



State of Wisconsin
2017 - 2018 LEGISLATURE

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

October 3, 2017 - Offered by Senator LEMAHIEU.

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 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 for the construction, operation, or maintenance of small wireless facilities, wireless support structures, or for the collocation of small wireless facilities (collectively, wireless facilities and structures).

The 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 small wireless facilities and construct, modify, maintain, and operate (collectively, construct and operate) utility poles, wireless support structures, cable, and related appurtenances and facilities along, across, upon, and under ROW, provided such activity does not obstruct or hinder travel, drainage, maintenance, or the public health or safety or impede other uses of ROW by communications service providers, public utilities, or cooperatives.

4. Limits the height of utility poles, wireless support structures, and small wireless facilities. With regard to the rights of a wireless provider to construct small wireless facilities or modify utility poles, wireless support structures, and related appurtenances, the 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 small wireless facilities and structures.

Collocation

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 deadlines relating to the permit application and approval process. Generally, permits for collocation or replacement must be approved or denied within 60 days of receipt, and permits that involve new wireless facilities and structures must be approved or denied within 90 days of receipt. However, those deadlines may be

extended by mutual agreement. If the state or a political subdivision misses a deadline for an application, the substitute amendment 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 substitute amendment allows the state or a political subdivision to condition approval of a permit on compliance with reasonable and nondiscriminatory relocation, abandonment, or bonding requirements that are consistent with state law applicable to other occupiers of ROW.

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

6. Requires an applicant whose permit application is approved to commence the activity authorized by the permit within 365 days after its receipt and requires the applicant to pursue work on the activity until completion. However, the 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; the replacement of small wireless facilities with substantially similar or smaller facilities; or installation, maintenance, operation, or replacement of microwireless facilities strung on cables between existing utility poles or wireless support structures.

Access to governmental structures

With regard to regulating access to governmental structures, the 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 provides that, if no agreement is reached, the rate is subject to the Public Service Commission’s authority under current law.

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

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

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

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

Local authority, dispute resolution

With regard to the authority of a political subdivision, the 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 small 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).

1 (b) A setback requirement may apply only to a mobile service support structure
2 that is constructed on or adjacent to a parcel of land that is subject to a zoning
3 ordinance that permits only single-family residential use on that parcel. A setback
4 requirement does not apply to an existing or new utility pole, or wireless support
5 structure in a right-of-way that supports a small wireless facility, if the pole or
6 facility meets the height limitations in s. 66.0414 (2) (e) 2. and 3.

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

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

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

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

21 **66.0414 Small wireless facilities. (1) DEFINITIONS.** In this section:

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

24 (b) “Applicable codes” means the state electrical wiring code, as defined in s.
25 101.80 (4), the state plumbing code specified in s. 145.13, the fire prevention code

1 under ch. SPS 314, Wis. adm. code, the Wisconsin commercial building code under
2 chs. SPS 361 to 366, the Wisconsin uniform dwelling code under chs. SPS 320 to 325,
3 and local amendments to those codes enacted solely to address imminent threats of
4 destruction of property or injury to persons.

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

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

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

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

15 (g) “Fee” means a one-time charge.

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

20 (i) “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.

1 (j) "Microwireless 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 (k) "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 (L) "Political subdivision" means any city, village, town, or county.

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

8 (n) "Right-of-way" means the area on, below, or above a highway, as defined
9 in 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 (o) "Small wireless facility" means a wireless facility to which all of the
15 following apply:

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

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

1 (p) “Utility pole” means a structure that is used in whole or in part by a
2 communications service provider or for electric distribution, lighting, traffic control,
3 signage, or a similar function but does not include a structure that supports only a
4 wireless facility.

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

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

14 1. A wireline backhaul facility.

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

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

21 (t) “Wireless provider” means a wireless infrastructure provider or a wireless
22 services provider.

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

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

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

6 (x) “Wireline backhaul facility” means a facility for providing wireline backhaul
7 service.

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

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

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

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

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

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

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

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

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

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

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

1 (e) *Right of access.* 1. Except as otherwise provided in this subsection and subs.
2 (3) (c) 4. and (4), and notwithstanding ss. 182.017 and 196.58 and any zoning
3 ordinance enacted by a political subdivision under s. 59.69, 60.61, or 62.23, a wireless
4 provider shall have the right to collocate small wireless facilities and construct,
5 modify, maintain, and operate utility poles, wireless support structures, conduit,
6 cable, and related appurtenances and facilities along, across, upon, and under a
7 right-of-way. Such facilities and structures may not obstruct or hinder travel,
8 drainage, maintenance, or the public health, safety, and general welfare on or around
9 the right-of-way, or obstruct the legal use of the right-of-way for other
10 communications providers, public utilities, cooperative associations organized
11 under ch. 185 for the purpose of producing or furnishing heat, light, power, or water
12 to their members only, or pipes or pipelines transmitting liquid manure.

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

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

18 b. Fifty feet above ground level.

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

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

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

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

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

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

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

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

6 (b) *Zoning.* Notwithstanding an ordinance enacted under s. 59.69, 60.61, or
7 62.23, and except as provided in par. (c) 4., small wireless facilities shall be classified
8 as permitted uses and are not subject to a political subdivision's zoning ordinances
9 if they are collocated in a right-of-way or outside a right-of-way if the property is
10 not zoned exclusively for single-family residential use.

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

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

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

23 c. The state or a political subdivision shall notify an applicant in writing, within
24 10 days of receiving the application, whether it is complete. If it is incomplete, the
25 state or political subdivision shall specify why the application is incomplete.

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

5 e. Except as provided in subd. 1. g., if a permit application proposes to collocate
6 small wireless facilities to an existing utility pole or wireless support structure, or
7 replace an existing utility pole or wireless support structure, and the state or a
8 political subdivision fails to approve or deny the permit application under this
9 section not later than 60 days after its receipt, the applicant may consider its permit
10 application approved.

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

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

19 h. Subject to subd. 1. i., the state or a political subdivision shall approve a
20 permit application unless it does not meet the applicable codes. If the permit
21 application is denied for this reason, the state or political subdivision shall provide
22 the applicant with written documentation explaining the basis for the denial no later
23 than the date that the permit application is denied. An applicant may cure the
24 deficiencies identified in the documentation and resubmit the permit application no
25 later than 30 days after receipt of the documentation without being required to pay

1 an additional application fee. The state or a political subdivision shall approve or
2 deny the revised permit application not later than 30 days after its receipt.

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

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

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

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

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

1 b. The issuance of permits or other approvals for the collocation of small
2 wireless facilities.

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

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

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

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

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

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

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

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

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

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

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

16 1. Routine maintenance.

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

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

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

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

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

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

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

1 proving that the fee is reasonably related to the actual, direct, and reasonable costs
2 incurred by the governmental unit.

3 5. a. Except as provided in subd. 5. b., by the later of the first day of the 7th
4 month beginning after the effective date of this subd. 5. a. [LRB inserts date], or
5 3 months after receiving its first request to collocate a small wireless facility on a
6 governmental pole, other than a utility pole for designated services, the state or a
7 political subdivision shall make available, through ordinance or otherwise, rates,
8 fees, and terms for the collocation of small wireless facilities on governmental poles
9 that comply with this subsection.

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

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

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

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

19 (b) *Collocation on governmental wireless support structures and utility poles*
20 *outside the right-of-way.* The state or a political subdivision shall authorize the
21 collocation of small wireless facilities on wireless support structures and utility poles
22 owned or operated by a governmental unit that are not located within the
23 right-of-way to the same extent that the governmental unit permits access to such
24 structures for other commercial projects or uses. Such collocations are subject to sub.

1 (3) (c) 4. and to reasonable and nondiscriminatory rates, fees, and terms as are
2 provided in an agreement between the governmental unit and a wireless provider.

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

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

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

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

24 (6) DISPUTE RESOLUTION. Except as provided in sub. (4) (a) 3., and
25 notwithstanding ss. 182.017 (8) (a) and 196.58 (4) (a), a court of competent

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

12 **(7) 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. A wireless provider shall waive any claims
20 that it may have against a political subdivision with respect to consequential,
21 incidental, or special damages, however caused, based on the theory of liability.

22 **(8) FEDERAL LAW; CONTRACTS.** Nothing in this section adds to, replaces, or
23 supersedes federal laws regarding utility poles owned by investor-owned electric
24 utilities nor shall this section impose or otherwise affect any rights, controls, or

1 contractual obligations investor-owned electric utilities may establish with respect
2 to their utility poles.

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

8 **SECTION 3. Initial applicability.**

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

13 (END)