WISCONSIN LEGISLATIVE COUNCIL
AMENDMENT MEMO

2017 Assembly Bill 348	Senate Substitute Amendment 1 and Senate Amendment 2 to Senate Substitute Amendment 1
Memo published: **October 31, 2017**	*Contact*: **Michael Queensland, Senior Staff Attorney** **Zach Ramirez, Staff Attorney**

Engrossed 2017 Assembly Bill 348 ("the bill") 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[1] 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.

Senate Substitute Amendment 1 ("the substitute amendment") and Senate Amendment 2 to the substitute amendment make changes to the bill, as described below.

SENATE SUBSTITUTE AMENDMENT 1

Use of the Term "Small Wireless Facility"

Very generally, **the bill** creates a new statutory framework regarding the deployment of wireless facilities, which include small wireless facilities and conventional wireless facilities. The bill 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.

With regard to certain provisions governing the deployment of wireless facilities, **the substitute amendment** specifies that the new statutory framework only applies to deploying

[1] "Collocate" or "collocation" means the placement, mounting, replacement, modification, operation, or maintenance of a wireless facility on or adjacent to a wireless support structure or utility pole.

small wireless facilities. Note that the provisions in the bill that relate to setback requirements on certain mobile service support structures are not affected by this change.

Damage Caused by a Wireless Provider in a Right-of-Way

The bill generally allows a state or political subdivision to require a wireless provider to repair all damage directly caused by the wireless provider in a right-of-way involving wireless facilities, wireless support structures, or utility poles, and to return the right-of-way to its former condition. If the wireless provider fails to make required repairs, and certain conditions are met, the state or a political subdivision may make the necessary repairs and charge the liable party.

The substitute amendment provides that a political subdivision is not prevented from pursuing an action under s. 86.02, Stats., for injury to a highway. Generally, this law provides that any person who injures a highway is liable for treble (triple) damages to be recovered by the political subdivision responsible for maintaining the injured highway.

Permits to Collocate a Small Wireless Facility – Approval Timelines

Subject to certain conditions, **the bill** allows the state or a political subdivision to require an application for a permit to collocate a small wireless facility or to construct, modify, maintain, or operate a new or replacement utility pole or wireless support structure. Under the bill, a political subdivision must review a permit application consistent with the following timelines, or the applicant may consider its application approved:

- If a permit application involves a new utility pole or wireless support structure, the state or a political subdivision must approve or deny the application not later than 90 days after its receipt.

- 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, the state or a political subdivision must approve or deny the application not later than 60 days after its receipt.

- 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, the political subdivision must approve or deny that application within the specified 60-day or 90-day time frame.

The substitute amendment allows an applicant and a political subdivision to mutually agree in writing to extend the timelines described above.

Permits to Collocate a Small Wireless Facility – Conditions on Approval

The substitute amendment adds a new provision, not in the bill, that allows the state or a political subdivision to condition approval of a permit on compliance with reasonable and nondiscriminatory relocation, abandonment, or bonding requirements that are consistent with state law applicable to other occupiers of rights-of-way.

Access to Governmental Structures for Make-Ready Work

Except with regard to certain utility poles owned by the state or a political subdivision, **the bill** requires a governmental unit to provide a good faith estimate for any make-ready work necessary to enable a pole owned by it to support a requested collocation within 60 days after receipt of a complete application. Under the bill, make-ready work must be completed within 60 days of written acceptance of the estimate by the applicant.

In addition to what is provided in the bill, **the substitute amendment** allows a governmental unit the option to allow an applicant access to the governmental pole for the applicant to make the estimate. Under the substitute amendment, make-ready work must be completed within 60 days after the applicant's written acceptance of the estimate provided by the governmental unit or within 60 days after the applicant makes the estimate.

SENATE AMENDMENT 2 TO SENATE SUBSTITUTE AMENDMENT 1

Rates and Fees for Use of Rights-of-Way

Under **the bill and the substitute amendment**, the state or a political subdivision may charge a wireless provider a rate or fee for use of a right-of-way to construct or collocate a small wireless facility or wireless support structure in the right-of-way. The bill and the substitute amendment apply several conditions to the rate or fee that the state or a political subdivision may charge, including a condition that the fee or rate may not result in double recovery if existing fees, rates, or taxes already recover the direct and actual cost of managing the right-of-way.

Senate Amendment 2 provides that the fee or rate charged by the state or a political subdivision may not result in double recovery **from the wireless provider**.

Right of Access to Rights-of-Way

With certain exceptions, **the bill and the substitute amendment** provide that a wireless provider has the right to collocate small wireless facilities and construct, modify, maintain, and operate utility poles, wireless support structures, and other related facilities and structures along, across, upon, and under a right of way. Under the bill and the substitute amendment:

> Such facilities and structures may not obstruct or hinder travel, drainage, maintenance, or the public health, safety, and general welfare on or around the right-of-way, or obstruct the legal use of the right-of-way for other communications providers, public utilities, cooperative associations organized under ch. 185 for the purpose of producing or furnishing heat, light, power, or water to their members only, or pipes or pipelines transmitting liquid manure.

Senate Amendment 2 specifies that the restriction quoted above applies not only to facilities and structures in the right-of-way, but also activities related to the installation and maintenance of the facilities and structures. Senate Amendment 2 also allows a political subdivision to enact an ordinance consistent with this restriction.

Historic and Underground Districts

The bill and the substitute amendment allow a political subdivision to enact an ordinance prohibiting a communications service provider from installing structures in the right-of-way of a historic district or an underground district, except that the ordinance may not prohibit collocations or the replacement of existing structures. Under the bill and the substitute amendment, this provision only applies to ordinances enacted on or before January 1, 2014.

Senate Amendment 2 eliminates the condition that an ordinance described above must have been enacted on or before January 1, 2014.

BILL HISTORY

Senate Action

The substitute amendment and Senate Amendment 2 to the substitute amendment were introduced by Senator LeMahieu. On October 24, 2017, the Senate Committee on Elections and Utilities voted to recommend adoption of Senate Amendment 2 to the substitute amendment on a vote of Ayes, 5; Noes, 0. The committee recommended adoption of the substitute amendment, as amended, and concurrence in Assembly Bill 348, as amended, on votes of Ayes, 4; Noes, 1.

Assembly Action

Assembly Substitute Amendment 1 and Assembly Amendments 16 and 18 to Assembly Substitute Amendment 1 were introduced by Representative Kuglitsch. Assembly Amendment 5 to Assembly Substitute Amendment 1 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 Assembly Substitute Amendment 1 by votes of Ayes, 11; Noes, 0. The committee recommended adoption of Assembly Substitute Amendment 1, 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 Assembly Substitute Amendment 1, 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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