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State of Minnesota

HOUSE OF REPRESENTATIVES

NINETY-FIRST SESSION

H. F. No. 4598

04/28/2020 Authored by Hornstein
The bill was read for the first time and referred to the Committee on Commerce

1.1 A bill for an act
1.2 relating to telecommunications; modifying requirements for small wireless facilities;
1.3 requiring a study; appropriating money; amending Minnesota Statutes 2018, section
1.4 237.163, subdivisions 3a, 3b, 3c, 6.

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

1.6 Section 1. Minnesota Statutes 2018, section 237.163, subdivision 3a, is amended to read:

1.7 Subd. 3a. Small wireless facility permits; general. (a) A local government unit:

1.8 (1) may require a telecommunications right-of-way user to obtain a permit or permits
1.9 under this section to place a new wireless support structure or collocate a small wireless
1.10 facility in a public right-of-way managed by the local government unit;

1.11 (2) must not require an applicant for a small wireless facility permit to provide any
1.12 information that:

1.13 (i) has previously been provided to the local government unit by the applicant in an
1.14 application for a small wireless permit, which specific reference shall be provided to the
1.15 local government unit by the applicant; and

1.16 (ii) is not reasonably necessary to review a permit application for compliance with
1.17 generally applicable and reasonable health, safety, and welfare regulations, and to
1.18 demonstrate compliance with applicable Federal Communications Commission regulations
1.19 governing radio frequency exposure, or other information required by this section;

1.20 (3) must ensure that any application for a small wireless facility permit is processed on
1.21 a nondiscriminatory basis; and

2.1 (4) must specify that the term of a small wireless facility permit is equal to the length
 2.2 of time that the small wireless facility is in use, unless the permit is revoked under this
 2.3 section; and

2.4 (5) may require a telecommunications right-of-way user to provide notice to property
 2.5 owners adjacent to a new wireless support structure or small wireless facility before installing
 2.6 the new wireless support structure or small wireless facility in a public right-of-way managed
 2.7 by the local government unit. A local government requiring notice under this clause must
 2.8 require the telecommunications right-of-way user to provide notice to the adjacent property
 2.9 owners no later than seven days after the permit has been applied for or submitted.

2.10 (b) An applicant may file a consolidated permit application to collocate up to 15 small
 2.11 wireless facilities, or a greater number if agreed to by a local government unit, provided
 2.12 that all the small wireless facilities in the application:

2.13 (1) are located within a two-mile radius;

2.14 (2) consist of substantially similar equipment; and

2.15 (3) are to be placed on similar types of wireless support structures.

2.16 In rendering a decision on a consolidated permit application, a local government unit may
 2.17 approve a permit for some small wireless facilities and deny a permit for others, but may
 2.18 not use denial of one or more permits as a basis to deny all the small wireless facilities in
 2.19 the application.

2.20 ~~(e) If a local government unit receives applications within a single seven-day period~~
 2.21 ~~from one or more applicants seeking approval of permits for more than 30 small wireless~~
 2.22 ~~facilities, the local government unit may extend the 90-day deadline imposed in subdivision~~
 2.23 ~~3e by an additional 30 days. If a local government unit elects to invoke this extension, it~~
 2.24 ~~must inform in writing any applicant to whom the extension will be applied.~~

2.25 ~~(d)~~ (c) A local government unit is prohibited from requiring a person to pay a small
 2.26 wireless facility permit fee, obtain a small wireless facility permit, or enter into a small
 2.27 wireless facility collocation agreement solely in order to conduct ~~any of the following~~
 2.28 ~~activities:~~ (1) routine maintenance of a small wireless facility; A local government unit
 2.29 may require advance notice of routine maintenance under this paragraph.

2.30 (d) A local unit of government may require a person to pay a small wireless facility
 2.31 permit fee, obtain a small wireless facility permit, or enter into a small wireless facility
 2.32 collocation agreement in order to conduct:

3.1 ~~(2)~~ (1) replacement of a small wireless facility with a new facility that is ~~substantially~~
 3.2 ~~similar~~ the same or smaller in size, weight, height, and wind or structural loading than the
 3.3 small wireless facility being replaced; or

3.4 ~~(3)~~ (2) installation, placement, maintenance, operation, or replacement of micro wireless
 3.5 facilities that are suspended on cables strung between existing utility poles in compliance
 3.6 with national safety codes.

3.7 ~~A local government unit may require advance notification of these activities if the work~~
 3.8 ~~will obstruct a public right-of-way.~~

3.9 (e) Nothing in this subdivision affects the need for an entity seeking to place a small
 3.10 wireless facility on a wireless support structure that is not owned by a local government
 3.11 unit to obtain from the owner of the wireless support structure any necessary authority to
 3.12 place the small wireless facility, nor shall any provision of this chapter be deemed to affect
 3.13 the rates, terms, and conditions for access to or placement of a small wireless facility or a
 3.14 wireless support structure not owned by a local government unit. This subdivision does not
 3.15 affect any existing agreement between a local government unit and an entity concerning
 3.16 the placement of small wireless facilities on local government unit-owned wireless support
 3.17 structures.

3.18 (f) No later than six months after May 31, 2017, or three months after receiving a small
 3.19 wireless facility permit application from a wireless service provider, a local government
 3.20 unit that has elected to set forth terms and conditions of collocation in a standard small
 3.21 wireless facility collocation agreement shall develop and make available an agreement that
 3.22 complies with the requirements of this section and section 237.162. A standard small wireless
 3.23 facility collocation agreement shall be substantially complete. Notwithstanding any law to
 3.24 the contrary, the parties to a small wireless facility collocation agreement may incorporate
 3.25 additional terms and conditions mutually agreed upon into a small wireless facility collocation
 3.26 agreement. A small wireless facility collocation agreement between a local government
 3.27 unit and a wireless service provider is considered public data not on individuals and is
 3.28 accessible to the public under section 13.03.

3.29 (g) An approval of a small wireless facility permit under this section authorizes the
 3.30 installation, placement, maintenance, or operation of a small wireless facility to provide
 3.31 wireless service and shall not be construed to confer authorization to (1) provide any service
 3.32 other than a wireless service, or (2) install, place, maintain, or operate a wireline backhaul
 3.33 facility in the right-of-way.

3.34 (h) The terms and conditions of collocation under this subdivision:

4.1 (1) may be set forth in a small wireless facility collocation agreement, if a local
4.2 government unit elects to utilize such an agreement;

4.3 (2) must be nondiscriminatory, competitively neutral, and commercially reasonable; and

4.4 (3) must comply with this section and section 237.162.

4.5 Sec. 2. Minnesota Statutes 2018, section 237.163, subdivision 3b, is amended to read:

4.6 Subd. 3b. **Small wireless facility permits; placement.** (a) A local government unit may
4.7 ~~not~~ require the placement of small wireless facilities on any specific wireless support structure
4.8 other than the wireless support structure proposed in the permit application.

4.9 (b) A local government unit ~~must not~~ may limit the placement of small wireless facilities;
4.10 ~~either~~ by minimum separation distances between small wireless facilities or maximum
4.11 height limitations, ~~except that~~. Each wireless support structure installed in the right-of-way
4.12 after May 31, 2017, shall not exceed 50 feet above ground level, ~~unless the local government~~
4.13 ~~unit agrees to a greater height~~, subject to local zoning regulations, and may be subject to
4.14 separation requirements in relation to other wireless support structures.

4.15 (c) Notwithstanding paragraph (b), a wireless support structure that replaces an existing
4.16 wireless support structure that is higher than 50 feet above ground level may be placed at
4.17 the height of the existing wireless support structure, ~~unless the local government unit agrees~~
4.18 ~~to a greater height~~, subject to local zoning regulations.

4.19 (d) Wireless facilities constructed in the right-of-way after May 31, 2017, may not extend
4.20 more than ten feet above an existing wireless support structure in place as of May 31, 2017.

4.21 Sec. 3. Minnesota Statutes 2018, section 237.163, subdivision 3c, is amended to read:

4.22 Subd. 3c. **Small wireless facility permits; approval.** (a) Except as provided in
4.23 subdivision 4, a local government unit shall issue a small wireless facility permit to a
4.24 telecommunications right-of-way user seeking to install a new or replacement wireless
4.25 support structure for a small wireless facility, or to collocate a small wireless facility on a
4.26 wireless support structure in a public right-of-way. In processing and approving a small
4.27 wireless facility permit, a local government unit may condition its approval on compliance
4.28 with:

4.29 (1) generally applicable and reasonable health, safety, and welfare regulations consistent
4.30 with the local government unit's public right-of-way management;

4.31 (2) reasonable accommodations for decorative wireless support structures or signs; and

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

5.3 (b) ~~Except as provided in this paragraph and paragraph (c), a local government unit~~
5.4 ~~has 90 days after the date a small wireless facility permit application is filed to issue or deny~~
5.5 ~~the permit, or the permit is automatically issued. To toll the 90-day clock, the local~~
5.6 ~~government unit must provide a written notice of incompleteness to the applicant within 30~~
5.7 ~~days of receipt of the application, clearly and specifically delineating all missing documents~~
5.8 ~~or information. Information delineated in the notice is limited to documents or information~~
5.9 ~~publicly required as of the date of application and reasonably related to a local government~~
5.10 ~~unit's determination whether the proposed equipment falls within the definition of a small~~
5.11 ~~wireless facility and whether the proposed deployment satisfies all health, safety, and welfare~~
5.12 ~~regulations applicable to the small wireless facility permit request. Upon an applicant's~~
5.13 ~~submittal of additional documents or information in response to a notice of incompleteness,~~
5.14 ~~the local government unit has ten days to notify the applicant in writing of any information~~
5.15 ~~requested in the initial notice of incompleteness that is still missing. Second or subsequent~~
5.16 ~~notices of incompleteness may not specify documents or information that were not delineated~~
5.17 ~~in the original notice of incompleteness. Requests for information not requested in the initial~~
5.18 ~~notice of incompleteness do not toll the 90-day clock. Parties can mutually agree in writing~~
5.19 ~~to toll the 90-day clock at any time. Section 15.99 does not apply to this paragraph or~~
5.20 ~~paragraph (c).~~

5.21 For the purposes of this subdivision, "toll the 90-day clock" means to halt the progression
5.22 of days that count ~~towards~~ toward the 90-day deadline.

5.23 (c) ~~Except as provided in subdivision 3a, paragraph (c), a small wireless facility permit~~
5.24 ~~and any associated encroachment or building permit required by a local government unit,~~
5.25 ~~are deemed approved if the local government unit fails to approve or deny the application~~
5.26 ~~within 90 days after the permit application has been filed, unless the applicant and the local~~
5.27 ~~government unit have mutually agreed in writing to extend the 90-day deadline. If a local~~
5.28 ~~government unit receives applications within a single seven-day period from one or more~~
5.29 ~~applicants seeking approval of permits for more than 20 small wireless facilities, the local~~
5.30 ~~government unit may extend the 90-day deadline imposed under paragraph (b) by an~~
5.31 ~~additional 30 days. If a local government unit elects to extend the deadline under this~~
5.32 ~~paragraph, it must inform in writing any applicant the extension applies to.~~

5.33 (d) Nothing in this subdivision precludes a local government unit from applying generally
5.34 applicable and reasonable health, safety, and welfare regulations when evaluating and
5.35 deciding to approve or deny a small wireless facility permit.

6.1 Sec. 4. Minnesota Statutes 2018, section 237.163, subdivision 6, is amended to read:

6.2 Subd. 6. **Fees.** (a) A local government unit may recover its right-of-way management
6.3 costs by imposing a fee for registration, a fee for each right-of-way or small wireless facility
6.4 permit, or, when appropriate, a fee applicable to a particular telecommunications right-of-way
6.5 user when that user causes the local government unit to incur costs as a result of actions or
6.6 inactions of that user. A local government unit may not recover costs from a
6.7 telecommunications right-of-way user or an owner of a cable communications system
6.8 awarded a franchise under chapter 238 caused by another entity's activity in the right-of-way.

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

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

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

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

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

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

6.28 (d) A wireless service provider may collocate small wireless facilities on wireless support
6.29 structures owned or controlled by a local government unit and located within the public
6.30 roads or rights-of-way without being required to apply for or enter into any individual
6.31 license, franchise, or other agreement with the local government unit or any other entity,
6.32 other than a standard small wireless facility collocation agreement under subdivision 3a,
6.33 paragraph (f), if the local unit of government elects to utilize such an agreement.

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

7.5 (f) Total application fees for a small wireless facility permit must comply with this
 7.6 subdivision with respect to costs related to the permit.

7.7 (g) A local government unit may elect to charge a reasonable fee for each small wireless
 7.8 facility attached to a wireless support structure owned by the local government unit a fee,
 7.9 in addition to other fees or charges allowed under this subdivision, consisting of:

7.10 ~~(1) up to \$150 per year for rent to occupy space on a wireless support structure;~~

7.11 ~~(2) up to \$25 per year for maintenance associated with the space occupied on a wireless~~
 7.12 ~~support structure; and~~

7.13 ~~(3) a monthly fee for electricity used to operate a small wireless facility, if not purchased~~
 7.14 ~~directly from a utility, at the rate of:~~

7.15 ~~(i) \$73 per radio node less than or equal to 100 max watts;~~

7.16 ~~(ii) \$182 per radio node over 100 max watts; or~~

7.17 ~~(iii) the actual costs of electricity, if the actual costs exceed the amount in item (i) or~~
 7.18 ~~(ii).~~

7.19 **Sec. 5. STUDY OF HEALTH IMPACTS OF DEPLOYMENT OF FIFTH**
 7.20 **GENERATION TECHNOLOGY.**

7.21 The commissioner of health must conduct a study on the potential health and
 7.22 environmental impacts resulting from the use of fifth generation technology to transmit
 7.23 wireless data in Minnesota. As part of the study, the commissioner must examine the potential
 7.24 biological effects of electromagnetic radiation at higher frequencies. The study, including
 7.25 any recommendations, must be completed and submitted to the chairs and ranking minority
 7.26 members of the legislative committees with jurisdiction over health care policy and finance
 7.27 on or before January 15, 2021.

7.28 **Sec. 6. APPROPRIATION.**

7.29 \$..... in fiscal year 2021 is appropriated from the general fund to the commissioner of
 7.30 health to conduct the study on potential health impacts of the deployment of fifth generation
 7.31 technology under section 5. This is a onetime appropriation.