



State of Wisconsin
2017 - 2018 LEGISLATURE

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MES&MDK:wlj

**ASSEMBLY SUBSTITUTE AMENDMENT 1,
TO ASSEMBLY BILL 348**

June 5, 2017 - Offered by Representative KUGLITSCH.

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 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 substitute amendment 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 substitute amendment also authorizes political subdivisions to impose setback requirements for certain mobile service support structures.

Rights-of-way

With regard to ROW, the substitute amendment does the following:

1. Prohibits the state and political subdivisions from entering into an exclusive agreement with any person for the use of ROW or the construction, operation, or maintenance of wireless facilities, wireless support structures, or the collocation of small wireless facilities (collectively, wireless facilities and structures). The

substitute amendment defines “wireless facility” as equipment at a fixed location that enables wireless service between user equipment and a wireless network. Under the substitute amendment, a “small wireless facility” is a facility that has specified dimensions.

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 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 wireless facilities. With regard to the rights of a wireless provider to construct wireless facilities or modify utility poles, wireless support structures, and related appurtenances, the substitute amendment 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 wireless facilities and structures.

Collocation of small wireless facilities

With regard to the activities of a wireless provider within and outside a ROW, the substitute amendment 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 substitute amendment imposes various time limits relating to the permit application and approval process. Generally, permits for collocation involving construction, building, or encroachment must be approved or denied within 90 days of receipt, and permits for collocation that does not involve

construction or installation of new wireless facilities and structures must be approved or denied within 60 days of receipt.

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.

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 substitute amendment 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 of wireless facilities; the replacement of such 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 substitute amendment 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

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 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. For certain existing agreements between a wireless provider and the state or political subdivision for collocation of small wireless facilities, provides that those agreements remain in effect, but requires the state or political subdivision to revise its rates or fees to comply with the substitute amendment no later than the first day of the seventh month beginning after the substitute amendment takes effect.

7. Provides that a person who owns or controls a governmental pole or 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 substitute amendment does the following:

1. Subject to the limitations contained in the substitute amendment, 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 substitute amendment'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 wireless facility or wireless support structure at a temporary rate pending the resolution of a ROW dispute.

Indemnification

In general, the substitute amendment 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 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 substitute amendment 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 substitute amendment, 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 substitute amendment 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 substitute amendment for such a pole or facility.

Also under the substitute amendment, 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.

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

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

5 (c) A setback requirement may create a setback only from the lot line of a parcel
6 that is zoned for only single-family residential use or for which only single-family
7 residential use is a permitted use, or from the lot line of a parcel that is adjacent to
8 such a parcel.

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

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

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

19 **66.0414 Small wireless facilities. (1) DEFINITIONS.** In this section:

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

22 (b) “Applicable codes” means the state electrical wiring code, as defined in s.
23 101.80 (4), the state plumbing code specified in s. 145.13, the fire prevention code
24 under ch. SPS 314, Wis. adm. code, the Wisconsin commercial building code under
25 chs. SPS 361 to 366, the Wisconsin uniform dwelling code under chs. SPS 320 to 325,

1 and local amendments to those codes enacted solely to address imminent threats of
2 destruction of property or injury to persons.

3 (c) “Applicant” means a wireless provider that submits an application.

4 (d) “Application” means an application for a permit under this section to
5 collocate a small wireless facility or to install or modify a utility pole or wireless
6 support structure.

7 (e) “Collocate” or “collocation” means the placement, mounting, replacement,
8 modification, operation, or maintenance of a wireless facility on or adjacent to a
9 wireless support structure or utility pole.

10 (f) “Communications service provider” means a cable operator, as defined in 47
11 USC 522 (5); a provider of information service, as defined in 47 USC 153 (24); a
12 telecommunications carrier, as defined in 47 USC 153 (51); or a wireless provider.

13 (g) “Fee” means a one-time charge.

14 (h) “Governmental pole” means a utility pole that is owned or operated by the
15 state or by a political subdivision in a right-of-way, and a pole or similar structure
16 owned or operated by the state or a political subdivision in a right-of-way that
17 supports only wireless facilities.

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

22 (j) “Microwireless facility” means a small wireless facility that does not exceed
23 24 inches in length, 15 inches in width, and 12 inches in height and that has no
24 exterior antenna longer than 11 inches.

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

3 (L) "Political subdivision" means any city, village, town, or county.

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

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

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

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

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

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

1 (q) “Utility pole for designated services” means a utility pole owned or operated
2 in a right-of-way by the state, a political subdivision, or a utility district that is
3 designed to, or used to, carry electric distribution lines, or cables or wires for
4 telecommunications, cable, or electric service.

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

10 1. A wireline backhaul facility.

11 2. Coaxial or fiber-optic cable between utility poles or wireless support
12 structures or otherwise not immediately adjacent to or directly associated with a
13 particular antenna.

14 (s) “Wireless infrastructure provider” means any person, other than a wireless
15 services provider, that builds or installs wireless communication transmission
16 equipment, wireless facilities, or wireless support structures.

17 (t) “Wireless provider” means a wireless infrastructure provider or a wireless
18 services provider.

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

22 (v) “Wireless services provider” means any person who provides wireless
23 services.

1 (w) “Wireless support structure” means an existing pole or other freestanding
2 structure, other than a utility pole, that is designed to support, or capable of
3 supporting, wireless facilities.

4 (x) “Wireline backhaul facility” means a facility for providing wireline backhaul
5 service.

6 (y) “Wireline backhaul service” means the transport of communications
7 services by wire from wireless facilities to a network.

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

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

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

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

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

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

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

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

10 (d) *Rate or fee adjustment.* Ordinances or agreements between a wireless
11 provider and the state or a political subdivision that charge a wireless provider a fee
12 or rate for the use a right-of-way on the effective date of this paragraph [LRB
13 inserts date], remain in effect for all utility poles or wireless support structures in
14 the state's or political subdivision's geographic jurisdiction on which the wireless
15 provider has collocated a small wireless facility, subject to applicable termination
16 provisions. The state or political subdivision shall revise its fee or rate to comply with
17 par. (c) no later than the first day of the 7th month beginning after the effective date
18 of this paragraph [LRB inserts date], and a fee or rate for the use of the
19 right-of-way that is the subject of an application submitted after the first day of the
20 7th month beginning after the effective date of this paragraph [LRB inserts date]
21 shall comply with par. (c).

22 (e) *Right of access.* 1. Except as otherwise provided in this subsection and subs.
23 (3) (c) 4. and (4), and notwithstanding any zoning ordinance enacted by a political
24 subdivision under s. 59.69, 60.61, or 62.23, a wireless provider shall have the right
25 to collocate wireless facilities and construct, modify, maintain, and operate utility

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

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

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

14 b. Fifty feet above ground level.

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

17 a. Ten feet above the tallest existing utility pole or wireless support structure
18 that is in place on the effective date of this subd. 3. a. [LRB inserts date].

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

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

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

8 (f) *Damage and repair.* The state or a political subdivision may require a
9 wireless provider to repair all damage that is directly caused by the activities of the
10 wireless provider in a right-of-way involving its wireless facilities, wireless support
11 structures, or utility poles, and to return the right-of-way to its former condition
12 before it was so damaged. If the wireless provider fails to make the required repairs
13 within a reasonable amount of time after receiving a written request to do so from
14 the state or a political subdivision, the state or political subdivision may make the
15 necessary repairs and charge the liable party for the cost of the repairs.

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

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. e., with regard to any type of construction,
20 building, or encroachment permit required by a political subdivision that relates to
21 a collocation conducted under this subsection, if the state or a political subdivision
22 fails to approve or deny a permit application under this section not later than 90 days
23 after its receipt, the applicant may consider its permit application approved.

24 e. If a permit described in subd. 1. d. does not relate to collocation involving the
25 construction or installation of new wireless facilities, utility poles, wireless support

1 structures, conduits, cables, or related appurtenances and facilities described in sub.
2 (2) (e) 1., and the political subdivision fails to approve or deny the permit application
3 under this section not later than 60 days after its receipt, the applicant may consider
4 its permit application approved.

5 f. The state or a political subdivision shall approve a permit application unless
6 it does not meet the applicable codes. If the permit application is denied for this
7 reason, the state or political subdivision shall provide the applicant with written
8 documentation explaining the basis for the denial no later than the date that the
9 permit application is denied. An applicant may cure the deficiencies identified in the
10 documentation and resubmit the permit application no later than 30 days after
11 receipt of the documentation without being required to pay an additional application
12 fee. The state or a political subdivision shall approve or deny the revised permit
13 application not later than 30 days after its receipt.

14 g. An applicant may file a consolidated permit application to collocate up to 30
15 small wireless facilities, or a greater number if agreed to by a political subdivision,
16 provided that all the small wireless facilities in the application consist of
17 substantially similar equipment and are to be placed on similar types of wireless
18 support structures. In rendering a decision on a consolidated permit application, a
19 political subdivision may approve a permit for some small wireless facilities and
20 deny a permit for others, but the political subdivision may not use the denial of one
21 or more permits as a basis to deny permits for all of the small wireless facilities in
22 the application.

23 h. If an applicant's permit application is approved, the applicant shall
24 commence the activity authorized by the permit no later than 365 days after its
25 receipt and shall pursue work on the activity until completion. Neither the state nor

1 a political subdivision may place any time limitation on an applicant that is related
2 to the permit. An applicant may request that the state or a political subdivision
3 terminate the applicant's permit.

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

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

7 b. The issuance of permits or other approvals for the collocation of small
8 wireless facilities.

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

13 4. A political subdivision may enact an ordinance to prohibit, in a
14 nondiscriminatory way, a communications service provider from installing
15 structures in the right-of-way of a historic district or an underground district,
16 except that the ordinance may not prohibit collocations or the replacement of existing
17 structures. In this subdivision, a historic district is an area designated as historic
18 by the political subdivision, listed on the national register of historic places in
19 Wisconsin, or listed on the state register of historic places. In this subdivision, an
20 underground district is an area designated by the political subdivision in which any
21 pipe, pipeline, duct, wire, line, conduit, or other equipment, which is used for the
22 transmission, distribution, or delivery of electrical power, heat, water, gas, sewer, or
23 telecommunications equipment, is located underground. This subdivision applies
24 only to ordinances enacted on or before January 1, 2014.

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

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

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

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

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

14 4. Notwithstanding subds. 1. to 3., an application fee may not exceed the lesser
15 of the following:

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

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

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

23 1. Routine maintenance.

24 2. The replacement of a wireless facility with a wireless facility that is
25 substantially similar to, or the same size or smaller than, the existing wireless

1 facility, except that the governmental unit may require the person seeking to replace
2 the wireless facility to obtain a permit to work within a right-of-way to complete
3 such a replacement.

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

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

10 (4) ACCESS TO GOVERNMENTAL STRUCTURES. (a) *Collocation of small wireless*
11 *facilities on governmental poles and utility poles for designated services.* 1. A person
12 owning or controlling a governmental pole or a utility pole for designated services
13 may not enter into an exclusive arrangement with any person for the right to attach
14 to, or use, such poles.

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

18 3. The rate a political subdivision may charge a wireless provider to collocate
19 a small wireless facility on a utility pole for designated services owned or operated
20 by the political subdivision shall be governed by an agreement between the political
21 subdivision and the wireless provider the terms of which are subject to the
22 procedures and rates developed by the public service commission under ss. 196.02
23 (1) and 196.04.

24 4. The rate an owner of a governmental pole other than a utility pole for
25 designated services charges another person to collocate on the owner's pole shall be

1 sufficient to recover the actual, direct, and reasonable costs related to the applicant's
2 application for, and use of, space on the pole, except that the total annual rate for a
3 collocation and any related activities may not exceed the lesser of the actual, direct,
4 and reasonable costs related to the collocation or \$100 per year per pole. If a dispute
5 arises concerning the appropriateness of a rate charged by the state or political
6 subdivision under this subdivision, the governmental unit bears the burden of
7 proving that the fee is reasonably related to the actual, direct, and reasonable costs
8 incurred by the governmental unit.

9 5. Agreements between a wireless provider and the state or a political
10 subdivision owning a governmental pole that charge the wireless provider a fee or
11 rate for a service described under subd. 4. on the effective date of this subdivision
12 [LRB inserts date], remain in effect where the wireless provider has collocated a
13 small wireless facility, subject to applicable termination provisions. The state or
14 political subdivision shall revise its fee or rate to comply with subd. 4. no later than
15 the first day of the 7th month beginning after the effective date of this subdivision
16 [LRB inserts date], and a fee or rate for collocating a small wireless facility on a
17 governmental pole that is the subject of an application submitted after the first day
18 of the 7th month beginning after the effective date of this subdivision [LRB inserts
19 date], shall comply with such revised rate or fee.

20 6. With regard to a governmental pole that supports aerial cables used for
21 video, communications, or electric service, and with regard to utility poles for
22 designated services, the parties shall comply with the process for make-ready work
23 under 47 USC 224 and its implementing regulations, including 47 CFR 1.1420 and
24 1.1422. The good faith estimate of the person owning or controlling such poles for

1 any make-ready work necessary to enable the pole to support the requested
2 collocation must include pole replacement if necessary.

3 7. With regard to a governmental pole that does not support aerial cables used
4 for video, communications, or electric service, the governmental unit shall provide
5 a good faith estimate for any make-ready work necessary to enable the pole to
6 support the requested collocation, including pole replacement if necessary, not later
7 than 60 days beginning after receipt of a complete application. Make-ready work,
8 including any pole replacement, must be completed within 60 days of written
9 acceptance of the good faith estimate by the applicant.

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

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

1 **(5) LOCAL AUTHORITY.** (a) Subject to the provisions of this section and applicable
2 federal law, and except as provided under par. (b), a political subdivision may
3 exercise zoning, land use, planning, and permitting authority with respect to
4 wireless support structures and utility poles.

5 (b) A political subdivision may not exercise any authority over the design,
6 engineering, construction, installation, or operation of any small wireless facility
7 located in an interior structure or upon the site of any campus, stadium, or athletic
8 facility that is not owned or controlled by the political subdivision, other than to
9 comply with applicable codes.

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

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

22 **(6) DISPUTE RESOLUTION.** A court of competent jurisdiction shall determine all
23 disputes arising under this section. Unless otherwise agreed to by the parties to a
24 dispute, and pending resolution of a right-of-way access rate dispute, a political
25 subdivision controlling access to and use of a right-of-way shall allow the placement

1 of a wireless facility or wireless support structure at a temporary rate of one-half of
2 the political subdivision's proposed annual rate, or \$20, whichever is less. Rates
3 shall be reconciled and adjusted upon final resolution of the dispute. Pending the
4 resolution of a dispute concerning rates for collocation of small wireless facilities on
5 government poles or utility poles for designated services, the person owning or
6 controlling the pole shall allow the collocating person to collocate on its poles, at
7 annual rates of no more than \$20 per year per pole, with rates to be reconciled and
8 adjusted upon final resolution of the dispute.

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

19 (8) FEDERAL LAW; CONTRACTS. Nothing in this section replaces or supersedes
20 contractual obligations or federal laws regarding utility poles that relate to wireless
21 providers and investor-owned electric utilities.

22 (9) PRIVATE PROPERTY OWNERS. Nothing in this section is intended to authorize
23 a person to place, maintain, modify, operate, or replace a privately owned utility pole
24 or wireless support structure or to collocate small wireless facilities on a privately

1 owned utility pole, a privately owned wireless support structure, or other private
2 property without the consent of the property owner.

3 **SECTION 3. Initial applicability.**

4 (1) The treatment of section 66.0404 (4e) of the statutes first applies to an
5 application for a building permit, or any other kind of permit, to construct a new, or
6 substantially modify an existing, mobile service support structure that is filed with
7 a political subdivision on January 1, 2018.

8 (END)