

2019 DRAFTING REQUEST

Bill

For: **Devin LeMahieu (608) 266-2056** Drafter: **mkunkel**
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 Date: **5/15/2019** May Contact:
 Same as LRB: **-1451**

Submit via email: **YES**
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Pre Topic:

No specific pre topic given

Topic:

Local regulation of small wireless facilities

Instructions:

See attached

Drafting History:

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
/1	mkunkel 5/15/2019	wjackson 5/15/2019	dwalker 5/15/2019	dwalker 5/16/2019	State S&L

FE Sent For: **<END>**

At Introduction

Kunkel, Mark

From: Czaja, Ashley
Sent: Wednesday, May 15, 2019 10:03 AM
To: Kunkel, Mark
Subject: FW: 5G Bill
Attachments: 19-1451_1.pdf

Hi Mark,

Can I please get a Senate companion?

Thank you

Ashley Czaja

Policy Advisor

State Senator Devin LeMahieu

9th Senate District

(608) 266-2056



State of Wisconsin
2019 - 2020 LEGISLATURE

LRB-1451/1
MES&MDK:kjf + WJ
- 3079/1

2019 BILL

TODAY
Companion bill
See changes
6.11.16
-1451/2

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 following: 1) the deployment by wireless services and infrastructure providers (wireless providers) of wireless equipment and facilities, including the placement of such items in rights-of-way (ROW); 2) the permitting process for certain activities by wireless providers; 3) the regulation of access to certain governmental structures by wireless providers; and 4) the resolution of disputes. The bill also authorizes political subdivisions to impose setback requirements for certain mobile service support structures.

Key terms

The bill creates definitions for the following terms that are used in the analysis below:

1. "Small wireless facility" means specified antenna equipment at a fixed location that enables wireless service and that meets size, height, and other requirements.

2. "Utility pole" means any of the following: a pole used by a communications service provider; a pole used for electric distribution, lighting, traffic control, signage, or a similar function; or a pole used for collocating a small wireless facility.

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3. "Collocate" means to place, mount, replace, modify, operate, or maintain a small wireless facility on a utility pole or wireless support structure. "Collocate" also means to place, mount, replace, modify, operate, or maintain ground-mounted antenna equipment adjacent to a utility pole or wireless support structure.

4. "Governmental pole" means a utility pole owned or operated by the state or a political subdivision in ROW.

5. "Utility pole for designated services" (UPDS) means a governmental pole or a utility pole owned or operated by a utility district that is used to carry electric distribution lines or cables or wires for telecommunications, cable, or electric service.

6. "Wireless support structure" means a freestanding structure capable of supporting small wireless facilities, but does not include a utility pole or a structure designed solely for collocating small wireless facilities.

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.

2. Provides that the state and political subdivisions may impose nondiscriminatory rates or fees on wireless providers only if they charge other entities 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 replace utility poles that support small wireless 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 and small wireless facilities. With regard to the rights of a wireless provider to construct or modify utility poles, the bill allows a political subdivision to propose an alternate location for collocation, which the wireless provider must use if it has the right to do so and the alternate location is reasonable and technically feasible and does not impose material additional costs.

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, utility poles, and wireless support structures.

6. 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 use or occupancy of ROW by the wireless provider.

7. Prohibits political subdivisions from doing any of the following in a way that exceeds federal or state regulatory requirements: regulating communications service facilities in rights-of-way; regulating communications service; or imposing certain charges relating to communications service provided over facilities in rights-of-way. "Communications service" is defined as cable television, telecommunications, information, or wireless service.

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8. Creates a rights-of-way study committee consisting of the governor, legislators, and representatives of public and private stakeholders.

Permitting process

With regard to the activities of a wireless provider to collocate small wireless facilities within and outside a ROW and to install, modify, or replace associated utility poles within 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 if the permit is of general applicability and does not apply exclusively to small wireless facilities. The bill specifies the types of information that can be required in a permit application. The bill imposes various deadlines relating to the permit application and approval process. 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 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 approval sought, 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 express or de facto moratorium on filing, receiving, or processing applications, or issuing permits.

8. Subject to specified conditions, allows a political subdivision to adopt aesthetic requirements for deployment of small wireless facilities and associated antenna equipment and utility poles in rights-of-way.

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9. Authorizes a political subdivision to enact an ordinance to prohibit, in a nondiscriminatory way, a communications service provider from installing utility poles or wireless support structures in the ROW of a historic district or an area in which all utilities are located underground (underground district), except that the ordinance may not prohibit collocations or the replacement of existing structures, and the ordinance must satisfy specified requirements. The bill also allows a political subdivision to impose certain aesthetic requirements in a historic or underground district.

10. Subject to specified monetary limits and adjustments based on actions by the Federal Communications Commission, authorizes the state and political subdivisions to charge an application fee for permits. Generally, neither the state nor a political subdivision may require applications, permits, fees, or other approvals for routine maintenance, the replacement of small wireless facilities with substantially similar or smaller facilities, or certain activities involving micro wireless facilities that are strung on cables between existing utility poles.

Access to governmental structures

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

1. 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 discriminatory fees, charges, or other terms and conditions.

2. 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.

3. Subject to a number of conditions and adjustments based on FCC actions, 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 \$250 per small wireless facility per year.

4. 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.

5. 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.

Dispute resolution

The bill requires courts to determine disputes regarding the bill's requirements, except that, as noted above, subject to court review, the PSC resolves disputes over the rates charged by a political subdivision for collocating a small

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or substantial modification

wireless facility on a UPDS. The bill also provides a mechanism for political subdivisions to allow the placement of a small wireless facility or utility pole at a temporary rate pending the resolution of a ROW dispute.

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.

mobile service support

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 single-family residential use on that parcel. A setback
10 requirement does not apply to an existing or new utility pole, or wireless support
11 structure in a right-of-way that supports a small wireless facility, if the pole or
12 facility meets the height limitations in s. 66.0414 (2) (e) 2. and 3.

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1 (c) The setback requirement under par. (b) for a mobile service support
2 structure on a parcel shall be measured from the lot lines of other adjacent and
3 nonadjacent parcels for which single-family residential use is a permitted use under
4 a zoning ordinance.

5 (d) A setback requirement must be based on the height of the proposed mobile
6 service support structure, and the setback requirement may not be a distance that
7 is greater than the height of the proposed structure.

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

9 **66.0414 Small wireless facilities.** (1) DEFINITIONS. In this section:

10 (a) "Antenna" means communications equipment that transmits and receives
11 electromagnetic radio signals and is used in the provision of wireless services.

12 (b) "Antenna equipment" or "wireless equipment" means equipment, switches,
13 wiring, cabling, power sources, shelters, or cabinets associated with an antenna,
14 located at the same fixed location as the antenna, and, when collocated on a
15 structure, is mounted or installed at the same time as such antenna.

16 (c) "Antenna facility" means an antenna and associated antenna equipment,
17 including ground-mounted antenna equipment.

18 (d) "Applicable codes" means the state electrical wiring code, as defined in s.
19 101.80 (4), the state plumbing code specified in s. 145.13, the fire prevention code
20 under ch. SPS 314, Wis. adm. code, the Wisconsin commercial building code under
21 chs. SPS 361 to 366, the Wisconsin uniform dwelling code under chs. SPS 320 to 325,
22 and local amendments to those codes enacted solely to address imminent threats of
23 destruction of property or injury to persons.

24 (e) "Applicant" means a wireless provider that submits an application.

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1 (f) "Application" means an application for a permit under this section to
2 collocate a small wireless facility or to install, modify, or replace a utility pole.

3 (g) "Collocate," "collocate on," or "collocation" means the placement, mounting,
4 replacement, modification, operation, or maintenance of a small wireless facility on,
5 or of ground-mounted antenna equipment adjacent to, a structure.

6 (h) "Communications facilities" means the set of equipment and network
7 components, including wires and cables and associated facilities, used by a
8 communications service provider to provide communications service.

9 (i) "Communications network" means a network used to provide a
10 communications service.

11 (j) "Communications service" means cable service, as defined in 47 USC 522 (6),
12 telecommunications service, as defined in 47 USC 153 (53), information service, as
13 defined in 47 USC 153 (24), or wireless service.

14 (k) "Communications service provider" means a person that provides
15 communications service.

16 (L) "Facility" means an antenna facility or a structure.

17 (m) "Fee" means a one-time charge.

18 (n) "Governmental pole" means a utility pole that is owned or operated by the
19 state or by a political subdivision in a right-of-way.

20 (o) "Investor-owned electric utility" means a public utility whose purpose is the
21 generation, transmission, delivery, or furnishing of electric power but does not
22 include a public utility owned and operated wholly by a municipality or a cooperative
23 association organized under ch. 185.

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1 (p) "Micro wireless facility" means a small wireless facility that does not exceed
2 24 inches in length, 15 inches in width, and 12 inches in height and that has no
3 exterior antenna longer than 11 inches.

4 (q) "Permit" means written authorization required by the state or a political
5 subdivision to perform an action, or initiate, continue, or complete a project.

6 (r) "Political subdivision" means any city, village, town, or county.

7 (s) "Rate" means a recurring charge.

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

14 (u) "Small wireless facility" means a wireless facility to which all of the
15 following apply:

16 1. The wireless facility satisfies any of the following:

17 a. The wireless facility is mounted on a structure 50 feet or less in height
18 including any antenna.

19 b. The wireless facility is mounted on a structure no more than 10 percent taller
20 than any other adjacent structure.

21 c. The wireless facility does not increase the height of an existing structure on
22 which the wireless facility is located to a height of more than 50 feet or by 10 percent,
23 whichever is greater.

24 2. Each antenna associated with the deployment of the wireless facility,
25 excluding associated antenna equipment, is no more than 3 cubic feet in volume.

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1 3. All other wireless equipment associated with the wireless facility specified
2 in subd. 1., including the wireless equipment associated with the antenna and any
3 preexisting associated equipment on the structure, is no more than 28 cubic feet in
4 volume.

5 4. The wireless facility does not require registration as an antenna structure
6 under 47 CFR part 17.

7 5. The wireless facility is not located on tribal land, as defined in 36 CFR 800.16
8 (x).

9 6. The wireless facility does not result in human exposure to radio frequency
10 in excess of the applicable safety standards specified in 47 CFR 1.1307.

11 (v) Except in par. (zp), "structure" means a utility pole or wireless support
12 structure, whether or not it has an existing antenna facility.

13 (w) "Technically feasible" means that by virtue of engineering or spectrum
14 usage the proposed placement for a small wireless facility, or its design, concealment
15 measures, or site location can be implemented without a reduction in the
16 functionality of the small wireless facility.

17 (x) "Utility pole" means a pole that is used in whole or in part by a
18 communications service provider; used for electric distribution, lighting, traffic
19 control, signage, or a similar function; or used for the collocation of small wireless
20 facilities. "Utility pole" does not include a wireless support structure or electric
21 transmission structure.

22 (y) "Utility pole for designated services" means a utility pole owned or operated
23 in a right-of-way by the state, a political subdivision, or a utility district that is
24 designed to, or used to, carry electric distribution lines, or cables or wires for
25 telecommunications, cable, or electric service.

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1 (z) 1. “Wireless facility” means an antenna facility at a fixed location that
2 enables wireless services between user equipment and a communications network,
3 and includes all of the following:

4 a. Equipment associated with wireless services.

5 b. Radio transceivers, antennas, or coaxial, metallic, or fiber-optic cable
6 located on, in, under, or otherwise adjacent to a utility pole or wireless support
7 structure.

8 c. Regular and backup power supplies.

9 d. Equipment that is comparable to equipment specified in this subdivision
10 regardless of technical configuration.

11 2. “Wireless facilities” does not include any of the following:

12 a. The structure or improvements on, under, or within which equipment
13 specified in subd. 1. is collocated.

14 b. Wireline backhaul facilities.

15 c. Coaxial, metallic, or fiber-optic cable that is between utility poles or wireless
16 support structures or that is not adjacent to a particular antenna.

17 (z) (za) “Wireless infrastructure provider” means any person, other than a wireless
18 services provider, that builds or installs wireless communication transmission
19 equipment, antenna equipment, or wireless support structures.

20 (zc) “Wireless provider” means a wireless infrastructure provider or a wireless
21 services provider.

22 (zg) “Wireless services” means any service using licensed or unlicensed
23 wireless spectrum, including the use of a Wi-Fi network, whether at a fixed location
24 or by means of a mobile device.

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1 (zL) “Wireless services provider” means any person who provides wireless
2 services.

3 (zp) “Wireless support structure” means an existing freestanding structure
4 that is capable of supporting small wireless facilities, except that “wireless support
5 structure” does not include any of the following:

6 1. A utility pole.

7 2. A structure designed solely for the collocation of small wireless facilities.

8 (zt) “Wireline backhaul facility” means a facility for providing wireline
9 backhaul service.

10 (zx) “Wireline backhaul service” means the transport of communications
11 services by wire from small wireless facilities to a communications network.

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

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

18 (c) *Rates and fees.* Subject to sub. (3) (e) 3., the state or a political subdivision
19 may charge a wireless provider a nondiscriminatory rate or fee for the use of a
20 right-of-way with respect to the collocation of a small wireless facility or the
21 installation, modification, or replacement of a utility pole in the right-of-way only
22 if the state or political subdivision charges other entities for the use of the
23 right-of-way. If the state or a political subdivision charges a wireless provider a rate
24 or fee as described in this paragraph, all of the following apply:

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

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

5 3. The fee or rate may not result in a double recovery by the state or political
6 subdivision if existing fees, rates, or taxes imposed by a political subdivision on the
7 wireless provider already recover the direct and actual cost of managing the
8 right-of-way.

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

11 5. The fee or rate may not exceed an annual amount equal to \$20 multiplied
12 by the number of small wireless facilities in the right-of-way in the state's or
13 political subdivision's geographic jurisdiction.

14 6. Beginning on the effective date of this subdivision [LRB inserts date], the
15 state or a political subdivision may adjust a rate or fee allowed under this paragraph
16 by 10 percent every 5 years, rounded to the nearest dollar. During each 5-year
17 period, the adjustment may be applied incrementally or as a single adjustment.

18 (d) *Rate or fee adjustment.* 1. Except as provided in subd. 2., by the later of the
19 first day of the 3rd month beginning after the effective date of this subdivision
20 [LRB inserts date], or 3 months after receiving its first request for access to the
21 right-of-way by a wireless provider, the state or a political subdivision shall
22 implement rates, fees, and terms for such access that comply with this subsection.

23 2. Agreements between a wireless provider and the state or a political
24 subdivision that are in effect on the effective date of this subdivision [LRB inserts
25 date], and that relate to access to the right-of-way, remain in effect, subject to

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1 applicable termination provisions, except that by the first day of the 25th month
2 beginning after the effective date of this subdivision [LRB inserts date], the state
3 or political subdivision shall amend any such agreement to comply with the rates,
4 fees, and terms required under this subsection.

5 (e) *Right of access.* 1. Except as otherwise provided in this subsection and subs.
6 (3) (c) 4. and 5. and (4), and notwithstanding ss. 182.017 and 196.58 and any zoning
7 ordinance enacted by a political subdivision under s. 59.69, 60.61, 60.62, or 62.23, a
8 wireless provider shall have the right to collocate small wireless facilities and
9 construct, modify, maintain, and replace its own utility poles, or, with the permission
10 of the owner, a 3rd party's utility pole, that supports small wireless facilities along,
11 across, upon, and under a right-of-way. Such small wireless facilities and utility
12 poles, and activities related to the installation and maintenance of the small wireless
13 facilities and utility poles, may not obstruct or hinder travel, drainage, maintenance,
14 or the public health, safety, and general welfare on or around the right-of-way, or
15 obstruct the legal use of the right-of-way for other communications providers, public
16 utilities, cooperative associations organized under ch. 185 for the purpose of
17 producing or furnishing heat, light, power, or water to their members only, or pipes
18 or pipelines transmitting liquid manure. A political subdivision may enact an
19 ordinance consistent with this subdivision.

20 2. Except as provided in subd. 4., the height of a utility pole installed, or
21 modified, in a right-of-way may not exceed the greater of:

22 a. A height that is 10 percent taller than the tallest existing utility pole as of
23 the effective date of this subd. 2. a. [LRB inserts date], that is located within 500
24 feet of the new or modified utility pole in the same right-of-way.

25 b. Fifty feet above ground level.

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

3 a. A height that is 10 percent taller than the existing utility pole or wireless
4 support structure on which the small wireless facility is located.

5 b. Fifty feet above ground level.

6 4. A wireless provider may construct, modify, and maintain a utility pole,
7 wireless support structure, or small wireless facility along, across, upon, and under
8 a right-of-way that exceeds the height limits in this paragraph if the wireless
9 provider complies with height limits under the zoning ordinances enacted by a
10 political subdivision under s. 59.69, 60.61, 60.62, or 62.23.

11 5. With regard to the rights of a wireless provider to construct or modify a utility
12 pole as described in subd. 1., a political subdivision may propose an alternate location
13 for collocation, which the wireless provider shall use if it has the right to use the
14 alternate structure on reasonable terms and conditions and the alternate location is
15 technically feasible and does not impose material additional costs.

16 (f) *Damage and repair.* The state or a political subdivision may require a
17 wireless provider to repair all damage that is directly caused by the activities of the
18 wireless provider in a right-of-way involving its small wireless facilities or
19 structures, and to return the right-of-way to its former condition before it was so
20 damaged. If the wireless provider fails to make the required repairs within a
21 reasonable amount of time after receiving a written request to do so from the state
22 or a political subdivision, the state or political subdivision may make the necessary
23 repairs and charge the liable party for the cost of the repairs. This paragraph does
24 not prohibit a political subdivision from recovering damages under s. 86.02.

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

4 (3) PERMITTING PROCESS. (a) *Applicability.* This subsection applies to the
5 permitting for the collocation of small wireless facilities by a wireless provider within
6 and outside a right-of-way and to the permitting for the installation, modification,
7 and replacement of associated utility poles by a wireless provider inside a
8 right-of-way. Except as provided in this subsection and in subs. (2) and (4), neither
9 the state nor a political subdivision may prohibit, regulate, or charge any person for
10 the collocation of small wireless facilities.

11 (b) *Zoning.* Notwithstanding an ordinance enacted under s. 59.69, 60.61,
12 60.62, or 62.23, and except as provided in par. (c) 4. and 5., small wireless facilities
13 shall be classified as permitted uses and are not subject to a political subdivision's
14 zoning ordinances if they are collocated in a right-of-way or outside a right-of-way
15 if the property is not zoned exclusively for single-family residential use. For
16 purposes of this paragraph and notwithstanding sub. (1) (u) 3., the volume of a small
17 wireless facility does not include preexisting associated wireless equipment on a
18 structure outside the right-of-way.

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

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1 a. Neither the state nor a political subdivision may require an applicant to
2 perform services unrelated to the approval sought.

3 b. Neither the state nor a political subdivision may require an applicant that
4 is a wireless provider to provide more information in its permit application than such
5 a governmental unit requires from a communications service provider that is not a
6 wireless provider and that applies for the same type of permit. The state or a political
7 subdivision may require the types of information specified in subd. 2. in an
8 application.

9 c. The state or a political subdivision shall notify an applicant in writing, within
10 10 days of receiving an application, whether it is complete. If an application is
11 incomplete, the state or political subdivision shall specify why the application is
12 incomplete. The processing deadlines under subd. 1. d., e., and f. restart at zero on
13 the date that the applicant submits to the state or a political subdivision an
14 application that includes information identified by the state or political subdivision
15 to render the application complete.

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

20 e. Except as provided in subd. 1. g., if a permit application proposes to collocate
21 small wireless facilities on an existing structure and the state or a political
22 subdivision fails to approve or deny the permit application under this section not
23 later than 60 days after its receipt, the applicant may consider its permit application
24 approved.

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

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

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

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

22 j. An applicant may file a consolidated permit application to collocate up to 30
23 small wireless facilities, or a greater number if agreed to by a political subdivision,
24 provided that all the small wireless facilities in the application consist of
25 substantially similar equipment and are to be placed on similar types of structures.

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1 In rendering a decision on a consolidated permit application, a political subdivision
2 may approve a permit for some small wireless facilities and deny a permit for others,
3 but the political subdivision may not use the denial of one or more permits as a basis
4 to deny permits for all of the small wireless facilities in the application.

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

11 2. The state or a political subdivision may require any of the following types
12 of information in an application for a permit specified in subd. 1. (intro.):

13 a. The applicant's name, address, telephone number, e-mail address, and
14 emergency contact information.

15 b. The names, addresses, telephone numbers, and e-mail addresses of all duly
16 authorized representatives and consultants, if any, acting on behalf of the applicant
17 with respect to the filing of the application.

18 c. A general description of the proposed small wireless facility and associated
19 utility pole, if applicable. The scope and detail of such description shall be
20 appropriate to the nature and character of the work to be performed, with special
21 emphasis on those matters likely to be affected or impacted by the physical work
22 proposed.

23 d. Site plans and detailed construction drawings to scale that identify the
24 proposed small wireless facility and the proposed use of the right-of-way.

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1 e. To the extent the proposed facility involves collocation on a new utility pole,
2 existing utility pole, or existing wireless support structure, a structural report
3 performed by a duly licensed engineer evidencing that the utility pole or wireless
4 support structure will structurally support the collocation, or that the utility pole or
5 wireless support structure may and will be modified to meet structural
6 requirements, in accordance with applicable codes.

7 f. If the small wireless facility will be collocated on a utility pole or wireless
8 support structure owned by a 3rd party, other than a governmental pole or a utility
9 pole for designated services, a certification that the wireless provider has permission
10 from the owner to collocate on the utility pole or wireless support structure.

11 g. Certification by the wireless provider that the small wireless facility will
12 comply with relevant federal communications commission regulations concerning 1)
13 radio frequency emissions from radio transmitters and 2) unacceptable interference
14 with public safety spectrum, including compliance with the abatement and
15 resolution procedures for interference with public safety spectrum established by the
16 federal communications commission set forth in 47 CFR 22.970 to 22.973 and 47 CFR
17 90.672 to 90.675.

18 h. Certification by the wireless provider that the small wireless facility will not
19 materially interfere with any of the following: 1) the safe operation of traffic control
20 equipment; 2) sight lines or clear zones for transportation or pedestrians; and 3) the
21 federal Americans with Disabilities Act or similar federal or state standards
22 regarding pedestrian access or movement.

23 i. A statement that the small wireless facility shall comply with all applicable
24 codes.

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1 3. Neither the state nor a political subdivision may institute an express or de
2 facto moratorium on any of the following:

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

4 b. The issuance of permits or other approvals, if any, for the collocation of small
5 wireless facilities or the installation, modification, or replacement of utility poles to
6 support small wireless facilities.

7 4. A political subdivision may adopt aesthetics requirements governing the
8 deployment of small wireless facilities and associated antenna equipment and utility
9 poles in the right-of-way, subject to the following conditions:

10 a. The aesthetics requirements must be 1) reasonable in that they are
11 technically feasible and reasonably directed to avoiding or remedying unsightly or
12 out-of-character deployments; 2) no more burdensome than those applied to other
13 types of infrastructure deployments; and 3) objective and published in advance.

14 b. Any design or concealment measures are not considered a part of the small
15 wireless facility for purpose of the size parameters in the definition of a small
16 wireless facility under sub. (1) (u).

17 c. A political subdivision may deny an application for not complying with
18 aesthetic requirements only if the denial does not prohibit or have the effect of
19 prohibiting the provision of wireless service.

20 5. A political subdivision may enact an ordinance to prohibit, in a
21 nondiscriminatory way, a communications service provider from installing
22 structures in the right-of-way of a historic district or an underground district,
23 except that the ordinance may not prohibit collocations or the replacement of existing
24 structures. In this subdivision, a historic district is an area designated as historic
25 by the political subdivision, listed on the national register of historic places in

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1 Wisconsin, or listed on the state register of historic places. In this subdivision, an
2 underground district is an area designated by the political subdivision in which all
3 pipes, pipelines, ducts, wires, lines, conduits, or other equipment, which are used for
4 the transmission, distribution, or delivery of electrical power, heat, water, gas, sewer,
5 or telecommunications equipment, are located underground. A political subdivision
6 may require any collocation on or replacement of an existing structure to reasonably
7 conform to the design aesthetics of the original structure in a historic or underground
8 district. Any design or concealment measures are not considered a part of the small
9 wireless facility for purposes of the size restrictions in the definition of "small
10 wireless facility" under sub. (1) (u). The requirements of an ordinance enacted under
11 this subdivision must be objective, technically feasible, no more burdensome than
12 requirements applied to other types of infrastructure deployment, and reasonably
13 directed at avoiding or remedying the intangible public harm of unsightly or
14 out-of-character deployments. A political subdivision may not apply any
15 requirements under an ordinance enacted under this subdivision in a manner that
16 results in an effective prohibition of wireless service.

17 (d) *Application fees.* 1. Except as provided in subd. 2., the state or a political
18 subdivision may only charge an application fee that is reasonable,
19 nondiscriminatory, and recovers no more than a governmental unit's direct cost for
20 processing an application, except that no application fee may exceed any of the
21 following:

22 a. For an application that includes 5 or fewer small wireless facilities, \$500.

23 b. For an application that includes more than 5 small wireless facilities, \$500
24 plus \$100 for each small wireless facility in excess of 5.

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1 c. One thousand dollars for the installation or replacement of a utility pole
2 together with the collocation of an associated small wireless facility.

3 2. Beginning on the effective date of this subdivision [LRB inserts date], the
4 state or a political subdivision may adjust a fee allowed under subd. 1. by 10 percent
5 every 5 years, rounded to the nearest multiple of \$5. During each 5-year period, the
6 adjustment may be applied incrementally or as a single adjustment.

7 3. If the federal communications commission adjusts its levels for fees that are
8 presumptively lawful under 47 USC 253 or 332 (c) (7), the state or a political
9 subdivision may adjust any impacted fee under subd. 1. on a pro rata basis,
10 consistent with the federal communications commission's action.

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

13 1. Routine maintenance.

14 2. The replacement of a small wireless facility with a small wireless facility that
15 is substantially similar to, or the same size or smaller than, the existing small
16 wireless facility, except that the governmental unit may require the person seeking
17 to replace the small wireless facility to obtain a permit to work within a right-of-way
18 to complete such a replacement. For purposes of this subdivision, a small wireless
19 facility does not include the structure on which it is collocated.

20 3. The installation, placement, maintenance, operation, or replacement of
21 micro wireless facilities that are strung on cables between existing utility poles in
22 compliance with the National Electrical Safety Code.

23 (f) *Traffic work permits.* Nothing in this section prohibits a political subdivision
24 from requiring a work permit for work that will unreasonably affect traffic patterns
25 or obstruct vehicular traffic in a right-of-way, provided that such permits are issued

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1 to any applicant on a nondiscriminatory basis upon terms and conditions that apply
2 to the activities of any other person performing work in the right-of-way that
3 requires excavation or the closing of sidewalks or traffic lanes.

4 (4) COLLOCATION OF SMALL WIRELESS FACILITIES ON GOVERNMENTAL POLES AND
5 UTILITY POLES FOR DESIGNATED SERVICES. (a) A person owning or controlling a
6 governmental pole or a utility pole for designated services may not enter into an
7 exclusive arrangement with any person for the right to attach to, or use, such poles.

8 (b) The fees or rates charged by the owner of a pole described under par. (a), and
9 the terms and conditions for such attachment or use, may not be discriminatory.

10 (c) The rate a political subdivision may charge a wireless provider to collocate
11 a small wireless facility on a utility pole for designated services shall be governed by
12 an agreement between the political subdivision and the wireless provider. If there
13 is a failure to agree on the rate, the public service commission shall determine the
14 compensation pursuant to the procedures in s. 196.04 and the determination shall
15 be reviewable under s. 196.41.

16 (d) 1. The rate an owner of a governmental pole other than a utility pole for
17 designated services charges another person to collocate on the owner's pole shall be
18 sufficient to recover the actual, direct, and reasonable costs related to the applicant's
19 application for, and use of, space on the pole, except that subject to subd. 2., the total
20 annual rate for a collocation and any related activities may not exceed the lesser of
21 the actual, direct, and reasonable costs related to the collocation or \$250 per year per
22 small wireless facility. If a dispute arises concerning the appropriateness of a rate
23 charged by the state or political subdivision under this subdivision, the
24 governmental unit bears the burden of proving that the rate is reasonably related
25 to the actual, direct, and reasonable costs incurred by the governmental unit.

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1 2. Beginning on the effective date of this subdivision [LRB inserts date], the
2 owner of a governmental pole other than a utility pole for designated services may
3 adjust a rate allowed under subd. 1. by 10 percent every 5 years, rounded to the
4 nearest multiple of \$5. During each 5-year period, the adjustment may be applied
5 incrementally or as a single adjustment.

6 3. If the federal communications commission adjusts its levels for rates that are
7 presumptively lawful under 47 USC 253 or 332 (c) (7), the state or a political
8 subdivision may adjust any impacted rate under subd. 1. on a pro rata basis,
9 consistent with the federal communications commission's action.

10 (e) 1. Except as provided in subd. 2., by the later of the first day of the 3rd month
11 beginning after the effective date of this subdivision [LRB inserts date], or 3
12 months after receiving its first request to collocate a small wireless facility on a
13 governmental pole, other than a utility pole for designated services, the state or a
14 political subdivision shall implement rates, fees, and terms for the collocation of
15 small wireless facilities on governmental poles that comply with this subsection.

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

24 (f) With regard to a governmental pole that supports aerial cables used for
25 video, communications, or electric service, and with regard to utility poles for

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1 designated services, the parties shall comply with the process for make-ready work
2 under 47 USC 224 and its implementing regulations, including 47 CFR 1.1420 and
3 1.1422. The good faith estimate of the person owning or controlling such poles for
4 any make-ready work necessary to enable the pole to support the requested
5 collocation must include pole replacement if necessary.

6 (g) With regard to a governmental pole that does not support aerial cables used
7 for video, communications, or electric service, the state or political subdivision shall
8 provide a good faith estimate for any make-ready work necessary to enable the pole
9 to support the requested collocation, including pole replacement if necessary, not
10 later than 60 days beginning after receipt of a complete application, except that the
11 governmental unit may provide the applicant with access to the governmental pole
12 that is necessary for the applicant to make that estimate. Make-ready work,
13 including any pole replacement, must be completed within 60 days after the
14 applicant's written acceptance of a good faith estimate provided by the governmental
15 unit or within 60 days after the applicant makes the estimate.

16 (h) A person owning or controlling a governmental pole other than a utility pole
17 for designated services may not require more make-ready work than required to
18 meet applicable codes or industry standards. Fees for make-ready work may not
19 include any costs that are related to preexisting conditions, prior damage, or
20 noncompliance with currently applicable standards. Fees for make-ready work,
21 including any pole replacement, may not exceed actual costs or the amount charged
22 to other communications service providers for similar work, and may not include any
23 consultant fees or expenses.

24 (5) DISPUTE RESOLUTION. Except as provided in sub. (4) (c), and notwithstanding
25 ss. 182.017 (8) (a) and 196.58 (4) (a), a court of competent jurisdiction shall determine

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1 all disputes arising under this section. Unless otherwise agreed to by the parties to
2 a dispute, and pending resolution of a right-of-way access rate dispute, a political
3 subdivision controlling access to and use of a right-of-way shall allow the placement
4 of a small wireless facility or utility pole at a temporary rate of one-half of the
5 political subdivision's proposed annual rate, or \$20, whichever is less. Rates shall
6 be reconciled and adjusted upon final resolution of the dispute. Pending the
7 resolution of a dispute concerning rates for collocation of small wireless facilities on
8 governmental poles or utility poles for designated services, the person owning or
9 controlling the pole shall allow the collocating person to collocate on its poles, at
10 annual rates of no more than \$20 per year per pole, with rates to be reconciled and
11 adjusted upon final resolution of the dispute.

12 (6) INDEMNIFICATION. A wireless provider shall indemnify and hold harmless
13 a political subdivision against any and all liability and loss from personal injury or
14 property damage resulting from or arising out of, in whole or in part, the use or
15 occupancy of rights-of-way by the wireless provider or its employees, agents, or
16 contractors arising out of the rights and privileges granted under this section. A
17 wireless provider has no obligation to indemnify or hold harmless against any
18 liabilities and losses as may be due to or caused by the sole negligence of the political
19 subdivision or its employees or agents.

20 (7) FEDERAL LAW; CONTRACTS. Nothing in this section adds to, replaces, or
21 supersedes federal laws regarding utility poles owned by investor-owned electric
22 utilities nor shall this section impose or otherwise affect any rights, controls, or
23 contractual obligations investor-owned electric utilities may establish with respect
24 to their utility poles.

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1 (8) PRIVATE PROPERTY OWNERS. Nothing in this section is intended to authorize
2 a person to place, maintain, modify, operate, or replace a privately owned utility pole
3 or wireless support structure or to collocate small wireless facilities on a privately
4 owned utility pole, a privately owned wireless support structure, or other private
5 property without the consent of the property owner.

6 (9) COMMUNICATIONS SERVICES. (a) This section may not be construed or
7 interpreted to authorize any entity to provide communications service without
8 compliance with all applicable laws or to authorize the collocation, installation,
9 placement, operation, or maintenance of any communications facilities, including
10 wireline backhaul facilities, other than small wireless facilities and associated
11 utility poles.

12 (b) Except as it relates to small wireless facilities subject to the permit and fee
13 requirements established under this section and except as otherwise specifically
14 required by federal or state law, a political subdivision may not do any of the
15 following:

16 1. Adopt or enforce any regulation or requirement on the placement or
17 operation of communications facilities in rights-of-way by a communications service
18 provider authorized under federal, state, or local law to operate in rights-of-way.

19 2. Regulate any communications service.

20 3. Impose or collect any tax, fee, or other charge for the provision of additional
21 communications services over a communications service provider's communications
22 facilities in a right-of-way.

23 **SECTION 3. Nonstatutory provisions.**

24 (1) RIGHTS-OF-WAY STUDY COMMITTEE.

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1 (a) There is created a rights-of-way study committee to study laws,
2 regulations, and ordinances regarding use by private entities of public rights-of way
3 in cities, villages, towns, and counties, including private entity access to and
4 placement of facilities in public rights-of-way. The study shall examine fees charged
5 for such use and consider whether the fees are transparent and nondiscriminatory.
6 The study shall include an examination of all of the following:

7 1. Procedures for locating and obtaining access to facilities in public
8 rights-of-way, resolving disputes, and making appeals.

9 2. Issues regarding compensation, timelines, nondiscrimination, mediation,
10 condemnation, remediation, and maintenance that are associated with use of public
11 rights-of-way.

12 (b) The rights-of-way study committee shall consist of the following members:

13 1. The governor or his or her designee.

14 2. Two senators appointed by the senate majority leader or an appointed
15 senator's designee. One member appointed under this subdivision shall serve as
16 cochairperson of the committee.

17 3. One senator appointed by the senate minority leader or the appointed
18 senator's designee.

19 4. Two representatives to the assembly appointed by the speaker of the
20 assembly or an appointed representative's designee. One member appointed under
21 this subdivision shall serve as cochairperson of the committee.

22 5. One representative to the assembly appointed by the minority leader of the
23 assembly or the appointed representative's designee.

24 6. One representative from each of the following appointed jointly by the
25 speaker of the assembly and the senate majority leader:

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- 1 a. The Wisconsin Counties Association.
- 2 b. The League of Wisconsin Municipalities.
- 3 c. The Wisconsin Towns Association.
- 4 d. The Wisconsin State Telecommunications Association.
- 5 e. The Wisconsin Cable Communications Association.
- 6 f. The Wisconsin Utilities Association.
- 7 7. Two representatives of the wireless community appointed jointly by the
- 8 speaker of the assembly and the senate majority leader.
- 9 8. Two representatives of the electric distribution community, one of whom
- 10 represents a for-profit business and one of whom represents a cooperative
- 11 association, appointed jointly by the speaker of the assembly and the senate majority
- 12 leader.
- 13 (c) The study committee shall commence no later than June 1, 2020, and
- 14 terminate on the date that it completes its study, or January 1, 2021, whichever
- 15 occurs first.

SECTION 4. Initial applicability.

- 17 (1) The treatment of s. 66.0404 (4e) first applies to an application for a building
- 18 permit, or any other kind of permit, to construct a new, or substantially modify an
- 19 existing, mobile service support structure that is filed with a political subdivision on
- 20 the first day of the 4th month beginning after the effective date of this subsection.

21

(END)

**2019-2020 DRAFTING INSERT
FROM THE
LEGISLATIVE REFERENCE BUREAU**

LRB-3279/lins
MDK:...

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3
4
5

INSERT 3A:

interferes with rights-of-way, as specified in the bill, or

INSERT 17-10:

, sub. (2) (e) 1., or the standards of an ordinance enacted pursuant to sub. (2) (e) 1

Walker, Dan

From: Czaja, Ashley
Sent: Thursday, May 16, 2019 9:59 AM
To: LRB.Legal
Subject: Draft Review: LRB -3279/1

Please Jacket LRB -3279/1 for the SENATE.