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State of Minnesota

HOUSE OF REPRESENTATIVES

EIGHTY-NINTH SESSION

H. F. No. 3554

03/23/2016 Authored by Sanders
The bill was read for the first time and referred to the Committee on Government Operations and Elections Policy

A bill for an act

relating to telecommunications; providing for deployment of small wireless facilities; amending Minnesota Statutes 2014, section 222.37, subdivision 1; proposing coding for new law in Minnesota Statutes, chapter 237.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MINNESOTA:

Section 1. Minnesota Statutes 2014, section 222.37, subdivision 1, is amended to read:

Subdivision 1. **Use requirements.** Any water power, telegraph, telephone, wireless communications service provider, pneumatic tube, pipeline, community antenna television, cable communications or electric light, heat, power company, or fire department may use public roads for the purpose of constructing, using, operating, and maintaining lines, subways, canals, conduits, hydrants, or dry hydrants, for their business, but such lines shall be so located as in no way to interfere with the safety and convenience of ordinary travel along or over the same; and, in the construction and maintenance of such line, subway, canal, conduit, hydrants, or dry hydrants, the company shall be subject to all reasonable regulations imposed by the governing body of any county, town or city in which such public road may be. If the governing body does not require the company to obtain a permit, a company shall notify the governing body of any county, town, or city having jurisdiction over a public road prior to the construction or major repair, involving extensive excavation on the road right-of-way, of the company's equipment along, over, or under the public road, unless the governing body waives the notice requirement. A waiver of the notice requirement must be renewed on an annual basis. For emergency repair a company shall notify the governing body as soon as practical after the repair is made. Nothing herein shall be construed to grant to any person any rights for the maintenance of a telegraph, telephone, pneumatic tube, community antenna television system, cable communications system, or

light, heat, power system, or hydrant system within the corporate limits of any city until such person shall have obtained the right to maintain such system within such city or for a period beyond that for which the right to operate such system is granted by such city.

Sec. 2. **[237.90] SMALL WIRELESS FACILITIES DEPLOYMENT.**

Subdivision 1. **Definitions.** (a) For the purposes of this section, the following terms have the meanings given.

(b) "Antenna" means communications equipment that transmits or receives electromagnetic radio signals used to provide wireless service.

(c) "Applicant" means a wireless service provider that submits an application to deploy small wireless facilities under this section.

(d) "Application" means a request submitted by an applicant to an authority seeking to collocate small wireless facilities or small wireless facility networks under subdivision 2.

(e) "Authority" means a city, village, incorporated town, township, county, local unit of government, or other political subdivision of this or another state that has entered into an agreement to jointly or cooperatively exercise powers under section 471.59:

(1) over the jurisdiction, control, or use of public rights-of-way; or

(2) for zoning, land use, or other official control of placements not within the public rights-of-way.

(f) "Authority structure" means an existing tower, building, water tower, or other structure owned or controlled by an authority. Authority structure does not include an authority utility pole.

(g) "Authority utility pole" means a utility pole or other similar structure that is (1) used in whole or in part for communications service, electric service, lighting, traffic control, signage, or similar functions, and (2) owned or controlled by an authority.

(h) "Collocate" means to install, mount, maintain, modify, operate, or replace wireless facilities on an existing private or public tower, building, private or authority utility pole, water tower, or other structure. Collocation includes any installation, mounting, maintenance, modification, replacement, or operation of wireless facilities on a replacement private or authority utility pole of a similar height, location, and appearance as an existing structure.

(i) "Private utility pole" means a utility pole or other similar structure that is (1) used in whole or in part for communications service, electric service, or similar functions, and (2) not owned or controlled by an authority.

(j) "Small wireless facilities" means wireless facilities that meet both of the following qualifications: (1) each antenna is located inside an enclosure that is no more

than six cubic feet in volume or, in the case of an antenna that has exposed elements, the antenna and all of its exposed elements could fit within an imaginary enclosure that is no more than six cubic feet; and (2) all other wireless equipment associated with the structure is cumulatively no more than 28 cubic feet in volume. Small wireless facilities includes a new pole no taller than 35 feet above ground level that is erected or installed by a communications service provider in order to support antennas and other wireless equipment described in clause (2). For the purposes of this paragraph, the following types of associated ancillary equipment are not included in the calculation of equipment volume: electric meters, concealment, telecommunications demarcation boxes, ground-based enclosures, grounding equipment, power transfer switches, cutoff switches, and vertical cable runs for the connection of power and other services.

(k) "Small wireless facility network" means a collection of interrelated small wireless facilities designed to deliver wireless communications service.

(l) "Utility pole" means a pole or similar structure that is used in whole or in part for communications service, electric service, lighting, traffic control, signage, or other similar functions.

(m) "Wireless facilities" means equipment at a fixed location that enables wireless communications between user equipment and a communications network, including but not limited to:

(1) equipment associated with wireless communications services, including private, broadcast, and public safety services, as well as unlicensed wireless services and fixed wireless services, including microwave backhaul; and

(2) radio transceivers, antennas, coaxial or fiber-optic cable, regular and backup power supplies, and comparable equipment, regardless of technological configuration.

(n) "Wireless service" means any fixed or mobile wireless communications services provided using wireless facilities.

(o) "Wireless service provider" means a provider of wireless service.

Subd. 2. **Siting; small wireless facilities and small wireless facility networks.** (a) Except as provided in this chapter and chapter 238, an authority must not prohibit, regulate, or charge a fee to collocate and install small wireless facilities or small wireless facility networks.

(b) Small wireless facilities and small wireless facility networks must be classified as permitted uses and are not subject to the zoning, land use, or other official controls, including height, setbacks, or any special or conditional use standards, in:

(1) all public rights-of-way and authority property; and

(2) other property not zoned exclusively for single-family residential use.

4.1 (c) Small wireless facilities and small wireless facility networks may be classified
4.2 as special or conditional uses if the facilities are (1) not located on public rights-of-way
4.3 or authority property, and (2) located on property zoned exclusively for single-family
4.4 residential use.
4.5 (d) An authority may require building permits, encroachment permits to work within
4.6 public rights-of-way, and other permits to collocate or install small wireless facilities and
4.7 small wireless facility networks, provided the permits apply generally to all users of
4.8 the right-of-way. Authorities must receive applications for, process, and issue permit
4.9 approvals subject to the following:
4.10 (1) applicants must not be required to pay a higher application processing fee than
4.11 communications service providers that are not wireless providers, and total processing
4.12 fees for any individual permit or approval, including any fees charged by third parties,
4.13 must not exceed $500;
4.14 (2) applicants must not be required to perform any services, including restoration
4.15 work not directly related to the collocation, to obtain approval for an application;
4.16 (3) applicants must not be required to provide more information to obtain a permit
4.17 than communications service providers that are not wireless service providers;
4.18 (4) section 15.99 applies to each application for a permit or approval, which may
4.19 address multiple small wireless facilities or a small wireless facilities network;
4.20 (5) an authority may deny an application only if the proposed small wireless
4.21 facility or small wireless facility network does not meet authority regulations governing
4.22 construction in public rights-of-way, building codes, electrical codes, or related standards,
4.23 provided the codes and standards apply generally. The authority must document the basis
4.24 for any denial, including the specific regulations, codes, or standards on which the denial
4.25 was based, and send the documentation to the applicant on or before the day an authority
4.26 denies an application. An applicant may cure the deficiencies identified by the authority
4.27 and resubmit the application within 30 days of the denial without paying an additional
4.28 processing fee. The authority must approve or deny the revised application within 30 days;
4.29 (6) an authority must not limit the duration of a permit or approval related to one or
4.30 more small wireless facilities or a small wireless facility network;
4.31 (7) notwithstanding sections 394.34, 462.355, or any other law, an authority must
4.32 not institute a moratorium on (1) filing, receiving, or processing applications to collocate
4.33 or install small wireless facilities and small wireless facility networks, or (2) issuing
4.34 permits or approvals to collocate or install small wireless facilities and small wireless
4.35 facility networks; and

5.1 (8) an authority must not impose discriminatory licensing standards for persons
5.2 constructing small wireless facilities and small wireless facility networks. An authority
5.3 must receive applications for, process, and issue licenses to construct small wireless
5.4 facilities and small wireless facility networks in a manner substantially comparable to the
5.5 licensing of other contractors subject to the authority's jurisdiction.

5.6 (e) A wireless provider or licensed contractor may collocate small wireless facilities
5.7 and small wireless facility networks on authority utility poles located within public
5.8 rights-of-way, subject to reasonable rates, terms, and conditions. An authority must
5.9 process authority utility pole collocation requests, issue permits, and authorize the
5.10 installation and operation of small wireless facilities and small wireless facility networks
5.11 on authority utility poles pending negotiation of an agreement. Authority utility pole
5.12 collocation requests must be processed in the same manner as permit applications under
5.13 paragraph (d). An authority may charge a reasonable annual recurring rate to collocate a
5.14 small wireless facility on an authority utility pole, but the rate must not exceed the rate
5.15 produced by applying the Federal Communications Commission Telecommunications
5.16 Pole Attachment formula in Code of Federal Regulations, title 47, section 1.1409(e)(2).

5.17 (f) An authority must authorize the collocation of small wireless facilities and small
5.18 wireless facility networks on authority structures not located within a public right-of-way
5.19 to the same extent an authority permits access to authority structures for other commercial
5.20 projects or uses. An authority may authorize collocation if the authority has not previously
5.21 permitted access. Collocations are subject to reasonable rates, terms, and conditions
5.22 provided in one or more agreements between a wireless provider and an authority. The
5.23 rate charged for collocation must be calculated on an annual basis and must not exceed the
5.24 lesser of: (1) the amount charged for similar commercial projects or uses to occupy or
5.25 use the same amount of space on similarly situated property; (2) the projected cost to the
5.26 authority resulting from the collocation; or (3) $500 annually.

5.27 Subd. 3. **Construction; maintenance.** Notwithstanding section 237.163, a
5.28 communications service provider, its contractor, or a communications facilities provider,
5.29 subject to the receipt of all permits and approvals processed under subdivision 2, has the
5.30 right to construct, maintain, and operate conduit, poles, cables, wireless facilities, and
5.31 related facilities along, across, upon, under, and over any public street, road, highway,
5.32 or right-of-way. Notwithstanding this section, a local government unit, as defined in
5.33 section 237.162, subdivision 2, may charge fees to recover its right-of-way management
5.34 costs under section 237.163, subdivision 6.