) An authority denying an application shall document the
5 basis for the denial, including the specific code provisions
6 or standards on which the denial is based, and provide the
7 applicant with such documentation on or before the date the
8 application is denied.

9 (c) An applicant whose application is denied shall have
10 an opportunity to cure any deficiencies identified by the
11 authority as the basis for the denial and to submit a revised
12 application within thirty days following the date of denial
13 without paying an additional fee. The authority shall approve
14 or deny a revised application within thirty days following
15 submission. The authority shall not identify any deficiencies
16 in a second or subsequent denial that were not identified in
17 the original denial.

18 (4) An authority shall not limit the duration of a permit
19 issued under this subsection, provided, however, that the
20 construction of a small wireless facility permitted pursuant
21 to this subsection shall commence no later than two years
22 following the date that the permit is issued, or two years
23 after any appeals are exhausted.

24 (5) An authority shall not impose a moratorium on the
25 processing or issuance of permits under this subsection.

26 (6) An authority shall process and issue permits on a
27 nondiscriminatory basis. An authority shall receive an
28 application for, process, and issue a permit for the siting of
29 a small wireless facility in a manner substantially comparable
30 to the permitting of other applicants within the jurisdiction
31 of the authority, and may not impose discriminatory licensing
32 standards for persons siting small wireless facilities.

33 4. The annual recurring rate charged by an authority
34 for the siting of a small wireless facility on an authority
35 utility pole shall not exceed the rate computed by the

1 federal communications commission for telecommunications pole
2 attachments in 47 C.F.R. §1.1409(e)(2).

3 5. *a.* An authority shall authorize the siting of a small
4 wireless facility on an authority structure located outside
5 of a public right-of-way to the same extent the authority
6 authorizes access to such structures for other communication
7 or utility purposes that involve external attachments, and may
8 authorize the siting even if the authority has not previously
9 permitted such access.

10 *b.* A siting authorized under this subsection shall be
11 subject to reasonable rates, terms, and conditions as provided
12 in one or more agreements between the authority and the
13 wireless service provider. Notwithstanding chapter 480A,
14 the annual recurring rate for such siting as charged by an
15 authority shall not exceed the least of any of the following:

16 (1) The amount charged for a similar commercial project or
17 use to occupy a similar area of space on similarly situated
18 property.

19 (2) The projected cost to the authority resulting from the
20 siting.

21 (3) One hundred dollars, adjusted every five years to
22 reflect any increases or decreases in the consumer price index,
23 rounded to the nearest five dollars.

24 6. A party aggrieved by the final action of an authority,
25 either by its affirmative action on a permit, term or
26 condition, or rate under the provisions of this section or by
27 its inaction, may bring an action for review in any court of
28 competent jurisdiction, except that if the final action of the
29 authority was the denial of a conditional or special use permit
30 pursuant to this section, the party must first seek review
31 under section 335.13 or 414.10, as applicable.

32 7. This section only addresses an authority's approval of
33 zoning and building permits and the rates for the use of public
34 rights-of way and authority structures. This section shall not
35 modify the rights and obligations of a nonauthority owner of a

1 utility pole or a municipal utility that owns a utility pole,
2 under 47 C.F.R. §1.1401 et seq., and the Iowa electrical safety
3 code.

4 Sec. 4. NEW SECTION. **8C.7B Small wireless facilities —**
5 **violation and removal.**

6 1. A public utility that owns or controls a utility pole on
7 which a small wireless facility is sited in alleged violation
8 of this chapter or the Iowa electrical safety code shall
9 notify the owner of the small wireless facility of the alleged
10 violation, in writing or by any other method agreed upon by the
11 parties in writing. The notice shall include the following
12 information:

13 a. The address and location where the alleged violation
14 occurred.

15 b. A description of the alleged violation.

16 c. Suggested corrective action.

17 2. Upon the receipt of notice of an alleged violation, the
18 recipient of such notice shall respond to the public utility
19 within sixty days in writing or by any other method agreed upon
20 by the parties in writing. The response shall include the
21 following information:

22 a. A statement disclosing whether or not the recipient
23 of the notice is the owner of the small wireless facility at
24 issue.

25 b. A statement disclosing that the owner disputes that the
26 alleged violation has occurred, if applicable.

27 c. A plan for corrective action if the owner does not
28 dispute that the violation has occurred.

29 d. A statement disclosing whether the violation has been
30 corrected, if the owner does not dispute that the violation has
31 occurred.

32 3. The owner of a small wireless facility in alleged
33 violation of this chapter or the Iowa electrical safety
34 code shall correct the alleged violation within one hundred
35 eighty days after receiving notice of the violation unless,

1 for good cause shown, a delay for taking corrective action
2 is appropriate or if the parties otherwise agree in writing
3 to extend the time required to take corrective action. Good
4 cause for a delay in corrective action shall include but is
5 not limited to a dispute over whether the recipient of the
6 notice is the owner of the small wireless facility at issue, a
7 dispute over whether the alleged violation has occurred, or if
8 taking corrective action within the required time frame is not
9 possible due to circumstances which are beyond the control of
10 the owner of the small wireless facility. The public utility
11 and owner of the small wireless facility shall cooperate in
12 determining an efficient and cost-effective solution to correct
13 an alleged violation.

14 4. *a.* Notwithstanding subsections 1 through 3, in the event
15 of an emergency, an authority or public utility shall contact
16 the owner of the small wireless facility at issue and provide
17 the owner with a reasonable opportunity to alleviate such
18 emergency or participate with the authority or public utility
19 to make any repairs necessary to alleviate such emergency. If
20 the owner of the small wireless facility does not respond in a
21 timely manner, the authority or public utility may remove or
22 make alterations to the small wireless facility as necessary
23 to ensure public safety.

24 *b.* For purposes of this subsection, "*emergency*" means
25 exigent and extraordinary circumstances under which the
26 physical or electrical failure of a utility pole, wireless
27 support structure, or small wireless facility threatens
28 imminent physical harm to persons or there is a substantial
29 likelihood of imminent and significant harm to property.

30 5. If the parties cannot resolve a dispute after following
31 the procedures provided in this section, any party may file an
32 action concerning an alleged violation under this section in
33 the district court for the county in which the violation is
34 alleged to have occurred, for any appropriate remedy, including
35 the removal of a small wireless facility deemed by the court to

1 be in violation of this chapter or the Iowa electrical safety
2 code. However, this section shall not preclude a party from
3 bringing an action pursuant to the Iowa electrical safety code
4 or 47 C.F.R. §1.1401 et seq., or the application of a dispute
5 resolution process set forth in an applicable pole attachment
6 agreement between the parties.

7 6. Nothing in this section shall be deemed to limit the
8 ability of a public utility and the owner of a small wireless
9 facility to voluntarily enter into a pole attachment agreement
10 that establishes different terms for the siting of a small
11 wireless facility or the resolution of a dispute regarding such
12 a facility.

13 Sec. 5. NEW SECTION. **8C.7C Height limitations.**

14 1. A new, replacement, or modified utility pole or wireless
15 support structure installed in a public right-of-way located
16 within the city limits of an incorporated city for the purpose
17 of siting a wireless facility, including a small wireless
18 facility under the provisions of this chapter shall not exceed
19 the greater of ten feet in height above the tallest utility
20 pole existing on or before July 1, 2017, located within five
21 hundred feet of the new, replacement, or modified utility pole
22 in the same public right-of-way, or forty feet in height above
23 ground level. Except as provided in section 8C.7A, subsection
24 2, paragraph "c", an authority shall not require a special or
25 conditional use permit for the installation of a utility pole
26 or wireless support structure that complies with the height
27 limitations of this subsection.

28 2. Notwithstanding subsection 1, a person may construct,
29 modify, or maintain a utility pole or wireless support
30 structure along, across, and under a public right-of-way
31 in excess of the size limits provided in subsection 1, to
32 the extent permitted by the authority's applicable zoning
33 regulations.

34 3. A person shall comply with nondiscriminatory
35 undergrounding requirements that prohibit wireless service

1 providers from installing structures in a public right-of-way
2 without prior zoning approval in areas zoned and used for
3 single-family residential use, provided that such requirements
4 shall not prohibit the replacement of existing structures.

5 4. Nothing in this section shall be deemed to limit the
6 ability of a public utility to install a utility pole for the
7 purposes of electric utility transmission or distribution
8 within a public right-of-way subject to an authority's planning
9 and zoning regulations.

10 Sec. 6. Section 8C.9, Code 2017, is amended to read as
11 follows:

12 **8C.9 Repeal.**

13 This chapter is repealed July 1, ~~2020~~ 2022.>

DAN ZUMBACH