

SENATE
STATE OF MINNESOTA
NINETIETH SESSION

S.F. No. 561

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DATE	D-PG	OFFICIAL STATUS
02/02/2017	491	Introduction and first reading
		Referred to Energy and Utilities Finance and Policy
03/06/2017	1013a	Comm report: To pass as amended and re-refer to Local Government

- 1.1 A bill for an act
- 1.2 relating to telecommunications; providing for collocation of small wireless facilities;
- 1.3 amending Minnesota Statutes 2016, sections 237.162, subdivisions 2, 4, 9, by
- 1.4 adding subdivisions; 237.163, subdivisions 2, 4, 6, by adding subdivisions.
- 1.5 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MINNESOTA:
- 1.6 Section 1. Minnesota Statutes 2016, section 237.162, subdivision 2, is amended to read:
- 1.7 Subd. 2. **Local government unit.** "Local government unit" means a county, home rule
- 1.8 charter or statutory city, ~~or town,~~ or the Metropolitan Council.
- 1.9 **EFFECTIVE DATE.** This section is effective the day following final enactment.
- 1.10 Sec. 2. Minnesota Statutes 2016, section 237.162, subdivision 4, is amended to read:
- 1.11 Subd. 4. **Telecommunications right-of-way user.** (a) "Telecommunications right-of-way
- 1.12 user" means a person owning or controlling a facility in the public right-of-way, or seeking
- 1.13 to own or control a facility in the public right-of-way, that is used or is intended to be used
- 1.14 for transporting telecommunications or other voice or data information.
- 1.15 (b) A provider of wireless services using or seeking to use a small wireless facility
- 1.16 authorized by a collocation permit approved under section 237.163, subdivision 3c, is a
- 1.17 telecommunications right-of-way user for the purposes of this section and section 237.163.
- 1.18 (c) Neither a cable communication system defined and regulated under chapter 238, ~~and~~
- 1.19 nor with respect to the provision of telecommunications activities related to providing natural
- 1.20 gas or electric energy services ~~whether provided by,~~ a public utility as defined in section
- 1.21 216B.02, a municipality, a municipal gas or power agency organized under chapter 453 or
- 1.22 453A, or a cooperative electric association organized under chapter 308A, ~~are not~~ is a

2.1 telecommunications right-of-way ~~users~~ user for the purposes of this section and section
 2.2 237.163, unless these entities are providing or seeking to provide wireless services using a
 2.3 small wireless facility authorized by a collocation permit approved under section 237.163,
 2.4 subdivision 3c.

2.5 **EFFECTIVE DATE.** This section is effective the day following final enactment.

2.6 Sec. 3. Minnesota Statutes 2016, section 237.162, subdivision 9, is amended to read:

2.7 Subd. 9. **Management costs or rights-of-way management costs.** (a) "Management
 2.8 costs" or "rights-of-way management costs" means the actual costs a local government unit
 2.9 incurs in managing its public rights-of-way, and includes such costs, if incurred, as those
 2.10 associated with registering applicants; issuing, processing, and verifying right-of-way or
 2.11 collocation permit applications; inspecting job sites and restoration projects; maintaining,
 2.12 supporting, protecting, or moving user equipment during public right-of-way work;
 2.13 determining the adequacy of right-of-way restoration; restoring work inadequately performed
 2.14 after providing notice and the opportunity to correct the work; and revoking right-of-way
 2.15 or collocation permits.

2.16 (b) For an application for approval of a collocation permit under section 237.163,
 2.17 subdivision 3c, management costs do not include a fee charged by a third-party contractor
 2.18 of the local government unit for performance of any of the management activities in
 2.19 paragraph (a). Management costs do not include payment by a telecommunications
 2.20 right-of-way user for the use of the public right-of-way, any fee based on a
 2.21 telecommunications right-of-way user's revenues or number of customers, subscribers,
 2.22 access lines, or other performance measure, the fees and cost of litigation relating to the
 2.23 interpretation of this section or section 237.163 or any ordinance enacted under those
 2.24 sections, or the local unit of government's fees and costs related to appeals taken pursuant
 2.25 to section 237.163, subdivision 5.

2.26 **EFFECTIVE DATE.** This section is effective the day following final enactment.

2.27 Sec. 4. Minnesota Statutes 2016, section 237.162, is amended by adding a subdivision to
 2.28 read:

2.29 Subd. 10. **Collocate.** "Collocate" or "collocation" means to install, mount, maintain,
 2.30 modify, operate, or replace a small wireless facility on, under, within, or adjacent to an
 2.31 existing wireless support structure that is owned privately or by a local government unit.

2.32 **EFFECTIVE DATE.** This section is effective the day following final enactment.

3.1 Sec. 5. Minnesota Statutes 2016, section 237.162, is amended by adding a subdivision to
3.2 read:

3.3 Subd. 11. **Small wireless facility.** "Small wireless facility" means a wireless facility
3.4 that meets both of the following qualifications:

3.5 (1) each antenna is located inside an enclosure of no more than six cubic feet in volume
3.6 or, in the case of an antenna that has exposed elements, the antenna and all its exposed
3.7 elements could fit within an enclosure of no more than six cubic feet; and

3.8 (2) all other wireless equipment associated with the facility, excluding electric meters,
3.9 concealment elements, telecommunications demarcation boxes, battery backup power
3.10 systems, grounding equipment, power transfer switches, cutoff switches, cable, conduit,
3.11 vertical cable runs for the connection of power and other services, and any equipment
3.12 concealed from public view within or behind an existing structure or concealment, is in
3.13 aggregate no more than 28 cubic feet in volume.

3.14 **EFFECTIVE DATE.** This section is effective the day following final enactment.

3.15 Sec. 6. Minnesota Statutes 2016, section 237.162, is amended by adding a subdivision to
3.16 read:

3.17 Subd. 12. **Utility pole.** "Utility pole" means a pole that is used in whole or in part to
3.18 facilitate telecommunications or electric service.

3.19 **EFFECTIVE DATE.** This section is effective the day following final enactment.

3.20 Sec. 7. Minnesota Statutes 2016, section 237.162, is amended by adding a subdivision to
3.21 read:

3.22 Subd. 13. **Wireless facility.** "Wireless facility" means an antenna, accessory equipment,
3.23 or other wireless device or equipment used to provide wireless service.

3.24 **EFFECTIVE DATE.** This section is effective the day following final enactment.

3.25 Sec. 8. Minnesota Statutes 2016, section 237.162, is amended by adding a subdivision to
3.26 read:

3.27 Subd. 14. **Wireless service.** "Wireless service" means any service using licensed or
3.28 unlicensed wireless spectrum, whether at a fixed location or by means of a mobile device,
3.29 that is provided using wireless facilities.

3.30 **EFFECTIVE DATE.** This section is effective the day following final enactment.

4.1 Sec. 9. Minnesota Statutes 2016, section 237.162, is amended by adding a subdivision to
4.2 read:

4.3 Subd. 15. **Wireless support structure.** "Wireless support structure" means a pole,
4.4 including but not limited to a monopole, light pole, traffic signal, arch, sign pole, kiosk,
4.5 post, or utility pole, that is capable of supporting wireless facilities.

4.6 **EFFECTIVE DATE.** This section is effective the day following final enactment.

4.7 Sec. 10. Minnesota Statutes 2016, section 237.163, subdivision 2, is amended to read:

4.8 Subd. 2. **Generally.** (a) Subject to this section, a telecommunications right-of-way user
4.9 authorized to do business under the laws of this state or by license of the Federal
4.10 Communications Commission may construct, maintain, and operate small wireless facilities,
4.11 conduit, cable, switches, and related appurtenances and facilities along, across, upon, above,
4.12 and under any public right-of-way.

4.13 (b) Subject to this section, a local government unit has the authority to manage its public
4.14 rights-of-way and to recover its rights-of-way management costs. Except as provided in
4.15 subdivisions 3a, 3b, and 3c, the authority defined in this section may be exercised at the
4.16 option of the local government unit. ~~The exercise of this authority and~~ is not mandated under
4.17 this section. A local government unit may, by ordinance:

4.18 (1) require a telecommunications right-of-way user seeking to excavate or obstruct a
4.19 public right-of-way for the purpose of providing telecommunications services to obtain a
4.20 right-of-way permit to do so and to impose permit conditions consistent with the local
4.21 government unit's management of the right-of-way;

4.22 (2) require a telecommunications right-of-way user using, occupying, or seeking to use
4.23 or occupy a public right-of-way for the purpose of providing telecommunications services
4.24 to register with the local government unit by providing the local government unit with the
4.25 following information:

4.26 (i) the applicant's name, gopher state one-call registration number under section 216D.03,
4.27 address, and telephone and facsimile numbers;

4.28 (ii) the name, address, and telephone and facsimile numbers of the applicant's local
4.29 representative;

4.30 (iii) proof of adequate insurance; and

4.31 (iv) other information deemed reasonably necessary by the local government unit for
4.32 the efficient administration of the public right-of-way; and

5.1 (3) require telecommunications right-of-way users to submit to the local government
 5.2 unit plans for construction and major maintenance that provide reasonable notice to the
 5.3 local government unit of projects that the telecommunications right-of-way user expects to
 5.4 undertake that may require excavation and obstruction of public rights-of-way.

5.5 (c) A local government unit may also require a telecommunications right-of-way user
 5.6 that is registered with the local government unit pursuant to paragraph (b), clause (2), to
 5.7 periodically update the information in its registration application.

5.8 (d) Notwithstanding sections 394.34 and 462.355, or any other law, a local government
 5.9 unit must not establish a moratorium with respect to:

5.10 (1) filing, receiving, or processing applications for right-of-way or collocation permits;

5.11 or

5.12 (2) issuing or approving right-of-way or collocation permits.

5.13 (e) A telecommunications right-of-way user may collocate small wireless facilities on
 5.14 wireless support structures located within a public right-of-way, subject to the approval
 5.15 procedures under this section and, for collocation on wireless support structures owned by
 5.16 a local government unit, the reasonable terms, conditions, and rates set forth under this
 5.17 chapter. A local government unit may prohibit, regulate, or charge a fee to install wireless
 5.18 support structures or to collocate small wireless facilities only as provided in this chapter.

5.19 (f) A local government unit's zoning, land use, or other official controls must classify
 5.20 wireless support structures or small wireless facilities located in a public right-of-way as a
 5.21 permitted use. A telecommunications right-of-way user must not be required to obtain
 5.22 zoning approval to install, collocate, maintain, or repair a small wireless facility or a wireless
 5.23 support structure in a public right-of-way. This paragraph does not apply to areas outside
 5.24 a public right-of-way that are zoned and used for single family residential use.

5.25 **EFFECTIVE DATE.** This section is effective the day following final enactment.

5.26 Sec. 11. Minnesota Statutes 2016, section 237.163, is amended by adding a subdivision
 5.27 to read:

5.28 Subd. 3a. **Collocation permits; general.** (a) A local government unit:

5.29 (1) may require a telecommunications right-of-way user to obtain a permit or permits
 5.30 under this section to collocate a small wireless facility in a public right-of-way managed
 5.31 by the local government unit;

6.1 (2) must not require an applicant for a collocation permit to provide any information
6.2 that:

6.3 (i) has previously been provided to the local government unit in prior permits or
6.4 otherwise; and

6.5 (ii) is different from or in addition to the information the local government unit requires
6.6 from a provider of nonwireless telecommunications services, except for information related
6.7 to demonstrating compliance with applicable Federal Communications Commission
6.8 regulations governing radio frequency exposure, or other information required by this
6.9 section;

6.10 (3) must not require an applicant for a collocation permit to perform services unrelated
6.11 to the collocation or collocations for which approval is sought;

6.12 (4) must ensure that any application for a collocation permit is processed on a
6.13 nondiscriminatory basis; and

6.14 (5) must specify that the term of the collocation permit is equal to the length of time that
6.15 the small wireless facility is in use, unless the permit is revoked under this section.

6.16 (b) An applicant may file a consolidated permit application to collocate up to 35 separate
6.17 small wireless facilities. If a local government unit receives within a seven-day period
6.18 applications from one or more wireless service providers seeking approval of more than 75
6.19 small wireless facilities in aggregate, the local government unit may, upon written notice
6.20 to the applicants seeking collocation permits for the small wireless facilities exceeding the
6.21 first 75 received, extend the review period specified in subdivision 3c by an additional 20
6.22 days with respect to those incremental small wireless facilities. An extension obtained under
6.23 this paragraph does not prevent a further extension allowed under subdivision 3c, if mutually
6.24 agreed to in writing by the applicant and the local government unit.

6.25 (c) A local government unit is prohibited from requiring a collocation permit for routine
6.26 maintenance of a small wireless facility or for replacement of a small wireless facility with
6.27 a new facility that is substantially similar or smaller in size, weight, height, and wind or
6.28 structural loading than the small wireless facility being replaced. A local government unit
6.29 may require a right-of-way permit if the maintenance or replacement work will obstruct a
6.30 public right-of-way.

6.31 (d) Nothing in this subdivision affects the need for an entity seeking to place a small
6.32 wireless facility on a wireless support structure that is not owned by a local government
6.33 unit to obtain from the owner of the wireless support structure any necessary authority to

7.1 place the small wireless facility, nor shall any provision of this chapter be deemed to affect
 7.2 the rates, terms, and conditions for access to or placement of a small wireless facility or a
 7.3 wireless support structure not owned by a local government unit. This subdivision shall not
 7.4 affect any existing agreement between a local government unit and an entity concerning
 7.5 the placement of small wireless facilities on local government unit-owned wireless support
 7.6 structures.

7.7 **EFFECTIVE DATE.** This section is effective the day following final enactment.

7.8 Sec. 12. Minnesota Statutes 2016, section 237.163, is amended by adding a subdivision
 7.9 to read:

7.10 Subd. 3b. **Collocation permits; placement.** (a) A local government unit may not require
 7.11 the placement of small wireless facilities on any specific utility pole or type of pole, or
 7.12 require multiple small wireless facilities to be placed on a single pole.

7.13 (b) A local government unit must not limit the placement of small wireless facilities,
 7.14 either by minimum separation distances or maximum height limitations, except that each
 7.15 wireless support structure installed in the right-of-way after the effective date of this act
 7.16 must not exceed the greater of:

7.17 (1) ten feet in height above the tallest existing utility pole in place that is located within
 7.18 500 feet of the new wireless support structure in the same right-of-way as of the effective
 7.19 date of this act; or

7.20 (2) 50 feet above ground level.

7.21 (c) Wireless facilities constructed in the right-of-way after the effective date of this act
 7.22 may not extend more than ten feet above an existing wireless support structure in place as
 7.23 of the effective date of this act.

7.24 **EFFECTIVE DATE.** This section is effective the day following final enactment.

7.25 Sec. 13. Minnesota Statutes 2016, section 237.163, is amended by adding a subdivision
 7.26 to read:

7.27 Subd. 3c. **Collocation permits; approval.** (a) Except as provided in subdivision 4, a
 7.28 local government unit shall issue a collocation permit to a telecommunications right-of-way
 7.29 user seeking to install a new or replacement wireless support structure for a small wireless
 7.30 facility, or to collocate a small wireless facility on a wireless support structure in a public
 7.31 right-of-way. In processing and approving a collocation permit, a local government unit
 7.32 may condition its approval on compliance with:

8.1 (1) generally applicable health, safety, and welfare conditions consistent with the local
8.2 government unit's public right-of-way management;

8.3 (2) reasonable accommodations for decorative utility poles or signs; and

8.4 (3) any reasonable restocking, replacement, or relocation requirements when a new
8.5 wireless support structure is placed in a public right-of-way.

8.6 (b) A local government unit has 90 days after the date a collocation permit is filed to
8.7 issue or deny the permit, or the permit is automatically issued. To toll the 90-day clock, the
8.8 local government unit must provide a written notice of incompleteness to the applicant
8.9 within 30 days of receipt of the application, clearly and specifically delineating all missing
8.10 documents or information. Information delineated in the notice is limited to documents or
8.11 information publicly required as of the date of application and reasonably related to a local
8.12 government unit's determination whether the proposed equipment falls within the definition
8.13 of a small wireless facility and whether the proposed deployment satisfies all health, safety,
8.14 and welfare regulations applicable to the collocation permit request. Upon an applicant's
8.15 submittal of additional documents or information in response to a notice of incompleteness,
8.16 the local government unit has ten days to notify the applicant in writing any information
8.17 requested in the initial notice of incompleteness that is still missing. Second or subsequent
8.18 notices of incompleteness may not specify documents or information that were not delineated
8.19 in the original notice of incompleteness. Requests for information not requested in the initial
8.20 notice of incompleteness do not toll the 90-day clock. Parties can mutually agree in writing
8.21 to toll the 90-day clock at any time.

8.22 For the purposes of this subdivision, "toll the 90-day clock" means to halt the progression
8.23 of days that count towards the 90-day deadline.

8.24 (c) Except as provided in subdivision 3a, paragraph (b), a collocation permit and any
8.25 associated encroachment or building permit required by a local government unit, are deemed
8.26 approved if the local government unit fails to approve or deny the application within 90
8.27 days after the permit application has been filed, unless the applicant and the local government
8.28 unit have mutually agreed in writing to extend the 90-day deadline.

8.29 (d) Nothing in this subdivision precludes a local government unit from applying generally
8.30 applicable health, safety, and welfare regulations in connection with evaluating a collocation
8.31 permit application and its decision to approve or deny a collocation permit. For purposes
8.32 of this subdivision, "generally applicable health, safety, and welfare regulations" mean
8.33 uniform building, fire, electrical, plumbing, or mechanical codes that are adopted under

9.1 Minnesota law or any structural analysis standard adopted by the American National
9.2 Standards Institute.

9.3 **EFFECTIVE DATE.** This section is effective the day following final enactment.

9.4 Sec. 14. Minnesota Statutes 2016, section 237.163, subdivision 4, is amended to read:

9.5 Subd. 4. **Permit denial or revocation.** (a) A local government unit may deny any
9.6 application for a right-of-way or collocation permit if the telecommunications right-of-way
9.7 user does not comply with a provision of this section.

9.8 (b) A local government unit may deny an application for a right-of-way permit if the
9.9 local government unit determines that the denial is necessary to protect the health, safety,
9.10 and welfare or when necessary to protect the public right-of-way and its current use.

9.11 (c) A local government unit may revoke a right-of-way or collocation permit granted to
9.12 a telecommunications right-of-way user, with or without fee refund, in the event of a
9.13 substantial breach of the terms and conditions of statute, ordinance, rule, or regulation or
9.14 any material condition of the permit. A substantial breach by a permittee includes, but is
9.15 not limited to, the following:

9.16 (1) a material violation of a provision of the right-of-way or collocation permit;

9.17 (2) an evasion or attempt to evade any material provision of the right-of-way or
9.18 collocation permit, or the perpetration or attempt to perpetrate any fraud or deceit upon the
9.19 local government unit or its citizens;

9.20 (3) a material misrepresentation of fact in the right-of-way or collocation permit
9.21 application;

9.22 (4) a failure to complete work in a timely manner, unless a permit extension is obtained
9.23 or unless the failure to complete work is due to reasons beyond the permittee's control; and

9.24 (5) a failure to correct, in a timely manner, work that does not conform to applicable
9.25 standards, conditions, or codes, upon inspection and notification by the local government
9.26 unit of the faulty condition.

9.27 (d) Subject to this subdivision, a local government unit may not deny an application for
9.28 a right-of-way or collocation permit for failure to include a project in a plan submitted to
9.29 the local government unit under subdivision 2, paragraph (b), clause (3), when the
9.30 telecommunications right-of-way user has used commercially reasonable efforts to anticipate
9.31 and plan for the project.

10.1 (e) In no event may a local government unit unreasonably withhold approval of an
 10.2 application for a right-of-way permit, or unreasonably revoke a permit.

10.3 (f) Any denial or revocation of a right-of-way or collocation permit must be made in
 10.4 writing and must document the basis for the denial, including the specific regulations, codes,
 10.5 or standards supporting or requiring the denial. The local government unit must notify the
 10.6 telecommunications right-of-way user in writing within three days of the decision to deny
 10.7 or revoke a permit. If a permit application is denied, the telecommunications right-of-way
 10.8 user may cure the deficiencies identified by the local government unit and resubmit its
 10.9 application. If the telecommunications right-of-way user resubmits the application within
 10.10 30 days of receiving written notice of the denial, it may not be charged an additional filing
 10.11 or processing fee. The local government unit must approve or deny the revised application
 10.12 within 30 days after the revised application is submitted.

10.13 **EFFECTIVE DATE.** This section is effective the day following final enactment.

10.14 Sec. 15. Minnesota Statutes 2016, section 237.163, subdivision 6, is amended to read:

10.15 Subd. 6. **Fees.** (a) A local government unit may recover its right-of-way management
 10.16 costs by imposing a fee for registration, a fee for each right-of-way permit, or, when
 10.17 appropriate, a fee applicable to a particular telecommunications right-of-way user when
 10.18 that user causes the local government unit to incur costs as a result of actions or inactions
 10.19 of that user. A local government unit may not recover from a telecommunications
 10.20 right-of-way user costs caused by another entity's activity in the right-of-way.

10.21 (b) Fees, or other right-of-way obligations, imposed by a local government unit on
 10.22 telecommunications right-of-way users under this section must be:

10.23 (1) based on the actual costs incurred by the local government unit in managing the
 10.24 public right-of-way;

10.25 (2) based on an allocation among all users of the public right-of-way, including the local
 10.26 government unit itself, which shall reflect the proportionate costs imposed on the local
 10.27 government unit by each of the various types of uses of the public rights-of-way;

10.28 (3) imposed on a competitively neutral basis; and

10.29 (4) imposed in a manner so that aboveground uses of public rights-of-way do not bear
 10.30 costs incurred by the local government unit to regulate underground uses of public
 10.31 rights-of-way.

11.1 (c) The rights, duties, and obligations regarding the use of the public right-of-way
 11.2 imposed under this section must be applied to all users of the public right-of-way, including
 11.3 the local government unit while recognizing regulation must reflect the distinct engineering,
 11.4 construction, operation, maintenance and public and worker safety requirements, and
 11.5 standards applicable to various users of the public rights-of-way. For users subject to the
 11.6 franchising authority of a local government unit, to the extent those rights, duties, and
 11.7 obligations are addressed in the terms of an applicable franchise agreement, the terms of
 11.8 the franchise shall prevail over any conflicting provision in an ordinance.

11.9 (d) A wireless provider may collocate small wireless facilities on wireless support
 11.10 structures owned or controlled by a local government unit and located within the public
 11.11 roads or rights-of-way without being required to apply for or enter into any individual
 11.12 license, franchise, or other agreement with the local government unit or any other entity.

11.13 (e) Any initial engineering survey and preparatory construction work associated with
 11.14 collocation must be paid by the cost causer in the form of a onetime, nonrecurring,
 11.15 commercially reasonable, nondiscriminatory, and competitively neutral charge to recover
 11.16 the costs associated with a proposed attachment.

11.17 (f) The terms, rent, and conditions of collocation under this subdivision must be:

11.18 (1) set forth in the permit;

11.19 (2) nondiscriminatory, competitively neutral, and commercially reasonable; and

11.20 (3) compliant with this section, section 237.162, and federal pole attachment requirements
 11.21 under United States Code, title 47, section 224, and related implementing regulations
 11.22 governing the costs and process for any necessary engineering survey and preparatory
 11.23 construction work associated with preparing utility poles for collocation, including, as
 11.24 applicable, relocating existing attachments, and upgrading or replacing a utility pole.

11.25 **EFFECTIVE DATE.** This section is effective the day following final enactment.

11.26 Sec. 16. Minnesota Statutes 2016, section 237.163, is amended by adding a subdivision
 11.27 to read:

11.28 Subd. 9. **Authorized contractors.** (a) Nothing in this section precludes a
 11.29 telecommunications right-of-way user from authorizing another entity or individual to act
 11.30 on its behalf to install, construct, maintain, or repair a facility or facilities owned or controlled
 11.31 by the telecommunications right-of-way user.

- 12.1 (b) A local government unit is prohibited from imposing fees or requirements on an
12.2 authorized entity or individual for actions on behalf of a telecommunications right-of-way
12.3 user that are in addition to or different from the fees and requirements it is authorized to
12.4 impose on the telecommunications right-of-way user under this section.
- 12.5 **EFFECTIVE DATE.** This section is effective the day following final enactment.