



**WISCONSIN LEGISLATIVE COUNCIL
AMENDMENT MEMO**

2017 Assembly Bill 348

**Assembly Substitute
Amendment 1 and Assembly
Amendments 5, 16, and 18 to
Assembly Substitute
Amendment 1**

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Assembly Substitute Amendment 1 (“the substitute amendment”) generally prescribes the authority of the state or a political subdivision (i.e., a city, village, town, or county) regarding: (1) a wireless provider’s use of a right-of-way; (2) collocation of small wireless facilities; (3) access to governmental poles and structures; (4) local authority over communications facilities; (5) dispute resolution; (6) utility poles owned by investor-owned electric utilities; and (7) setback requirements on certain mobile service support structures.

Assembly Amendments 5, 16, and 18 make changes to the substitute amendment, as described below.

RIGHTS-OF-WAY

The Substitute Amendment

Under the substitute amendment, a “right-of-way” means the area on, below, or above a highway, other than a federal interstate highway; sidewalk; utility easement, other than a utility easement for a cooperative association; or other similar property, including property owned or controlled by the Department of Transportation.

The substitute amendment provides that, notwithstanding any local zoning ordinance to the contrary, a wireless provider may construct and operate certain poles, structures, and equipment along, across, upon, and under a right-of-way, subject to all of the following conditions:

- A wireless provider’s facilities may not hinder travel, drainage, maintenance, safety, public health, or the legal use of the right-of-way by certain other persons.

- The height of certain poles, structures, and equipment may not exceed the greater of 50 feet above ground level or 10 feet above the height of certain existing poles, structures, and equipment.
- The height of a wireless facility installed or modified in a right-of-way may not exceed the greater of: (1) 50 feet above ground level; or (2) 10 feet above the tallest existing utility pole or wireless support structure that is in place on the date the bill is enacted.
- The state or a political subdivision may require a wireless provider to repair or pay the cost of certain damage caused by the wireless provider.
- The state or a political subdivision may only charge a wireless provider for the use of a right-of-way up to an amount equal to the lesser of: (1) the direct and actual cost of managing the right-of-way; or (2) \$20 per year per location of certain wireless facilities or structures.

The substitute amendment requires the state or a political subdivision to revise any charges for the use of a right-of-way that are not in compliance with the limitations described above by the first day of the seventh month after enactment and apply those charges to applications received after that time.

The substitute amendment further provides that, subject to applicable termination provisions, existing ordinances and agreements between a wireless provider and the state or a political subdivision that charge a wireless provider for the use of a right-of-way remain in effect for all utility poles or wireless support structures **on which a wireless provider has collocated a small wireless facility**.

Assembly Amendment 18

Assembly Amendment 18 makes the following changes to the substitute amendment regarding rights-of-way:

- Specifies that the height of a wireless facility in a right-of-way may not exceed the greater of: (1) 50 feet above ground level; or (2) 10 feet above the tallest existing utility pole or wireless support structure that is in place on the effective date **and that is located in the same right-of-way**.
- Deletes the provisions of the substitute amendment regarding revisions to charges, and instead it provides that the state or a political subdivision must make available, through ordinance or otherwise, charges for the use of a right-of-way that comply with the limitations described in the substitute amendment, by the first day of the seventh month after enactment or within three months after the state or a political subdivision receives its first request to collocate a small wireless facility on a governmental pole other than certain utility poles, whichever is later.
- Deletes the provisions of the substitute amendment regarding existing agreements, and instead it provides that, subject to applicable termination provisions, existing

agreements for the use of a right-of-way between a wireless provider and the state or a political subdivision **remain in effect for two years**, after which time the state or a political subdivision must amend the agreement to comply with the limitations provided for the substitute amendment.

Assembly Amendment 5

As summarized above, the **substitute amendment**, prohibits the state or a political subdivision from entering into an agreement with any person “for the use of a right-of-way or the construction, operation, marketing, or maintenance of wireless facilities, wireless support structures, or the collocation of small wireless facilities.” **Assembly Amendment 5** modifies this language to prohibit a political subdivision from entering into an exclusive agreement “for the use of a right-of-way **for** the construction, operation marketing, or maintenance of wireless facilities, wireless support structures, or **for** the collocation of small wireless facilities.” [Emphasis added.]

COLLOCATION OF SMALL WIRELESS FACILITIES

The Substitute Amendment

The substitute amendment provides that, notwithstanding any local zoning ordinance to the contrary, a small wireless facility¹ qualifies as a permitted use if it is located within a right-of-way, or outside a right-of-way if it is located on property that is not zoned exclusively for single-family residential use. The substitute amendment also generally prohibits the state or a political subdivision from prohibiting or regulating the collocation of a small wireless facility.

With certain exceptions, the substitute amendment authorizes the state or a political subdivision to require an application for a permit for the collocation of a small wireless facility or the construction or operation of certain poles and wireless support structures, subject to all of the following conditions:

- The state or a political subdivision may not charge an application fee that includes certain costs or that exceeds the lesser of: (1) the amount charged for a building permit for a similar activity; or (2) \$100 each for up to five small wireless facilities and \$50 for each additional facility.
- Generally, the state or political subdivision must approve a permit application unless the project does not meet certain state codes.

¹ The substitute amendment generally defines a “small wireless facility” to mean a wireless facility with certain size limitations, including that each antenna is located inside an enclosure of no more than six cubic feet and all other wireless equipment associated with the wireless facility is cumulatively no more than 28 cubic feet, subject to certain other limitations.

- A political subdivision may prohibit a communications service provider from installing a structure in the right-of-way of a historic or underground district pursuant to an ordinance enacted on or before January 1, 2014.
- An applicant may file a consolidated permit application to collocate up to 30 small wireless facilities.
- Generally, an applicant may consider its permit application approved if the state or a political subdivision fails to approve or deny an application within 90 days, or within 60 days if the application does not relate to a new facility, pole, or structure.

Assembly Amendment 18

Assembly Amendment 18 replaces the provisions of the substitute amendment regarding approval deadlines with all of the following:

- If a permit application involves a new utility pole or wireless support structure, and the state or a political subdivision fails to approve or deny the application not later than 90 days after its receipt, the applicant may consider its application approved.
- If a permit application proposes to collocate wireless facilities to an existing utility pole or wireless support structure, or replace an existing utility pole or wireless support structure, and the state or a political subdivision fails to approve or deny the application not later than 60 days after its receipt, the applicant may consider its application approved.
- If there is any type of construction, building, or encroachment permit required by a political subdivision that relates to a permit under either of the two circumstances described above, and the political subdivision fails to approve or deny that application within the specified 60-day or 90-day time frame, the applicant may consider its application approved.

ACCESS TO GOVERNMENTAL POLES AND STRUCTURES

The Substitute Amendment

The substitute amendment provides that the authority of the state or a political subdivision over its own poles and structures is subject to all of the following limitations:

- The state or a political subdivision may not enter into an exclusive agreement with any person for the right to use a pole or structure.
- The state or a political subdivision must comply with certain conditions when determining the work and cost associated with preparing a pole or structure to be used by another person.
- Except with regard to certain utility poles owned by the state or a political subdivision, the amount that the state or a political subdivision may charge a person

to collocate on one of its poles or structures is limited to the amount of the actual costs of allowing the use, or \$100 per pole per year, whichever is less.

The substitute amendment requires the state or a political subdivision to revise any charges that do not comply with the limitations described above by the first day of the seventh month after enactment and apply those charges to applications received after that time.

The substitute amendment further provides that existing agreements between a wireless provider and the state or a political subdivision that charge a wireless provider for the collocation of a small wireless facilities on a pole owned by the state or a political subdivision, other than certain utility poles, remain in effect **where the wireless provider has collocated a small wireless facility**, subject to applicable termination provisions.

Assembly Amendment 18

Assembly Amendment 18 deletes the provisions of the substitute amendment regarding revisions to charges and instead it provides that the state or a political subdivision must make available, through ordinance or otherwise, charges that comply with the limitations described above, by the first day of the seventh month after enactment or within three months after the state or a political subdivision receives its first request for access to the right-of-way by a wireless provider, whichever is later.

Assembly Amendment 18 deletes the provisions of the substitute amendment regarding existing agreements and instead provides that existing agreements between a wireless provider and the state or a political subdivision that relate to the collocation of small wireless facilities in a right-of-way **remain in effect for two years**, at which time the state or a political subdivision must amend the agreement to comply with the limitations in the substitute amendment.

Assembly Amendment 16

With regard to certain utility poles, Assembly Amendment 16 authorizes the state or a political subdivision not to adhere to certain conditions otherwise required by the substitute amendment with regard to determining the work and cost associated with preparing a pole to be used by another person.

LOCAL AUTHORITY OVER COMMUNICATIONS FACILITIES

In general, the **substitute amendment** limits local authority over the placement or operation of communications facilities in a right-of-way by entities authorized to operate in the right-of-way, including wireless providers and their affiliates. The **substitute amendment** also prohibits a political subdivision from imposing or collecting fees on communications services except to the extent specifically provided for in an authorization to operate in the right-of-way.

DISPUTE RESOLUTION

The Substitute Amendment

The substitute amendment provides the following with regard to disputes arising from requirements contained in the substitute amendment:

- A dispute regarding the amount that the state or a political subdivision charges a wireless provider to collocate on certain utility poles owned by the state or a political subdivision shall be decided by the Public Service Commission (PSC).
- Any other dispute shall be decided by a court of competent jurisdiction.
- While a dispute regarding access to a right-of-way is pending, a political subdivision must allow a wireless provider access to the right-of-way at a temporary rate of one-half of the political subdivision's proposed rate or \$20 per year, whichever is less.
- While a dispute regarding the use of governmental poles is pending, the state or a political subdivision must allow access to the pole at a temporary rate not to exceed \$20 per year.

Assembly Amendment 16

Assembly Amendment 16 clarifies that a decision by the PSC regarding the amount that the state or a political subdivision charges a wireless provider to collocate on certain poles is reviewable by a court.

INDEMNIFICATION

The **substitute amendment** generally requires a wireless provider to indemnify and hold harmless a political subdivision for any liability and loss from personal injury or property damage that results from the provider's use of a right-of-way, and requires a wireless provider to waive certain claims it may have against a political subdivision with respect to damages.

SETBACK REQUIREMENTS FOR A MOBILE SERVICE SUPPORT STRUCTURE

Under current law, a political subdivision may not impose a setback requirement on a mobile service support structure.

The Substitute Amendment

The substitute amendment provides that a political subdivision may enact an ordinance imposing setback requirements related to the placement of a mobile service support structure, subject to all of the following limitations:

- The length of the setback distance imposed is not greater than the height of the proposed structure.

- The setback requirement applies only to new construction or to a substantial modification of an existing mobile service support structure.
- The setback requirement does not apply to an existing or new utility pole or wireless support structure that supports a small wireless facility, if the pole or facility does not exceed the greater of: (1) 50 feet above ground level; or (2) 10 feet above the height of certain existing poles, structures, and equipment.
- The setback requirement only applies to a mobile service support structure that is constructed on or adjacent to a parcel of land that is subject to a zoning ordinance that permits only single-family residential use on that parcel.
- The setback requirement is measured from the lot line of a parcel that is zoned for only single-family residential use or for which only single-family residential use is a permitted use, or from the lot line of a parcel that is adjacent to such a parcel.

The substitute amendment also provides that a political subdivision must allow a mobile service support structure to be constructed with a setback that is less than the height of the proposed structure, if all property owners of lots that are zoned for only single-family residential use that are located within a radius of three times the height of the structure consent in writing.

Assembly Amendment 18

Assembly Amendment 18 expands the authority of a political subdivision to impose a setback requirement by narrowing the exemption from setback requirements to include only an existing or new utility pole or wireless support structure **in a right-of-way** that supports a small wireless facility, if the pole or facility does not exceed the height limits described above.

Assembly Amendment 18 removes the provisions of the substitute amendment prescribing from where the setback requirements are measured and it instead provides that a setback requirement for a mobile support structure on a parcel must be measured from the lot lines of other adjacent and non-adjacent parcels zoned for only single-family residential use or for which only single-family residential use is a permitted use.

UTILITY POLES OWNED BY INVESTOR-OWNED ELECTRIC UTILITIES

The **substitute amendment** provides that nothing in the substitute amendment replaces or supersedes contractual obligations or federal laws regarding utility poles that relate to wireless providers and investor-owned utilities.

Assembly Amendment 18 instead provides that nothing in the amendment adds to, replaces, or supersedes any federal laws regarding utility poles owned by investor-owned electric utilities and the amendment does not impose or otherwise affect any rights, controls, or contractual obligations investor-owned utilities may establish with respect to their utility poles.

BILL HISTORY

The substitute amendment and Assembly Amendments 16 and 18 were introduced by Representative Kuglitsch. Assembly Amendment 5 was introduced by Representatives Ohnstad and Crowley. On June 6, 2017, the Assembly Committee on Jobs and the Economy recommended: adoption of Assembly Amendment 5 and Assembly Amendment 16 to the substitute amendment by votes of Ayes, 11; Noes, 0. The committee recommended adoption of the substitute amendment, as amended, and passage of Assembly Bill 348, as amended, on votes of Ayes, 9; Noes, 2. On June 21, 2017, the Assembly adopted Assembly Amendments 5, 16, and 18; and the substitute amendment, as amended, on voice votes. On the same day, the Assembly passed Assembly Bill 348, as amended, on a voice vote.

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