



2017 SENATE BILL 425

October 4, 2017 - Introduced by Senator LEMAHIEU, cosponsored by Representative KUGLITSCH. Referred to Committee on Elections and Utilities.

1 **AN ACT** *to create* 66.0404 (4e) and 66.0414 of the statutes; **relating to:** limiting
2 the authority of the state and political subdivisions to regulate certain wireless
3 facilities and authorizing political subdivisions to impose setback requirements
4 for certain mobile service support structures.

Analysis by the Legislative Reference Bureau

This bill creates a regulatory framework for the state and political subdivisions (cities, villages, towns, and counties) for the deployment of wireless equipment and facilities, including the placement of such items in rights-of-way (ROW), the collocation of such facilities on existing poles and structures, the regulation of access to governmental structures by wireless services and infrastructure providers, and limitations on local authority to regulate such activities. The bill also authorizes political subdivisions to impose setback requirements for certain mobile service support structures.

Rights-of-way

With regard to ROW, the bill does the following:

1. Prohibits the state and political subdivisions from entering into an exclusive agreement with any person for the use of ROW for the construction, operation, or maintenance of small wireless facilities, wireless support structures, or for the collocation of small wireless facilities (collectively, wireless facilities and structures). The bill defines “wireless facility” as equipment at a fixed location that enables wireless service between user equipment and a wireless network. Under the bill, a “small wireless facility” is a facility that has specified dimensions.

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2. Provides that the state and political subdivisions may impose rates or fees on wireless providers only if they charge other communications service providers or utilities for the use of ROW, subject to a number of conditions and limitations.

3. Subject to a number of exceptions, and notwithstanding a political subdivision's zoning ordinances, authorizes a wireless provider to collocate small wireless facilities and construct, modify, maintain, and operate (collectively, construct and operate) utility poles, wireless support structures, cable, and related appurtenances and facilities along, across, upon, and under ROW, provided such activity does not obstruct or hinder travel, drainage, maintenance, or the public health or safety or impede other uses of ROW by communications service providers, public utilities, or cooperatives.

4. Limits the height of utility poles, wireless support structures, and small wireless facilities. With regard to the rights of a wireless provider to construct small wireless facilities or modify utility poles, wireless support structures, and related appurtenances, the bill allows a political subdivision to propose an alternate location within 50 feet of the proposed location, which the wireless provider must use if it has the right to do so and the alternate location is reasonable and does not impose additional cost or technical issues, as determined by the wireless provider.

5. Allows the state or political subdivisions to require a wireless provider to repair all damage that is directly caused by its activities in ROW that involve small wireless facilities and structures.

Collocation

With regard to the activities of a wireless provider within and outside a ROW, the bill does the following:

1. Subject to a number of exceptions, prohibits the state and political subdivisions from prohibiting, regulating, or charging any person for the collocation of small wireless facilities.

2. Notwithstanding a political subdivision's zoning ordinances, classifies small wireless facilities as a permitted use that is not subject to such zoning ordinances if they are collocated in or outside a ROW if the property is not zoned exclusively for single-family residential use.

3. Subject to a number of conditions, authorizes the state and political subdivisions to require an application for a permit to collocate a small wireless facility and to construct and operate a new or replacement utility pole or wireless support structure if the permit is of general applicability and does not apply exclusively to wireless facilities. The bill imposes various deadlines relating to the permit application and approval process. Generally, permits for collocation or replacement must be approved or denied within 60 days of receipt, and permits that involve new wireless facilities and structures must be approved or denied within 90 days of receipt. However, those deadlines may be extended by mutual agreement. If the state or a political subdivision misses a deadline for an application, the bill allows the applicant to consider the application approved.

4. Requires the state or political subdivisions to approve permit applications unless the application does not meet applicable codes, which are defined as state codes related to electrical wiring, plumbing, and fire prevention; commercial

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building codes; uniform dwelling codes; and local amendments to those codes. However, the bill 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 ROW.

5. Prohibits the state and political subdivisions from requiring an applicant to perform services unrelated to the collocation to which a permit relates, and prohibits such governmental units from requiring a wireless provider permit applicant to provide more information in its permit application than the governmental unit requires of communications service providers for the same type of permit.

6. Requires an applicant whose permit application is approved to commence the activity authorized by the permit within 365 days after its receipt and requires the applicant to pursue work on the activity until completion. However, the bill prohibits the state and political subdivisions from placing any time limit on an application related to the permit.

7. Prohibits the state and political subdivisions from imposing a moratorium on filing, receiving, or processing applications, or issuing permits for the collocation of small wireless facilities.

8. Authorizes a political subdivision to enact an ordinance to prohibit, in a nondiscriminatory way, a communications service provider from installing structures in the ROW of a historic district or an area in which underground utilities are located, except that the ordinance may not prohibit collocations or the replacement of existing structures. In addition, such an ordinance had to have been in effect on or before January 1, 2014.

9. Subject to a number of conditions, authorizes the state and political subdivisions to charge an application fee for permits if an application fee is required for similar types of permit applications related to other types of commercial development. Generally, neither the state nor a political subdivision may require applications, permits, or fees for routine maintenance; the replacement of small wireless facilities with substantially similar or smaller facilities; or installation, maintenance, operation, or replacement of microwireless facilities strung on cables between existing utility poles or wireless support structures.

Access to governmental structures

With regard to regulating access to governmental structures, the bill does the following:

1. Defines “governmental pole” as a utility pole that is owned or operated by the state or a political subdivision in a ROW, and a pole or similar structure owned or operated by the state or a political subdivision in a ROW that supports only wireless facilities.

2. Defines “utility pole for designated services” (UPDS) as a utility pole owned or operated in a ROW by the state or a political subdivision or a utility district.

3. Prohibits a person who owns or controls a governmental pole or UPDS from entering into an exclusive arrangement with any person for the right to attach to or use such poles, and prohibits the owner of such poles from imposing fees or charges

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for the use of the poles that discriminate based on the type of collocation provided by the person who contracts to use the poles.

4. Provides that the rate a political subdivision may charge for collocating a small wireless facility on a UPDS is governed by agreement between the political subdivision and a wireless provider and provides that, if no agreement is reached, the rate is subject to the Public Service Commission's authority under current law.

5. Subject to a number of conditions, limits the rate an owner of a governmental pole, other than a UPDS, charges another person to collocate on the pole to an amount that is sufficient to recover the owner's actual, direct, and reasonable costs, subject to a maximum of \$100 per pole per year.

6. Specifies deadlines for the state and political subdivisions to make available rates, fees, and terms for collocation of small wireless facilities on governmental poles that comply with the bill's requirements and to amend existing agreements relating to collocation in the ROW.

7. Provides that a person who owns or controls a governmental pole other than a UPDS may not require more make-ready work than required to meet applicable codes or industry standards, and prohibits fees for make-ready work from including costs related to preexisting conditions, prior damage, or noncompliance with current standards. Such fees may not exceed actual costs or the amount charged to other communications service providers for similar work.

8. Requires the state and political subdivisions to authorize the collocation of small wireless facilities on wireless support structures and governmental poles that are not located within ROW to the same extent that the governmental unit permits access to such structures for other commercial projects or uses.

Local authority, dispute resolution

With regard to the authority of a political subdivision, the bill does the following:

1. Subject to the limitations contained in the bill, and federal law, authorizes a political subdivision to exercise zoning, land use, planning, and permitting authority with respect to wireless support structures and utility poles.

2. In general, prohibits a political subdivision from exercising authority over the design, engineering, construction, installation, or operation of any small wireless facility located inside or on the site of any campus, stadium, or athletic facility not owned or controlled by the political subdivision.

3. Limits regulatory authority over the placement or operation of communications facilities in a ROW by entities authorized to operate in the ROW on the bill's effective date or by the wireless provider affiliates of such entities.

4. Provides a mechanism for political subdivisions to allow the placement of a small wireless facility or wireless support structure at a temporary rate pending the resolution of a ROW dispute.

Indemnification

In general, the bill 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 use or occupancy of ROW by the wireless provider, and

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requires a wireless provider to waive any claims it may have against a political subdivision with respect to damages, however caused, based on the theory of liability.

Setback requirements for a mobile service support structure

Generally, under current law, a political subdivision may not impose a setback requirement for a mobile service support structure. This bill grants a political subdivision limited authority to impose a setback requirement on the placement of such a structure with regard to new or substantially modified structures. Under the bill, a requirement could apply only to a structure that is constructed on land that is zoned for only single-family residential use or on adjacent land. In addition, the setback requirement must be based on the height of the proposed structure, and the requirement may not exceed the height of the proposed structure. The bill also provides, however, that a setback requirement does not apply to an existing or new utility pole, or wireless support structure that supports small wireless facilities, if the pole or facility meets the height limitations specified in the bill for such a pole or facility.

Also under the bill, a political subdivision must allow a setback of a proposed mobile service support structure that is less than the height of the structure if all property owners of lots zoned for only single-family residential use, located within a radius of three times the height of the structure, consent to such placement.

For further information see the ***state and local*** fiscal estimate, which will be printed as an appendix to this bill.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

1 **SECTION 1.** 66.0404 (4e) of the statutes is created to read:

2 66.0404 (4e) SETBACK REQUIREMENTS. (a) Notwithstanding sub. (4) (r), and
3 subject to the provisions of this subsection, a political subdivision may enact an
4 ordinance imposing setback requirements related to the placement of a mobile
5 service support structure that applies to new construction or the substantial
6 modification of facilities and support structures, as described in sub. (2).

7 (b) A setback requirement may apply only to a mobile service support structure
8 that is constructed on or adjacent to a parcel of land that is subject to a zoning
9 ordinance that permits only single-family residential use on that parcel. A setback
10 requirement does not apply to an existing or new utility pole, or wireless support

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1 structure in a right-of-way that supports a small wireless facility, if the pole or
2 facility meets the height limitations in s. 66.0414 (2) (e) 2. and 3.

3 (c) The setback requirement under par. (b) for a mobile service support
4 structure on a parcel shall be measured from the lot lines of other adjacent and
5 non-adjacent parcels zoned for only single-family residential use or for which only
6 single-family residential use is a permitted use.

7 (d) A setback requirement must be based on the height of the proposed mobile
8 service support structure, and the setback requirement may not be a distance that
9 is greater than the height of the proposed structure and, subject to par. (e), may be
10 a distance that is less than the height of the proposed structure.

11 (e) A political subdivision shall allow a setback of a proposed mobile service
12 support structure that is less than the height of the proposed structure if all property
13 owners of lots that are zoned for only single-family residential use, that are located
14 within a radius of 3 times the height of the proposed structure, consent in writing to
15 such placement of the proposed structure.

16 **SECTION 2.** 66.0414 of the statutes is created to read:

17 **66.0414 Small wireless facilities. (1) DEFINITIONS.** In this section:

18 (a) “Antenna” means communications equipment that transmits and receives
19 electromagnetic radio signals and is used in the provision of wireless services.

20 (b) “Applicable codes” means the state electrical wiring code, as defined in s.
21 101.80 (4), the state plumbing code specified in s. 145.13, the fire prevention code
22 under ch. SPS 314, Wis. adm. code, the Wisconsin commercial building code under
23 chs. SPS 361 to 366, the Wisconsin uniform dwelling code under chs. SPS 320 to 325,
24 and local amendments to those codes enacted solely to address imminent threats of
25 destruction of property or injury to persons.

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- 1 (c) “Applicant” means a wireless provider that submits an application.
- 2 (d) “Application” means an application for a permit under this section to
3 collocate a small wireless facility or to install or modify a utility pole or wireless
4 support structure.
- 5 (e) “Collocate” or “collocation” means the placement, mounting, replacement,
6 modification, operation, or maintenance of a wireless facility on or adjacent to a
7 wireless support structure or utility pole.
- 8 (f) “Communications service provider” means a cable operator, as defined in 47
9 USC 522 (5); a provider of information service, as defined in 47 USC 153 (24); a
10 telecommunications carrier, as defined in 47 USC 153 (51); or a wireless provider.
- 11 (g) “Fee” means a one-time charge.
- 12 (h) “Governmental pole” means a utility pole that is owned or operated by the
13 state or by a political subdivision in a right-of-way, and a pole or similar structure
14 owned or operated by the state or a political subdivision in a right-of-way that
15 supports only wireless facilities.
- 16 (i) “Investor-owned electric utility” means a public utility whose purpose is the
17 generation, transmission, delivery, or furnishing of electric power but does not
18 include a public utility owned and operated wholly by a municipality or a cooperative
19 association organized under ch. 185.
- 20 (j) “Microwireless facility” means a small wireless facility that does not exceed
21 24 inches in length, 15 inches in width, and 12 inches in height and that has no
22 exterior antenna longer than 11 inches.
- 23 (k) “Permit” means written authorization required by the state or a political
24 subdivision to perform an action, or initiate, continue, or complete a project.
- 25 (L) “Political subdivision” means any city, village, town, or county.

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1 (m) "Rate" means a recurring charge.

2 (n) "Right-of-way" means the area on, below, or above a highway, as defined
3 in s. 340.01 (22), other than a federal interstate highway; sidewalk; utility easement,
4 other than a utility easement for a cooperative association organized under ch. 185
5 for purposes of providing or furnishing heat, light, power, or water to its members
6 only; or other similar property, including property owned or controlled by the
7 department of transportation.

8 (o) "Small wireless facility" means a wireless facility to which all of the
9 following apply:

10 1. Each antenna is located inside an enclosure of no more than 6 cubic feet or,
11 in the case of an antenna that has exposed elements, the antenna and all of its
12 exposed elements could fit within an enclosure of no more than 6 cubic feet.

13 2. All other wireless equipment associated with the facility is cumulatively no
14 more than 28 cubic feet, except that when calculating the allowable volume for
15 purposes of this subdivision, an electric meter, concealment elements, a
16 telecommunications demarcation box, a ground-based enclosure, a power transfer
17 switch, and vertical cable runs for the connection of power and other services may
18 not be included.

19 (p) "Utility pole" means a structure that is used in whole or in part by a
20 communications service provider or for electric distribution, lighting, traffic control,
21 signage, or a similar function but does not include a structure that supports only a
22 wireless facility.

23 (q) "Utility pole for designated services" means a utility pole owned or operated
24 in a right-of-way by the state, a political subdivision, or a utility district that is

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1 designed to, or used to, carry electric distribution lines, or cables or wires for
2 telecommunications, cable, or electric service.

3 (r) "Wireless facility" means equipment at a fixed location that enables wireless
4 service between user equipment and a wireless network, not including the structure
5 or improvements on, under, or within which the equipment is collocated. "Wireless
6 facility" includes a small wireless facility. "Wireless facility" does not include any of
7 the following:

- 8 1. A wireline backhaul facility.
- 9 2. Coaxial or fiber-optic cable between utility poles or wireless support
10 structures or otherwise not immediately adjacent to or directly associated with a
11 particular antenna.

12 (s) "Wireless infrastructure provider" means any person, other than a wireless
13 services provider, that builds or installs wireless communication transmission
14 equipment, wireless facilities, or wireless support structures.

15 (t) "Wireless provider" means a wireless infrastructure provider or a wireless
16 services provider.

17 (u) "Wireless services" means any service using licensed or unlicensed wireless
18 spectrum, including the use of a Wi-Fi network, whether at a fixed location or by
19 means of a mobile device, that is provided using wireless facilities.

20 (v) "Wireless services provider" means any person who provides wireless
21 services.

22 (w) "Wireless support structure" means an existing pole or other freestanding
23 structure, other than a utility pole, that is designed to support, or capable of
24 supporting, wireless facilities.

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1 (x) "Wireline backhaul facility" means a facility for providing wireline backhaul
2 service.

3 (y) "Wireline backhaul service" means the transport of communications
4 services by wire from wireless facilities to a network.

5 **(2) RIGHTS-OF-WAY.** (a) *Applicability.* This subsection applies only to the
6 activities of a wireless provider within a right-of-way.

7 (b) *Exclusive use prohibited.* Neither the state nor a political subdivision may
8 enter into an exclusive arrangement with any person for the use of a right-of-way
9 for the construction, operation, marketing, maintenance, or collocation of small
10 wireless facilities or wireless support structures.

11 (c) *Rates and fees.* The state or a political subdivision may charge a wireless
12 provider a rate or fee for the use a right-of-way with respect to the construction or
13 collocation of a small wireless facility or wireless support structure in the
14 right-of-way only if the state or political subdivision charges other communications
15 service providers or utilities for the use of the right-of-way. If the state or a political
16 subdivision charges a wireless provider a rate or fee as described in this paragraph,
17 all of the following apply:

18 1. Subject to subd. 5., the fee or rate must be limited to no more than the direct
19 and actual cost of managing the right-of-way.

20 2. Except as provided in par. (d), the fee or rate must be competitively neutral
21 with regard to other users of the right-of-way.

22 3. The fee or rate may not result in a double recovery by the state or political
23 subdivision if existing fees, rates, or taxes already recover the direct and actual cost
24 of managing the right-of-way.

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1 4. The fee or rate may not be in the form of a franchise or other fee based on
2 revenue or customer counts.

3 5. The fee or rate may not exceed an annual amount equal to \$20 multiplied
4 by the number of utility poles or wireless support structures in the state's or political
5 subdivision's geographic jurisdiction on which the wireless provider has collocated
6 a small wireless facility antenna.

7 (d) *Rate or fee adjustment.* 1. Except as provided in subd. 2., by the later of the
8 first day of the 7th month beginning after the effective date of this subdivision ...
9 [LRB inserts date], or 3 months after receiving its first request for access to the
10 right-of-way by a wireless provider, the state or a political subdivision shall make
11 available, through ordinance or otherwise, rates, fees, and terms for such access that
12 comply with this subsection.

13 2. Agreements between a wireless provider and the state or a political
14 subdivision that are in effect on the effective date of this subdivision ... [LRB inserts
15 date], and that relate to access to the right-of-way, remain in effect, subject to
16 applicable termination provisions, except that by the first day of the 25th month
17 beginning after the effective date of this subdivision ... [LRB inserts date], the state
18 or political subdivision shall amend any such agreement to comply with the rates,
19 fees, and terms required under this subsection.

20 (e) *Right of access.* 1. Except as otherwise provided in this subsection and subs.
21 (3) (c) 4. and (4), and notwithstanding ss. 182.017 and 196.58 and any zoning
22 ordinance enacted by a political subdivision under s. 59.69, 60.61, or 62.23, a wireless
23 provider shall have the right to collocate small wireless facilities and construct,
24 modify, maintain, and operate utility poles, wireless support structures, conduit,
25 cable, and related appurtenances and facilities along, across, upon, and under a

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

7 2. Except as provided in subd. 4., the height of a utility pole or wireless support
8 structure installed, or modified, in a right-of-way may not exceed the greater of:

9 a. Ten feet above the tallest existing utility pole that is in place on the effective
10 date of this subd. 2. a. [LRB inserts date], and that is located within 500 feet of
11 the new or modified pole or structure in the same right-of-way.

12 b. Fifty feet above ground level.

13 3. The height of a small wireless facility installed, or modified, in a
14 right-of-way may not exceed the greater of:

15 a. Ten feet above the tallest existing utility pole or wireless support structure
16 that is in place on the effective date of this subd. 3. a. [LRB inserts date], and that
17 is located in the same right-of-way.

18 b. The maximum height described in subd. 2. b.

19 4. A wireless provider may construct, modify, and maintain a utility pole,
20 wireless support structure, or small wireless facility along, across, upon, and under
21 a right-of-way that exceeds the height limits in this paragraph if the wireless
22 provider complies with height limits under the zoning ordinances enacted by a
23 political subdivision under s. 59.69, 60.61, or 62.23.

24 5. With regard to the rights of a wireless provider to construct small wireless
25 facilities or modify utility poles, wireless support structures, conduit, cable, and

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1 related appurtenances and facilities as described in subd. 1., a political subdivision
2 may propose an alternate location within 50 feet of the proposed location, which the
3 wireless provider shall use if it has the right to use the alternate structure on
4 reasonable terms and conditions and the alternate location does not impose technical
5 limits or additional costs, as determined by the wireless provider.

6 (f) *Damage and repair.* The state or a political subdivision may require a
7 wireless provider to repair all damage that is directly caused by the activities of the
8 wireless provider in a right-of-way involving its small wireless facilities, wireless
9 support structures, or utility poles, and to return the right-of-way to its former
10 condition before it was so damaged. If the wireless provider fails to make the
11 required repairs within a reasonable amount of time after receiving a written
12 request to do so from the state or a political subdivision, the state or political
13 subdivision may make the necessary repairs and charge the liable party for the cost
14 of the repairs. This paragraph does not prohibit a political subdivision from
15 recovering damages under s. 86.02.

16 (g) *Nondiscrimination.* The state and political subdivisions must administer
17 and regulate a right-of-way in a competitively neutral manner with regard to all
18 users of the right-of-way.

19 **(3) COLLOCATION OF SMALL WIRELESS FACILITIES.** (a) *Applicability.* This
20 subsection applies to the activities of a wireless provider both within and outside a
21 right-of-way. Except as provided in this subsection and in subs. (2) and (4), neither
22 the state nor a political subdivision may prohibit, regulate, or charge any person for
23 the collocation of small wireless facilities.

24 (b) *Zoning.* Notwithstanding an ordinance enacted under s. 59.69, 60.61, or
25 62.23, and except as provided in par. (c) 4., small wireless facilities shall be classified

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1 as permitted uses and are not subject to a political subdivision's zoning ordinances
2 if they are collocated in a right-of-way or outside a right-of-way if the property is
3 not zoned exclusively for single-family residential use.

4 (c) *Permits.* 1. Subject to subd. 3., the state or a political subdivision may
5 require an application for a permit to collocate a small wireless facility and to
6 construct, modify, maintain, or operate a new or replacement utility pole or wireless
7 support structure, provided such permit is of general applicability and does not apply
8 exclusively to wireless facilities. All of the following apply to such permit
9 applications filed by an applicant:

10 a. Neither the state nor a political subdivision may require an applicant to
11 perform services unrelated to the collocation for which approval is sought.

12 b. Neither the state nor a political subdivision may require an applicant that
13 is a wireless provider to provide more information in its permit application than such
14 a governmental unit requires from a communications service provider that is not a
15 wireless provider and that applies for the same type of permit.

16 c. The state or a political subdivision shall notify an applicant in writing, within
17 10 days of receiving the application, whether it is complete. If it is incomplete, the
18 state or political subdivision shall specify why the application is incomplete.

19 d. Except as provided in subd. 1. g., if a permit application involves a new utility
20 pole or wireless support structure, and the state or a political subdivision fails to
21 approve or deny the permit application under this section not later than 90 days after
22 its receipt, the applicant may consider its permit application approved.

23 e. Except as provided in subd. 1. g., if a permit application proposes to collocate
24 small wireless facilities to an existing utility pole or wireless support structure, or
25 replace an existing utility pole or wireless support structure, and the state or a

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1 political subdivision fails to approve or deny the permit application under this
2 section not later than 60 days after its receipt, the applicant may consider its permit
3 application approved.

4 f. Except as provided in subd. 1. g., if there is any type of construction, building,
5 or encroachment permit required by a political subdivision that relates to a permit
6 under subd. 1. d. or e., and the political subdivision fails to approve or deny that
7 permit application within the specified 60-day or 90-day time frame, the applicant
8 may consider its permit application approved.

9 g. The applicant and the state or political subdivision may mutually agree to
10 extend the deadline for the state or political subdivision to approve or deny a permit
11 application under subd. 1. d., e., or f.

12 h. Subject to subd. 1. i., the state or a political subdivision shall approve a
13 permit application unless it does not meet the applicable codes. If the permit
14 application is denied for this reason, the state or political subdivision shall provide
15 the applicant with written documentation explaining the basis for the denial no later
16 than the date that the permit application is denied. An applicant may cure the
17 deficiencies identified in the documentation and resubmit the permit application no
18 later than 30 days after receipt of the documentation without being required to pay
19 an additional application fee. The state or a political subdivision shall approve or
20 deny the revised permit application not later than 30 days after its receipt.

21 i. The state or a political subdivision may condition approval of a permit on
22 compliance with reasonable and nondiscriminatory relocation, abandonment, or
23 bonding requirements that are consistent with state law applicable to other
24 occupiers of rights-of-way.

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1 j. An applicant may file a consolidated permit application to collocate up to 30
2 small wireless facilities, or a greater number if agreed to by a political subdivision,
3 provided that all the small wireless facilities in the application consist of
4 substantially similar equipment and are to be placed on similar types of wireless
5 support structures. In rendering a decision on a consolidated permit application, a
6 political subdivision may approve a permit for some small wireless facilities and
7 deny a permit for others, but the political subdivision may not use the denial of one
8 or more permits as a basis to deny permits for all of the small wireless facilities in
9 the application.

10 k. If an applicant's permit application is approved, the applicant shall
11 commence the activity authorized by the permit no later than 365 days after its
12 receipt and shall pursue work on the activity until completion. Neither the state nor
13 a political subdivision may place any time limitation on an applicant that is related
14 to the permit. An applicant may request that the state or a political subdivision
15 terminate the applicant's permit.

16 2. Neither the state nor a political subdivision may institute a moratorium on
17 any of the following:

18 a. The filing, receiving, or processing of applications.

19 b. The issuance of permits or other approvals for the collocation of small
20 wireless facilities.

21 3. An approval under this section authorizes only the installation, placement,
22 maintenance, or operation of a small wireless facility to provide wireless service and
23 does not authorize the provision of any other service or the installation, placement,
24 maintenance, or operation of wireline backhaul service in a right-of-way.

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1 4. A political subdivision may enact an ordinance to prohibit, in a
2 nondiscriminatory way, a communications service provider from installing
3 structures in the right-of-way of a historic district or an underground district,
4 except that the ordinance may not prohibit collocations or the replacement of existing
5 structures. In this subdivision, a historic district is an area designated as historic
6 by the political subdivision, listed on the national register of historic places in
7 Wisconsin, or listed on the state register of historic places. In this subdivision, an
8 underground district is an area designated by the political subdivision in which any
9 pipe, pipeline, duct, wire, line, conduit, or other equipment, which is used for the
10 transmission, distribution, or delivery of electrical power, heat, water, gas, sewer, or
11 telecommunications equipment, is located underground. This subdivision applies
12 only to ordinances enacted on or before January 1, 2014.

13 (d) *Application fees.* 1. The state or a political subdivision may charge an
14 application fee only if an application fee is required for similar types of permit
15 applications related to other types of commercial development within the
16 governmental unit's jurisdiction. Such a fee may be imposed only for the actual,
17 direct, and reasonable costs incurred by the governmental unit that relate to the
18 processing and granting of the permit.

19 2. An application fee may not include any of the following:

20 a. Travel expenses incurred by a 3rd party in its review of an application.

21 b. A direct payment or reimbursement of 3rd-party rates or fees charged on a
22 contingency basis or a result-based arrangement.

23 3. If a dispute arises concerning the appropriateness of an application fee, the
24 state or political subdivision bears the burden of proving that the fee is reasonably
25 related to the actual, direct, and reasonable costs incurred by the governmental unit.

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1 4. Notwithstanding subs. 1. to 3., an application fee may not exceed the lesser
2 of the following:

3 a. A building permit issued by the state or a political subdivision for any similar
4 commercial construction, activity, or land use development.

5 b. One hundred dollars each for up to 5 small wireless facilities that are
6 specified in the permit application, and \$50 for each additional small wireless facility
7 that is specified in the permit application.

8 (e) *Approvals not required.* Neither the state nor a political subdivision may
9 require applications, permits, or fees for any of the following:

10 1. Routine maintenance.

11 2. The replacement of a small wireless facility with a small wireless facility that
12 is substantially similar to, or the same size or smaller than, the existing small
13 wireless facility, except that the governmental unit may require the person seeking
14 to replace the small wireless facility to obtain a permit to work within a right-of-way
15 to complete such a replacement.

16 3. The installation, placement, maintenance, operation, or replacement of
17 microwireless facilities that are strung on cables between existing utility poles or
18 wireless support structures in compliance with applicable codes.

19 (f) *Traffic work permits.* Nothing in this section prohibits a political subdivision
20 from requiring a work permit for work that will unreasonably affect traffic patterns
21 or obstruct vehicular traffic in a right-of-way.

22 **(4) ACCESS TO GOVERNMENTAL STRUCTURES.** (a) *Collocation of small wireless*
23 *facilities on governmental poles and utility poles for designated services.* 1. A person
24 owning or controlling a governmental pole or a utility pole for designated services

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1 may not enter into an exclusive arrangement with any person for the right to attach
2 to, or use, such poles.

3 2. The fees or rates charged by the owner of a pole described under subd. 1. may
4 not be discriminatory, without regard to the type of collocation provided by the person
5 who contracts to use such a pole.

6 3. The rate a political subdivision may charge a wireless provider to collocate
7 a small wireless facility on a utility pole for designated services owned or operated
8 by the political subdivision shall be governed by an agreement between the political
9 subdivision and the wireless provider. If there is a failure to agree on the rate, the
10 public service commission shall determine the compensation pursuant to the
11 procedures in s. 196.04 and the determination shall be reviewable under s. 196.41.

12 4. The rate an owner of a governmental pole other than a utility pole for
13 designated services charges another person to collocate on the owner's pole shall be
14 sufficient to recover the actual, direct, and reasonable costs related to the applicant's
15 application for, and use of, space on the pole, except that the total annual rate for a
16 collocation and any related activities may not exceed the lesser of the actual, direct,
17 and reasonable costs related to the collocation or \$100 per year per pole. If a dispute
18 arises concerning the appropriateness of a rate charged by the state or political
19 subdivision under this subdivision, the governmental unit bears the burden of
20 proving that the fee is reasonably related to the actual, direct, and reasonable costs
21 incurred by the governmental unit.

22 5. a. Except as provided in subd. 5. b., by the later of the first day of the 7th
23 month beginning after the effective date of this subd. 5. a. [LRB inserts date], or
24 3 months after receiving its first request to collocate a small wireless facility on a
25 governmental pole, other than a utility pole for designated services, the state or a

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1 political subdivision shall make available, through ordinance or otherwise, rates,
2 fees, and terms for the collocation of small wireless facilities on governmental poles
3 that comply with this subsection.

4 b. Agreements between a wireless provider and the state or a political
5 subdivision that are in effect on the effective date of this subd. 5. b. [LRB inserts
6 date], and that relate to the collocation of small wireless facilities in the
7 right-of-way, including the collocation of small wireless facilities on governmental
8 poles, remain in effect, subject to applicable termination provisions, except that by
9 the first day of the 25th month beginning after the effective date of this subd. 5. b.
10 [LRB inserts date], the state or political subdivision shall amend any such
11 agreement to comply with the rates, fees, and terms required under this subsection.

12 6. With regard to a governmental pole that supports aerial cables used for
13 video, communications, or electric service, and with regard to utility poles for
14 designated services, the parties shall comply with the process for make-ready work
15 under 47 USC 224 and its implementing regulations, including 47 CFR 1.1420 and
16 1.1422. The good faith estimate of the person owning or controlling such poles for
17 any make-ready work necessary to enable the pole to support the requested
18 collocation must include pole replacement if necessary.

19 7. With regard to a governmental pole that does not support aerial cables used
20 for video, communications, or electric service, the governmental unit shall provide
21 a good faith estimate for any make-ready work necessary to enable the pole to
22 support the requested collocation, including pole replacement if necessary, not later
23 than 60 days beginning after receipt of a complete application, except that the
24 governmental unit may provide the applicant with access to the governmental pole
25 that is necessary for the applicant to make that estimate. Make-ready work,

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1 including any pole replacement, must be completed within 60 days after the
2 applicant's written acceptance of a good faith estimate provided by the governmental
3 unit or within 60 days after the applicant makes the estimate.

4 8. A person owning or controlling a governmental pole other than a utility pole
5 for designated services may not require more make-ready work than required to
6 meet applicable codes or industry standards. Fees for make-ready work may not
7 include any costs that are related to preexisting conditions, prior damage, or
8 noncompliance with currently applicable standards. Fees for make-ready work,
9 including any pole replacement, may not exceed actual costs or the amount charged
10 to other communications service providers for similar work, and may not include any
11 consultant fees or expenses.

12 (b) *Collocation on governmental wireless support structures and utility poles*
13 *outside the right-of-way.* The state or a political subdivision shall authorize the
14 collocation of small wireless facilities on wireless support structures and utility poles
15 owned or operated by a governmental unit that are not located within the
16 right-of-way to the same extent that the governmental unit permits access to such
17 structures for other commercial projects or uses. Such collocations are subject to sub.
18 (3) (c) 4. and to reasonable and nondiscriminatory rates, fees, and terms as are
19 provided in an agreement between the governmental unit and a wireless provider.

20 **(5) LOCAL AUTHORITY.** (a) Subject to the provisions of this section, ss. 182.017
21 and 196.58, and applicable federal law, and except as provided under par. (b), a
22 political subdivision may exercise zoning, land use, planning, and permitting
23 authority with respect to wireless support structures and utility poles.

24 (b) A political subdivision may not exercise any authority over the design,
25 engineering, construction, installation, or operation of any small wireless facility

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1 located in an interior structure or upon the site of any campus, stadium, or athletic
2 facility that is not owned or controlled by the political subdivision, other than to
3 comply with applicable codes.

4 (c) 1. In this paragraph, “affiliate” means a person that directly, or indirectly
5 through one or more intermediaries, controls, or is controlled by, or is under common
6 control with, another person.

7 2. Except as provided in this section or required by federal law, a political
8 subdivision may not adopt or enforce any regulation on the placement or operation
9 of communications facilities in a right-of-way, or regulate, impose, or collect fees on
10 communication services in a right-of-way, that are provided by an entity authorized
11 on the effective date of this subdivision [LRB inserts date], to operate in the
12 right-of-way, or by that entity’s wireless provider affiliate, and may not regulate or
13 impose or collect fees on communications services except to the extent specifically
14 provided for in that authorization, and unless expressly required by state or federal
15 statute.

16 **(6) DISPUTE RESOLUTION.** Except as provided in sub. (4) (a) 3., and
17 notwithstanding ss. 182.017 (8) (a) and 196.58 (4) (a), a court of competent
18 jurisdiction shall determine all disputes arising under this section. Unless otherwise
19 agreed to by the parties to a dispute, and pending resolution of a right-of-way access
20 rate dispute, a political subdivision controlling access to and use of a right-of-way
21 shall allow the placement of a small wireless facility or wireless support structure
22 at a temporary rate of one-half of the political subdivision’s proposed annual rate,
23 or \$20, whichever is less. Rates shall be reconciled and adjusted upon final resolution
24 of the dispute. Pending the resolution of a dispute concerning rates for collocation
25 of small wireless facilities on government poles or utility poles for designated

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1 services, the person owning or controlling the pole shall allow the collocating person
2 to collocate on its poles, at annual rates of no more than \$20 per year per pole, with
3 rates to be reconciled and adjusted upon final resolution of the dispute.

4 (7) INDEMNIFICATION. A wireless provider shall indemnify and hold harmless
5 a political subdivision against any and all liability and loss from personal injury or
6 property damage resulting from or arising out of, in whole or in part, the use or
7 occupancy of rights-of-way by the wireless provider or its employees, agents, or
8 contractors arising out of the rights and privileges granted under this section. A
9 wireless provider has no obligation to indemnify or hold harmless against any
10 liabilities and losses as may be due to or caused by the sole negligence of the political
11 subdivision or its employees or agents. A wireless provider shall waive any claims
12 that it may have against a political subdivision with respect to consequential,
13 incidental, or special damages, however caused, based on the theory of liability.

14 (8) FEDERAL LAW; CONTRACTS. Nothing in this section adds to, replaces, or
15 supersedes federal laws regarding utility poles owned by investor-owned electric
16 utilities nor shall this section impose or otherwise affect any rights, controls, or
17 contractual obligations investor-owned electric utilities may establish with respect
18 to their utility poles.

19 (9) PRIVATE PROPERTY OWNERS. Nothing in this section is intended to authorize
20 a person to place, maintain, modify, operate, or replace a privately owned utility pole
21 or wireless support structure or to collocate small wireless facilities on a privately
22 owned utility pole, a privately owned wireless support structure, or other private
23 property without the consent of the property owner.

SECTION 3. Initial applicability.

