



State of Wisconsin
2021 - 2022 LEGISLATURE

LRB-1107/P2
KP:cdc

DOA:.....Sherwin, BB0402 - Electric providers and broadband infrastructure

FOR 2021-2023 BUDGET -- NOT READY FOR INTRODUCTION

AN ACT ...; relating to: the budget.

Analysis by the Legislative Reference Bureau

STATE GOVERNMENT

PUBLIC UTILITY REGULATION

Allowing electric providers to use easements for broadband service

This bill allows electric providers to use easements that they hold to do the following: 1) install or maintain broadband infrastructure; and 2) lease or provide excess capacity in broadband infrastructure to a supplier of broadband services. Under the bill, "electric provider" includes both electric public utilities and electric cooperatives. The bill also provides that except for an easement that expressly prohibits, by its terms, using the easement for those purposes, the terms or conditions of an easement held by an electric provider that inhibit it from using the easement for those purposes do not apply.

Before an electric provider uses an easement for the purposes allowed under the bill, it must provide notice to the owner of the property subject to the easement. After providing notice, an electric provider may record a memorandum including certain information in the office of the register of deeds of the county where the property subject to the easement is located. The bill also establishes requirements for actions brought by a property owner against an electric provider, subsidiary of an electric provider, or supplier of broadband services because of the electric provider's use of

an easement for a purpose allowed by the bill, and the bill prohibits owners from bringing such actions if the bill's requirements are not satisfied.

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

SECTION 1. 182.0172 of the statutes is created to read:

182.0172 Electric providers using easements to provide broadband.

(1) In this section:

(a) 1. "Broadband infrastructure" means any of the following that can be used to facilitate, directly or indirectly, originate, send, and receive high-quality voice, data, graphics, video, and video programming communications:

a. Materials.

b. Wires.

c. Cables, including fiber optic and copper cables regardless of whether the cables are dark or lit and whether the cables are in use or dormant.

d. Conduits.

e. Antennas.

f. Equipment.

g. Fixtures.

h. Switching multiplexers.

i. Poles.

j. Routers.

k. Switches.

L. Servers.

m. Appurtenances.

n. Facilities.

o. Ancillary or auxiliary equipment.

2. “Broadband infrastructure” does not include new poles or new towers that are used exclusively for providing broadband services.

(b) “Electric provider” means any of the following:

1. A public utility, as defined in s. 196.01 (5), that generates, transmits, or distributes electric energy at wholesale or retail.

2. A cooperative association incorporated under ch. 185 to do business in this state that carries on the business of generating, transmitting, or distributing electric energy to its members at wholesale or retail.

(2) (a) 1. An electric provider may use an easement that it holds for any of the following purposes:

a. Installing or maintaining broadband infrastructure to provide broadband services or allowing a supplier of broadband services to install or maintain broadband infrastructure to provide broadband services.

b. Leasing or providing to a supplier of broadband services any excess capacity in the electric provider’s broadband infrastructure.

2. This paragraph does not exempt, except, or exclude an electric provider or supplier of broadband services from complying with any provision of state or federal law applicable to siting broadband infrastructure or providing broadband services.

(b) Except as provided in par. (c) 1., terms or conditions of an easement held by an electric provider that inhibit the electric provider from using the easement for a purpose under par. (a) do not apply.

(c) Paragraphs (a) and (b) do not apply to an easement that does any of the following:

1. Expressly prohibits, by its terms, using the easement for a purpose under par. (a).

2. Applies to property owned by the state or a city, village, town, or county.

(3) (a) In this subsection, “owner” means a person who owns a fee simple or life estate interest in land or who is a land contract vendee.

(b) At least 30 days before first using an easement for a purpose under sub. (2) (a), an electric provider shall make a reasonable attempt to mail a notice to the owner of the property subject to the easement, as determined from records of the office of the register of deeds of the county in which the property subject to the easement is located, by mailing a notice to at least one of the following:

1. The last known address for the owner of the property subject to the easement.

2. The address listed with the county real property lister for the owner of the property subject to the easement.

3. The registered agent office or principal office listed in the records of the department of financial institutions for the owner of the property subject to the easement.

(c) If an electric provider is unable to identify an address to mail a notice under par. (b), the electric provider shall publish a class 1 notice under ch. 985 at least 30 days before first using an easement for a purpose under sub. (2) (a).

(d) An electric provider shall include all of the following in a notice under par. (b) or (c):

1. An identification of the property subject to the easement, which may be made by reference to the property address, by reference to the tax parcel number of the property, by map, or by legal description.

2. A statement that the electric provider intends to install broadband infrastructure or use existing infrastructure to make broadband service available.

3. An estimate of when the electric provider intends to install or begin using infrastructure under subd. 2.

4. A reference to this section.

5. A statement explaining that the electric provider may record a memorandum stating that the electric provider may use the easement for a purpose under sub. (2) (a).

6. A notice that the owner of the property subject to the easement may not bring an action against the electric provider for using an easement for a purpose under sub. (2) (a) after one year after the date of receiving the notice.

(4) Beginning 30 days after providing notice under sub. (3), an electric provider may record a memorandum in the office of the register of deeds of a county in which property subject to an easement used for a purpose under sub. (2) (a) is located. The electric provider shall include all of the following in the memorandum:

(a) One of the following:

1. If the easement is recorded, recording information for the easement.

2. If the easement is unrecorded or a prescriptive easement under s. 893.28 (2), the legal description of the parcel subject to the easement.

(b) A reference to this section.

(c) A statement that the electric provider may use the easement for a purpose under sub. (2) (a).

(d) A statement that terms or conditions of the easement that inhibit the electric provider from using the easement for a purpose under sub. (2) (a) do not apply.

(5) (a) In this subsection, “owner” means an owner of or other person holding an interest in real property subject to an easement used for a purpose under sub. (2) (a).

(b) 1. If an owner provides an electric provider, a subsidiary of an electric provider, or a supplier of broadband services with an appraisal performed by an appraiser licensed under ch. 458 comparing the fair market value of the owner’s real property interest immediately before and after an easement on the property is used for a purpose under sub. (2) (a), the electric provider, subsidiary, or supplier of broadband services shall do one of the following within 30 days:

a. Pay the owner the amount of damages identified in the appraisal provided by the owner.

b. Notify the owner that it disputes the appraisal. If an electric provider, subsidiary, or supplier of broadband services disputes the appraisal provided by the owner under this subd. 1. b., the electric provider, subsidiary, or supplier of broadband services shall within 90 days provide the owner with an appraisal performed by an appraiser licensed under ch. 458 comparing the fair market value of the owner’s real property interest immediately before and after an easement on the property is used for a purpose under sub. (2) (a). The owner shall make reasonable accommodations for performance of the appraisal under this subd. 1. b.

2. If an owner who receives an appraisal under subd. 1. b. from an electric provider, subsidiary, or supplier of broadband services provides to the electric provider, subsidiary, or supplier of broadband services written notice accepting the appraisal or does not bring an action under par. (d) within 30 days of receiving the appraisal, the electric provider, subsidiary, or supplier of broadband services shall

promptly remit payment to the owner for the difference in the fair market value of the owner's real property interest identified in the appraisal.

(c) An owner may not bring an action against an electric provider, a subsidiary of an electric provider, or a supplier of broadband services for damages from a decrease in the value of the owner's interest in real property due to the use of an easement for a purpose under sub. (2) (a) except as provided under this subsection.

(d) An owner may bring an action under this subsection against an electric provider, a subsidiary of an electric provider, or a supplier of broadband services for damages from a decrease in the value of the owner's interest in real property due to the use of an easement for a purpose under sub. (2) (a) only if all of the following apply:

1. The owner provides an appraisal under par. (b) 1. to the electric provider, subsidiary, or supplier of broadband services within one year after the date that the owner receives notice under sub. (3) or, if the owner receives no notice under sub. (3), within one year after the date that a memorandum referring to an easement that applies to the property is recorded under sub. (4).

2. The owner brings the action within 30 days after receiving an appraisal from the electric provider, subsidiary, or supplier of broadband services under par. (b) 1.

b.

(e) The maximum recovery under this subsection may not exceed the difference between the fair market value of the owner's real property interest immediately before an easement on the property is used for a purpose under sub. (2) (a) and the fair market value of the owner's real property interest immediately after an easement on the property is used for a purpose under sub. (2) (a). Evidence of revenues, profits, or fees received by an electric provider, a subsidiary of an electric

provider, or a supplier of broadband services shall not be admissible as evidence in any proceeding or action under this subsection.

SECTION 9151. Nonstatutory provisions; Other.

(1) ELECTRIC PROVIDER USE OF EASEMENTS FOR BROADBAND; PRIOR CAUSES OF ACTION.

(a) *Definitions.* In this subsection:

1. “Electric provider” has the meaning given in s. 182.0172 (1) (b).
2. “Owner” has the meaning given in s. 182.0172 (5) (a).

(b) *Time limit for prior causes of action.* No owner may bring an action against an electric provider, a subsidiary of an electric provider, or a supplier of broadband services for using an easement held by the electric provider for any of the following before the effective date of this subsection unless the owner brings the action no later than one year after the effective date of this subsection:

1. Installing or maintaining broadband infrastructure to provide broadband services or allowing a supplier of broadband services to install or maintain broadband infrastructure to provide broadband services.

2. Leasing or providing to a supplier of broadband services any capacity in the electric provider’s broadband infrastructure.

(END)