

This Document can be made available in alternative formats upon request

State of Minnesota
HOUSE OF REPRESENTATIVES
NINETIETH SESSION

H. F. No. 739

02/02/2017 Authored by Hoppe, Garofalo, Kresha, Thissen, Slocum and others
The bill was read for the first time and referred to the Committee on Commerce and Regulatory Reform

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, 3, 9, by
1.4 adding subdivisions; 237.163, subdivisions 2, 4, 5, 6, 7, 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 Sec. 2. Minnesota Statutes 2016, section 237.162, subdivision 3, is amended to read:

1.10 Subd. 3. **Public right-of-way.** "Public right-of-way" means the area on, below, or above
1.11 a public roadway, highway, street, cartway, bicycle lane, and public sidewalk in which the
1.12 local government unit has an interest, including other dedicated rights-of-way for travel
1.13 purposes ~~and,~~ utility easements of local government units, and utility poles. Any other
1.14 property a local government unit has an interest in and has made available for commercial
1.15 uses is a public right-of-way solely for the purposes of small wireless facility collocation
1.16 under this section and section 237.163.

1.17 A public right-of-way does not include the airwaves above a public right-of-way with
1.18 regard to cellular or other nonwire telecommunications or broadcast service.

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

1.20 Subd. 9. **Management costs or rights-of-way management costs.** (a) "Management
1.21 costs" or "rights-of-way management costs" means the actual costs a local government unit

2.1 incurs in managing its public rights-of-way, and includes such costs, if incurred, as those
 2.2 associated with registering applicants; issuing, processing, and verifying right-of-way or
 2.3 collocation permit applications; inspecting job sites and restoration projects; maintaining,
 2.4 supporting, protecting, or moving user equipment during public right-of-way work; preparing
 2.5 utility poles for collocation, including, as applicable, relocating existing attachments,
 2.6 upgrading or replacing a utility pole; determining the adequacy of right-of-way restoration;
 2.7 restoring work inadequately performed after providing notice and the opportunity to correct
 2.8 the work; and revoking right-of-way or collocation permits.

2.9 (b) Management costs do not include a fee charged by a third-party contractor of the
 2.10 local government unit for performance of any of the management activities listed above.
 2.11 Management costs do not include payment by a telecommunications right-of-way user for
 2.12 the use of the public right-of-way, any fee based on a telecommunications right-of-way
 2.13 user's revenues or number of customers, subscribers, access lines, or other performance
 2.14 metric, the fees and cost of litigation relating to the interpretation of this section or section
 2.15 237.163 or any ordinance enacted under those sections, or the local unit of government's
 2.16 fees and costs related to appeals taken pursuant to section 237.163, subdivision 5.

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

2.19 Subd. 10. **Collocate.** "Collocate" or "collocation" means to install, mount, maintain,
 2.20 modify, operate, or replace a small wireless facility on, under, within, or adjacent to an
 2.21 existing private or local government authority utility pole.

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

2.24 Subd. 11. **Small wireless facility.** "Small wireless facility" means a wireless facility
 2.25 that meets both of the following qualifications: (1) each antenna is located inside an enclosure
 2.26 of no more than six cubic feet in volume or, in the case of an antenna that has exposed
 2.27 elements, the antenna and all of its exposed elements could fit within an enclosure of no
 2.28 more than six cubic feet; and (2) all other wireless equipment associated with the facility
 2.29 is cumulatively no more than 28 cubic feet in volume. The following types of associated
 2.30 ancillary equipment are not included in the calculation of equipment volume: electric meters,
 2.31 concealment elements, telecommunications demarcation boxes, ground-based enclosures,
 2.32 battery backup power systems, grounding equipment, power transfer switches, cutoff
 2.33 switches, cable, conduit, and vertical cable runs for the connection of power and other

3.1 services. Any equipment that is concealed from public view within or behind an existing
3.2 structure or concealment is not included in a volume calculation.

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

3.5 Subd. 12. **Utility pole.** "Utility pole" means a pole or similar structure that is used in
3.6 whole or in part for telecommunications service, electric service, lighting, signage, or other
3.7 similar functions.

3.8 Sec. 7. Minnesota Statutes 2016, section 237.163, subdivision 2, is amended to read:

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

3.14 (b) Subject to this section, a local government unit has the authority to manage its public
3.15 rights-of-way and to recover its rights-of-way management costs. The authority defined in
3.16 this section may be exercised at the option of the local government unit. The exercise of
3.17 this authority is not mandated under this section. A local government unit may, by ordinance:

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

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

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

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

3.30 (iii) proof of adequate insurance; and

4.1 (iv) other information ~~deemed~~ the local government unit deems is reasonably necessary
4.2 ~~by the local government unit~~ for the efficient administration of the public right-of-way; ~~and,~~
4.3 provided the same information is requested from all telecommunications right-of-way users;

4.4 (3) require telecommunications right-of-way users to submit to the local government
4.5 unit plans for construction and major maintenance that provide reasonable notice to the
4.6 local government unit of projects that the telecommunications right-of-way user expects to
4.7 undertake that may require excavation and obstruction of public rights-of-way; and

4.8 (4) require a telecommunications right-of-way user seeking to either install a new utility
4.9 pole for a small wireless facility or collocate a small wireless facility to obtain a collocation
4.10 permit which:

4.11 (i) must be perpetual in duration, unless revoked under this section;

4.12 (ii) may impose conditions consistent with the local government unit's public right-of-way
4.13 management, including requiring reasonable accommodations for decorative utility poles;

4.14 (iii) must not require or be conditioned upon the applicant providing any information
4.15 that is different from or in addition to the information the local government unit requires
4.16 providers of nonwireless telecommunications services to provide; and

4.17 (iv) must not require an applicant to perform services unrelated to the collocation or
4.18 collocations for which approval is sought.

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

4.22 (d) Section 15.99 applies to each application for a right-of-way or collocation permit.
4.23 An application for a right-of-way or collocation permit may address multiple independent
4.24 small wireless facilities or a network of small wireless facilities.

4.25 (e) Notwithstanding sections 394.34, 462.355, or any other law, a local government unit
4.26 must not institute a moratorium on:

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

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

5.1 Sec. 8. Minnesota Statutes 2016, section 237.163, subdivision 4, is amended to read:

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

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

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

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

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

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

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

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

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

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

6.1 (f) Any denial or revocation of a right-of-way or collocation permit must be made in
 6.2 writing and must document the basis for the denial, including the specific regulations, codes,
 6.3 or standards supporting or requiring the denial. The local government unit must send the
 6.4 written denial or revocation to the telecommunications right-of-way user within three days
 6.5 of the decision to deny or revoke the permit. If a permit application was denied, the
 6.6 telecommunications right-of-way user may cure the deficiencies identified by the local
 6.7 government unit and resubmit its application. The telecommunications right-of-way user
 6.8 must resubmit the application within 30 days of receiving the written denial, but is not
 6.9 required to pay an additional processing fee. The local government unit must approve or
 6.10 deny the revised application within 30 days following the date the application was
 6.11 resubmitted.

6.12 Sec. 9. Minnesota Statutes 2016, section 237.163, subdivision 5, is amended to read:

6.13 Subd. 5. **Appeal.** A telecommunications right-of-way user that: (1) has been denied
 6.14 registration; (2) has been denied a right-of-way permit; (3) has had its right-of-way permit
 6.15 revoked; or (4) believes that the fees imposed on the user by the local government unit do
 6.16 not conform to the requirements of subdivision 6, may have the denial, revocation, or fee
 6.17 imposition reviewed, upon written request, by the governing body of the local government
 6.18 unit. The governing body of the local government unit shall act on a timely written request
 6.19 at its next regularly scheduled meeting. A decision by the governing body affirming the
 6.20 denial, revocation, or fee imposition must be in writing and supported by written findings
 6.21 establishing the reasonableness of the decision.

6.22 Sec. 10. Minnesota Statutes 2016, section 237.163, subdivision 6, is amended to read:

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

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

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

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

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

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

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

7.16 (d) A wireless provider may collocate small wireless facilities on utility poles owned or
 7.17 controlled by a local government unit and located within the public roads or rights-of-way
 7.18 without being required to apply for or enter into any individual license, franchise, or other
 7.19 agreement with the local government unit or any other entity. The terms and conditions of
 7.20 collocation under this paragraph must be: (1) set forth in the permit; (2) nondiscriminatory,
 7.21 competitively neutral, and commercially reasonable; and (3) compliant with (i) this section;
 7.22 (ii) section 237.162; and (iii) federal pole attachment requirements under United States
 7.23 Code, title 47, section 224, and related implementing regulations. A local government unit
 7.24 may charge a reasonable annual recurring rate to collocate a small wireless facility on a
 7.25 utility pole owned or controlled by the local government unit. A rate charged by a local
 7.26 government unit must not exceed the rate calculated using the Federal Communications
 7.27 Commission Telecommunications Pole Attachment formula under Code of Federal
 7.28 Regulations, title 47, section 1.1409(e)(2).

7.29 Sec. 11. Minnesota Statutes 2016, section 237.163, subdivision 7, is amended to read:

7.30 Subd. 7. **Additional right-of-way provisions.** (a) In managing the public rights-of-way
 7.31 and in imposing fees under this section, no local government unit may:

7.32 (1) unlawfully discriminate among telecommunications right-of-way users or classes of
 7.33 telecommunications right-of-way users;

8.1 (2) grant a preference to any telecommunications right-of-way user or class of
 8.2 telecommunications right-of-way users;

8.3 (3) create or erect any unreasonable requirement for entry to the public rights-of-way
 8.4 by telecommunications right-of-way users; or

8.5 (4) require a telecommunications right-of-way user to obtain a franchise or pay for the
 8.6 use of the right-of-way.

8.7 (b) A telecommunications right-of-way user need not apply for or obtain right-of-way
 8.8 permits for facilities that are located in public rights-of-way on May 10, 1997, for which
 8.9 the user has obtained the required consent of the local government unit, or that are otherwise
 8.10 lawfully occupying the public right-of-way. However, the telecommunications right-of-way
 8.11 user may be required to register and to obtain a right-of-way permit for an excavation or
 8.12 obstruction of existing facilities within the public right-of-way after May 10, 1997.

8.13 (c) Data and documents exchanged between a local government unit and a
 8.14 telecommunications right-of-way user are subject to the terms of chapter 13. A local
 8.15 government unit not complying with this paragraph is subject to the penalties set forth in
 8.16 section 13.08.

8.17 (d) A local government unit may not collect a fee imposed under this section through
 8.18 the provision of in-kind services by a telecommunications right-of-way user, nor may a
 8.19 local government unit require the provision of in-kind services as a condition of consent to
 8.20 use the local government unit's public right-of-way.

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

8.23 **Subd. 9. Siting of small wireless facilities.** (a) A telecommunications right-of-way user
 8.24 may collocate small wireless facilities on utility poles located within public rights-of-way,
 8.25 subject to the approval procedures under this section and the reasonable terms, conditions,
 8.26 and rates set forth under this chapter, chapter 238, or administrative rules adopted under
 8.27 this section. A local government unit may prohibit, regulate, or charge a fee to install utility
 8.28 poles or to collocate small wireless facilities only as provided under this chapter, chapter
 8.29 238, or the administrative rules adopted under this section.

8.30 (b) A local government unit's zoning, land use, or other official controls must classify
 8.31 utility poles as a permitted use in all public rights-of-way and must classify small wireless
 8.32 facilities as a permitted use in all public rights-of-way and all zoning districts. A
 8.33 telecommunications right-of-way user must not be required to obtain zoning approval to

9.1 install, collocate, maintain, or repair a small wireless facility or a utility pole in a public
9.2 right-of-way, wherever located. This paragraph does not apply to areas outside the public
9.3 right-of-way that are zoned and used for single family residential use.

9.4 (c) Notwithstanding paragraph (b), a local government unit may require a
9.5 telecommunications right-of-way user to obtain a permit or permits under subdivision 2 to
9.6 collocate a small wireless facility in a public right-of-way managed by the local government
9.7 unit. A local government unit is prohibited from requiring a collocation permit for routine
9.8 maintenance of a small wireless facility or for replacement of a small wireless facility with
9.9 a new facility that is substantially similar or smaller in size, weight, height, and wind or
9.10 structural loading. A local government unit may require a right-of-way permit if the
9.11 maintenance or replacement work will obstruct the public right-of-way.

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

9.14 Subd. 10. **Authorized contractors.** (a) Nothing in this section precludes a
9.15 telecommunications right-of-way user from authorizing another entity or individual to act
9.16 on its behalf to install, construct, maintain, or repair a facility or facilities owned or controlled
9.17 by the telecommunications right-of-way user.

9.18 (b) A local government unit is prohibited from imposing fees or requirements on an
9.19 authorized entity or individual for actions on behalf of a telecommunications right-of-way
9.20 user that are in addition to or different from the fees and requirements it is authorized to
9.21 impose on the telecommunications right-of-way user under this section.

9.22 (c) Notwithstanding paragraph (b) and subject to subdivision 7, paragraph (a), a local
9.23 government unit may impose licensing requirements for entities or individuals that install
9.24 construct, maintain, or repair facilities under this paragraph only to the extent that any
9.25 licensing requirement imposed applies to all users of the public right-of-way.