

Senate File 431 - Introduced

SENATE FILE 431
BY COMMITTEE ON COMMERCE

(SUCCESSOR TO SSB 1138)

A BILL FOR

1 An Act relating to the siting of small wireless facilities.
2 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

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

3 3. "*Authority*", used as a noun, means a state, county,
4 or city governing body, board, agency, office, or commission
5 authorized by law to make legislative, quasi-judicial,
6 or administrative decisions relative to an application.
7 "*Authority*" does not include state courts having jurisdiction
8 over land use, planning, or zoning decisions made by an
9 authority, the utilities division of the department of
10 commerce, or entities municipally owned utilities established
11 under Title IX, subtitle 4 of the Code that do not have zoning
12 or permitting authority with respect to the siting of small
13 wireless facilities pursuant to section 8C.7A.

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

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

24 NEW SUBSECTION. 10A. a. "*Small wireless facility*" means a
25 wireless facility that meets the following requirements:

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

27 (2) (a) All other equipment associated with the base
28 station is cumulatively no more than twenty-eight cubic feet
29 in volume.

30 (b) For purposes of this subparagraph, volume shall be
31 measured by the external displacement of the primary equipment
32 enclosure, not the internal volume of such enclosure. An
33 associated electric meter, concealment, telecommunications
34 demarcation box, ground-based enclosures, battery backup power
35 systems, grounding equipment, power transfer switch, cutoff

1 switch, cable, conduit, and any equipment that is concealed
2 from public view within or behind an existing structure or
3 concealment may be located outside of the primary equipment
4 enclosure and shall not be included in the calculation of the
5 equipment volume.

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

8 NEW SUBSECTION. 14A. *"Wireless facility"* means equipment
9 at a fixed location that enables the transmission of wireless
10 communications and information of any kind between user
11 equipment and a communications network.

12 NEW SUBSECTION. 14B. *"Wireless service"* means any fixed or
13 mobile service using licensed or unlicensed wireless spectrum
14 and provided by a wireless facility.

15 NEW SUBSECTION. 14C. *"Wireless service provider"* means a
16 provider of wireless service.

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

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

22 *b.* For purposes of this section, *"siting"* means the
23 mounting, installation, maintenance, modification, operation,
24 or replacement of a small wireless facility on or adjacent to
25 any of the following:

26 (1) An existing tower, utility pole, wireless support
27 structure, or other existing structure.

28 (2) A new utility pole of a similar height, location, and
29 appearance as an existing structure.

30 (3) A replacement utility pole of a similar height,
31 location, and appearance as an existing structure.

32 2. *a.* An authority that has adopted planning and zoning
33 regulations shall authorize the siting of a small wireless
34 facility within its jurisdiction and shall not require a person
35 to obtain a special or conditional land use permit for any of

1 the following:

2 (1) For siting the small wireless facility on a public
3 right-of-way or authority property.

4 (2) For siting the small wireless facility on an existing
5 tower, utility pole, or wireless support structure, regardless
6 of the location of the small wireless facility, except for
7 on property zoned and used exclusively for single-family
8 residential use or within a previously designated area of
9 historical significance pursuant to section 303.34.

10 *b.* A small wireless facility may be classified as a special
11 or conditional land use where such small wireless facility is
12 not sited on a property or sited in a manner as provided in
13 paragraph "a".

14 *c.* An authority may require a person to obtain a special
15 or conditional land use permit to install a new utility
16 pole or wireless support structure for the siting of a small
17 wireless facility on property zoned and used exclusively for
18 single-family residential use or within a previously designated
19 area of historical significance pursuant to section 303.34.

20 3. *a.* An authority may require a person to obtain a
21 building, electrical, or public right-of-way use permit for
22 the siting of a small wireless facility to the extent that
23 such permit is of general applicability and does not deny
24 access by the small wireless facility to a public right-of-way.
25 Notwithstanding this paragraph, an authority shall not require
26 a person to obtain a permit for the routine maintenance of a
27 previously approved small wireless facility or the replacement
28 of a previously approved small wireless facility with a
29 facility of substantially similar height, weight, and wind
30 and structural loading, provided, however, that an authority
31 may require a person to obtain a permit to work in a public
32 right-of-way with the same terms and conditions provided for
33 other commercial projects or uses in the public right-of-way.

34 *b.* An authority shall not require a person to apply for or
35 enter into an individual license, franchise, or other agreement

1 with the authority or any other entity for the siting of a
2 small wireless facility on a utility pole located on a public
3 right-of-way or authority property, except that an authority
4 may establish nondiscriminatory, competitively neutral and
5 commercially reasonable rates, terms, and conditions set forth
6 in a building permit obtained pursuant to this subsection which
7 shall comply with the federal pole attachment requirements
8 provided in 47 U.S.C. §224 and any regulations promulgated
9 thereunder.

10 *c.* (1) A new, replacement, or modified utility pole or
11 wireless support structure installed in the public right-of-way
12 for the siting of a small wireless facility shall not exceed
13 the greater of ten feet in height above the tallest utility
14 pole existing on or before July 1, 2017, located within five
15 hundred feet of the new or replacement utility pole in the
16 same public right-of-way, or fifty feet in height above ground
17 level.

18 (2) Notwithstanding subparagraph (1), a person may
19 construct, modify, or maintain a utility pole along, across,
20 and under a public right-of-way in excess of the size limits
21 provided in subparagraph (1), subject to applicable zoning
22 regulations.

23 (3) A person shall comply with nondiscriminatory
24 undergrounding requirements that prohibit wireless service
25 providers from installing structures in the public right-of-way
26 without prior zoning approval in areas zoned and used for
27 single-family residential use, provided that such requirements
28 shall not prohibit the replacement of existing structures.

29 *d.* An authority shall accept an application for, process,
30 and issue a permit under this subsection as follows:

31 (1) An applicant shall not be required to provide more
32 information or pay a higher application fee, consulting fee,
33 or other fee associated with the processing or issuance of a
34 permit than the amount charged to a telecommunications service
35 provider that is not a wireless service provider. The total

1 amount of fees for processing or issuing a permit, including
2 any fees charged by third parties, shall not exceed five
3 hundred dollars for an application addressing no more than five
4 small wireless facilities, and an additional fifty dollars
5 for each small wireless facility addressed in an application
6 in excess of five small wireless facilities. An applicant
7 shall not be required to pay any additional fees or perform any
8 services relating to the acceptance, processing, or issuance
9 of a permit, nor provide any services unrelated to the siting
10 of the small wireless facility. The total amount of fees
11 shall be adjusted every five years to reflect any increases or
12 decreases in the consumer price index, rounded to the nearest
13 five dollars.

14 (2) An authority shall approve or deny a permit application
15 within sixty days following the submission of a completed
16 application. An application shall be deemed approved if the
17 authority fails to approve or deny the application within sixty
18 days following the submission of a completed application. This
19 period of time for the processing of an application may be
20 tolled to accommodate timely requests for information required
21 to complete or cure any defects in the application or may be
22 extended by mutual agreement between the authority and the
23 applicant. An applicant may address one or more small wireless
24 facilities in a single application.

25 (3) (a) An authority may deny a completed application
26 only if the application fails to include information required
27 under this subsection, does not meet applicable building
28 or electrical codes or standards, provided such codes and
29 standards are of general applicability, or where an engineer
30 certifies that siting the small wireless facility would
31 compromise the structural safety of the utility pole or
32 wireless support structure on which it is proposed to be sited
33 and the applicant refuses to reimburse the authority for
34 the costs of replacing the utility pole or wireless support
35 structure with a utility pole or wireless support structure

1 that can safely support the small wireless facility. An
2 authority denying an application shall document the basis for
3 the denial, including the specific code provisions or standards
4 on which the denial is based, and provide the applicant with
5 such documentation on or before the date the application is
6 denied.

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

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

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

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

31 4. The annual recurring rate charged by an authority
32 for the siting of a small wireless facility on an authority
33 utility pole shall not exceed the rate computed by the
34 federal communications commission for telecommunications pole
35 attachments in 47 C.F.R. §1.1409(e)(2).

1 5. a. An authority shall authorize the siting of a small
2 wireless facility on a wireless support structure not located
3 within the public right-of-way to the same extent the authority
4 authorizes access to such wireless support structures for other
5 commercial projects or uses, and may authorize the siting even
6 if the authority has not previously permitted such access.

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

13 (1) The amount charged for a similar commercial project or
14 use to occupy a similar area of space on similarly situated
15 property.

16 (2) The projected cost to the authority resulting from the
17 siting.

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

21 6. A party aggrieved by the final action of an authority,
22 either by its affirmative action on a permit, term or
23 condition, or rate under the provisions of this section or by
24 its inaction, may bring an action for review in any court of
25 competent jurisdiction.

26 7. This section shall not modify the rights and obligations
27 of an owner of a utility pole under 47 C.F.R. §1.1401 et seq.,
28 and the Iowa electrical safety code.

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

31 1. A public utility that owns or controls a utility pole to
32 which a small wireless facility is sited in alleged violation
33 of the Iowa electrical safety code or any other provision of
34 law shall notify, in writing or by any other method agreed upon
35 by the parties in writing, the owner of the small wireless

1 facility of the alleged violation. The notice shall include
2 the following information:

3 *a.* The address and location where the alleged violation
4 occurred.

5 *b.* A description of the alleged violation.

6 *c.* Suggested corrective action.

7 2. Upon the receipt of notice of an alleged violation, the
8 owner shall respond to the public utility within sixty days in
9 writing or by any other method agreed upon by the parties in
10 writing. The response shall include the following information:

11 *a.* A statement disclosing whether or not the person owns the
12 small wireless facility in dispute.

13 *b.* A statement disclosing that the owner disputes that the
14 violation has occurred, if applicable.

15 *c.* A plan for corrective action if the owner does not
16 dispute that the violation has occurred.

17 *d.* A statement disclosing whether the violation has been
18 corrected, if the owner does not dispute that the violation has
19 occurred.

20 3. The owner of a small wireless facility in alleged
21 violation of section 8C.7A or any other applicable provision
22 of law shall correct the alleged violation within one hundred
23 eighty days after receiving notice of the violation unless,
24 for good cause shown, a delay for taking corrective action
25 is appropriate or if the parties otherwise agree in writing
26 to extend the time required to take corrective action. Good
27 cause for a delay in corrective action shall include but is
28 not limited to a dispute over whether the person owns the
29 small wireless facility in dispute, or a dispute over whether
30 the alleged violation has occurred, if taking corrective
31 action within the required time frame is not possible due to
32 circumstances which are beyond the control of the owner of
33 the small wireless facility. The public utility and owner of
34 the small wireless facility shall cooperate in determining an
35 efficient and cost-effective solution to correct an alleged

1 violation.

2 4. If the parties cannot resolve the dispute after following
3 the procedures provided in subsections 1 through 3, either
4 party may file an action concerning an alleged violation under
5 this section in the district court for the county in which the
6 violation is alleged to have occurred, for injunctive relief or
7 any other appropriate remedy, including the removal of a small
8 wireless facility deemed by the court to be in violation of the
9 Iowa electrical safety code.

10 Sec. 5. 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.

14 EXPLANATION

15 The inclusion of this explanation does not constitute agreement with
16 the explanation's substance by the members of the general assembly.

17 This bill authorizes the siting of small wireless
18 facilities.

19 Code chapter 8C provides a series of uniform rules and
20 limitations for the deployment of and applications for wireless
21 communications facilities and infrastructure. The bill adds
22 specific rules and limitations for the application for and
23 deployment of small wireless facilities.

24 The bill amends the definition of "authority" in Code
25 section 8C.2 to exclude municipally owned utilities established
26 under Title IX, subtitle 4 of the Code that do not have zoning
27 or permitting authority with respect to the siting of small
28 wireless facilities. The bill defines "siting" to mean the
29 mounting, installation, maintenance, modification, operation,
30 or replacement of a small wireless facility on or adjacent to
31 an existing utility pole or other structure, a replacement
32 utility pole, or a new utility pole. The bill defines "small
33 wireless facility" as a wireless facility where each antenna is
34 no more than six cubic feet in volume and all other equipment,
35 except for certain equipment described in the bill, is

1 cumulatively no more than 28 cubic feet in volume, as measured
2 by its external displacement. A "small wireless facility" does
3 not include any structure that supports or houses equipment.
4 The bill amends the definition of "utility pole" in Code
5 section 8C.2 to include wireless service. The bill defines
6 "wireless facility" to mean equipment at a fixed location
7 that enables the transmission of wireless communications
8 and information of any kind between user equipment and a
9 communications network. The bill defines "wireless service" to
10 mean any fixed or mobile service using licensed or unlicensed
11 wireless spectrum and provided by a wireless facility. The
12 bill defines "wireless service provider" to mean a provider of
13 wireless service.

14 The bill prohibits an authority from restricting the siting
15 of small wireless facilities. An authority with planning
16 and zoning regulations shall authorize such facilities in
17 zoning districts where the facilities are located on public
18 rights-of-way or authority property, or where the facilities
19 are sited on certain existing structures. Facilities not sited
20 on such property or sited in such a manner may be classified as
21 special or conditional uses. An authority may also require a
22 person to obtain a special or conditional land use permit to
23 install new utility poles or wireless support structures on
24 certain property.

25 The bill provides that an authority may require a person
26 to obtain building, electrical, or public way use permits for
27 the siting of small wireless facilities if such permit is of
28 general applicability and does not deny a facility access to
29 a public right-of-way. However, an authority cannot require
30 a person to obtain a permit for the routine maintenance or
31 replacement of a previously approved facility unless such
32 permit contains the same terms and conditions provided for
33 other commercial projects or uses in the public right-of-way.

34 The bill prohibits an authority from requiring a person to
35 enter into an individual license, franchise, or other agreement

1 with the authority for the siting of small wireless facilities
2 on utility poles located on public rights-of-way or authority
3 property, subject to nondiscriminatory, competitively neutral
4 and commercially reasonable terms and conditions provided in
5 a building permit obtained pursuant to the bill and which
6 complies with federal pole attachment requirements.

7 The bill provides that a new, replacement, or modified
8 utility pole or wireless support structure installed in
9 the public right-of-way for the siting of a small wireless
10 facility shall not exceed the greater of 10 feet in height
11 above the tallest utility pole existing on or before July
12 1, 2017, located within 500 feet of the new or replacement
13 utility pole in the same public right-of-way, or 50 feet in
14 height above ground level. However, a person may construct,
15 modify, or maintain a utility pole along, across, and
16 under a public right-of-way in excess of such size limits,
17 subject to applicable zoning regulations and compliance with
18 nondiscriminatory undergrounding requirements.

19 The bill provides a series of rules and limitations
20 applicable to an application for a permit. The rules and
21 limitations include prohibiting requiring certain information
22 from or about an applicant, limiting the amount of application
23 fees for processing or issuing a permit, time frames within
24 which an authority must approve or deny a permit application,
25 standards for the denial of a permit application, prohibiting
26 the imposition of a moratorium on the processing or issuance of
27 permits, and prohibiting the processing or issuance of permits
28 on a discriminatory basis, as specified in the bill.

29 The bill provides that the annual recurring rate charged
30 by an authority for the siting of small wireless facilities
31 on utility poles cannot exceed the rate computed for
32 telecommunications pole attachments pursuant to federal law.

33 The bill provides that an authority must authorize the
34 siting of small wireless facilities on wireless support
35 structures not located within public rights-of-way to the

1 same extent the authority permits access for other commercial
2 projects or uses, and may authorize the siting even if the
3 authority has not previously permitted access. The annual
4 recurring rate for such siting cannot exceed the least of the
5 amount charged for a similar project on similar property,
6 the projected cost to the authority for the siting, or \$100,
7 adjusted every five years to reflect changes in the consumer
8 price index.

9 The bill provides that a party aggrieved by the final action
10 or inaction of an authority may bring an action for review in
11 any court of competent jurisdiction.

12 The bill provides that a public utility that owns or
13 controls a utility pole to which a small wireless facility
14 is sited in alleged violation of the Iowa electrical safety
15 code or any other applicable law must notify the owner of
16 the small wireless facility of the violation, which must
17 include the location of the alleged violation, a description
18 of the alleged violation, and suggested corrective action.
19 The owner of the small wireless facility must respond to the
20 public utility within 60 days, which must include a statement
21 as to whether the person is the owner of the small wireless
22 facility in dispute, a statement as to whether the owner
23 disputes the violation, a plan for corrective action if the
24 owner does not dispute the violation, and a statement as to
25 whether the violation has been corrected. The owner must take
26 corrective action to correct an alleged violation within 180
27 days after receiving notice of the alleged violation, unless
28 good cause is shown that a delay is appropriate, as specified
29 in the bill. The bill provides that either party may file
30 an action concerning an alleged violation in the appropriate
31 district court for injunctive relief or any other appropriate
32 remedy, including the removal of a small wireless facility,
33 if the parties cannot resolve the dispute after following the
34 procedures provided in the bill.

35 The bill amends Code section 8C.9 to repeal Code chapter 8C

S.F. 431

1 on July 1, 2022, instead of on July 1, 2020.