

**Senate Study Bill 1138 - Introduced**

SENATE FILE \_\_\_\_\_  
BY (PROPOSED COMMITTEE  
ON COMMERCE BILL BY  
CHAIRPERSON ANDERSON)

**A BILL FOR**

1 An Act relating to the siting of small wireless facilities and  
2 the authorization of joint financing of telecommunications  
3 facilities.  
4 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 Sec. 6. Section 28F.1, subsection 1, Code 2017, is amended  
15 to read as follows:

16 1. **This chapter** provides a means for the joint financing  
17 by public agencies of works or facilities useful and necessary  
18 for the collection, treatment, purification, and disposal  
19 in a sanitary manner of liquid and solid waste, sewage,  
20 and industrial waste, facilities used for the conversion of  
21 solid waste to energy, works or facilities useful for the  
22 operation of a telecommunications system or the provision of  
23 telecommunications services, and also electric power facilities  
24 constructed within the state of Iowa, except that hydroelectric  
25 power facilities may also be located in the waters and on the  
26 dams of or on land adjacent to either side of the Mississippi  
27 or Missouri river bordering the state of Iowa, water supply  
28 systems, swimming pools or golf courses. **This chapter** applies  
29 to the acquisition, construction, reconstruction, ownership,  
30 operation, repair, extension, or improvement of such works  
31 or facilities, by a separate administrative or legal entity  
32 created pursuant to **chapter 28E** or **chapter 389**. When the  
33 legal entity created under **this chapter** is comprised solely  
34 of cities, counties, and sanitary districts established under  
35 chapter 358, or any combination thereof or any combination of

1 the foregoing with other public agencies, the entity shall  
2 be both a corporation and a political subdivision with the  
3 name under which it was organized. The legal entity may sue  
4 and be sued, contract, acquire and hold real and personal  
5 property necessary for corporate purposes, adopt a corporate  
6 seal and alter the seal at pleasure, and execute all the powers  
7 conferred in [this chapter](#).

8

EXPLANATION

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

11       This bill authorizes the siting of small wireless facilities  
12 and the joint financing of telecommunications facilities.

13       Code chapter 8C provides a series of uniform rules and  
14 limitations for the deployment of and applications for wireless  
15 communications facilities and infrastructure. The bill adds  
16 specific rules and limitations for the application for and  
17 deployment of small wireless facilities.

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

1 that enables the transmission of wireless communications  
2 and information of any kind between user equipment and a  
3 communications network. The bill defines "wireless service" to  
4 mean any fixed or mobile service using licensed or unlicensed  
5 wireless spectrum and provided by a wireless facility. The  
6 bill defines "wireless service provider" to mean a provider of  
7 wireless service.

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

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

28 The bill prohibits an authority from requiring a person to  
29 enter into an individual license, franchise, or other agreement  
30 with the authority for the siting of small wireless facilities  
31 on utility poles located on public rights-of-way or authority  
32 property, subject to nondiscriminatory, competitively neutral  
33 and commercially reasonable terms and conditions provided in  
34 a building permit obtained pursuant to the bill and which  
35 complies with federal pole attachment requirements.

1 The bill provides that a new, replacement, or modified  
2 utility pole or wireless support structure installed in  
3 the public right-of-way for the siting of a small wireless  
4 facility shall not exceed the greater of 10 feet in height  
5 above the tallest utility pole existing on or before July  
6 1, 2017, located within 500 feet of the new or replacement  
7 utility pole in the same public right-of-way, or 50 feet in  
8 height above ground level. However, a person may construct,  
9 modify, or maintain a utility pole along, across, and  
10 under a public right-of-way in excess of such size limits,  
11 subject to applicable zoning regulations and compliance with  
12 nondiscriminatory undergrounding requirements.

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

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

27 The bill provides that an authority must authorize the  
28 siting of small wireless facilities on wireless support  
29 structures not located within public rights-of-way to the  
30 same extent the authority permits access for other commercial  
31 projects or uses, and may authorize the siting even if the  
32 authority has not previously permitted access. The annual  
33 recurring rate for such siting cannot exceed the least of the  
34 amount charged for a similar project on similar property,  
35 the projected cost to the authority for the siting, or \$100,

1 adjusted every five years to reflect changes in the consumer  
2 price index.

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

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

29 The bill amends Code section 8C.9 to repeal Code chapter 8C  
30 on July 1, 2022, instead of on July 1, 2020.

31 Code chapter 28F provides for the joint financing by public  
32 agencies of certain public works and facilities. The bill  
33 amends Code section 28F.1 to include works or facilities  
34 useful for the operation of a telecommunications system or  
35 the provision of telecommunications services in the list of

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1 specified facilities subject to joint financing by public  
2 agencies.