

# State of Wisconsin



2019 Senate Bill 239

Date of enactment: **July 10, 2019**  
Date of publication\*: **July 11, 2019**

## 2019 WISCONSIN ACT 14

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

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

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

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

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

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

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

**SECTION 2.** 66.0414 of the statutes is created to read:  
**66.0414 Small wireless facilities. (1) DEFINITIONS.** In this section:

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

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

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

(d) "Applicable codes" means the state electrical wiring code, as defined in s. 101.80 (4), the state plumbing code specified in s. 145.13, the fire prevention code under ch. SPS 314, Wis. adm. code, the Wisconsin commercial building code under chs. SPS 361 to 366, the Wisconsin uniform dwelling code under chs. SPS 320 to 325, and local amendments to those codes enacted solely

\* Section 991.11, WISCONSIN STATUTES: Effective date of acts. "Every act and every portion of an act enacted by the legislature over the governor's partial veto which does not expressly prescribe the time when it takes effect shall take effect on the day after its date of publication."

to address imminent threats of destruction of property or injury to persons.

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

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

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

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

(i) “Communications network” means a network used to provide a communications service.

(j) “Communications service” means cable service, as defined in 47 USC 522 (6), telecommunications service, as defined in 47 USC 153 (53), information service, as defined in 47 USC 153 (24), or wireless service.

(k) “Communications service provider” means a person that provides communications service.

(L) “Facility” means an antenna facility or a structure.

(m) “Fee” means a one-time charge.

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

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

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

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

(r) “Political subdivision” means any city, village, town, or county.

(s) “Rate” means a recurring charge.

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

(u) “Small wireless facility” means a wireless facility to which all of the following apply:

1. The wireless facility satisfies any of the following:

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

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

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

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

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

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

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

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

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

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

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

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

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

a. Equipment associated with wireless services.

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

c. Regular and backup power supplies.

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

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

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

b. Wireline backhaul facilities.

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

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

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

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

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

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

1. A utility pole.

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

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

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

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

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

(c) *Rates and fees.* Subject to sub. (3) (e) 3., the state or a political subdivision may charge a wireless provider a nondiscriminatory rate or fee for the use of a right-of-way with respect to the collocation of a small wireless facility or the installation, modification, or replacement of a utility pole in the right-of-way only if the state or political subdivision charges other entities for the use of

the right-of-way. If the state or a political subdivision charges a wireless provider a rate or fee as described in this paragraph, all of the following apply:

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

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

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

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

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

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

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

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

(e) *Right of access.* 1. Except as otherwise provided in this subsection and subs. (3) (c) 4. and 5. and (4), and notwithstanding ss. 182.017 and 196.58 and any zoning ordinance enacted by a political subdivision under s. 59.69, 60.61, 60.62, or 62.23, a wireless provider shall have the right to collocate small wireless facilities and construct, modify, maintain, and replace its own utility poles, or, with the permission of the owner, a 3rd party’s utility pole, that supports small wireless facilities along, across, upon, and under a right-of-way. Such small wireless facilities and utility poles, and activities related to the installation and maintenance of the small wireless

facilities and utility poles, may not obstruct or hinder travel, drainage, maintenance, or the public health, safety, and general welfare on or around the right-of-way, or obstruct the legal use of the right-of-way for other communications providers, public utilities, cooperative associations organized under ch. 185 for the purpose of producing or furnishing heat, light, power, or water to their members only, or pipes or pipelines transmitting liquid manure. A political subdivision may enact an ordinance consistent with this subdivision.

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

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

b. Fifty feet above ground level.

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

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

b. Fifty feet above ground level.

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

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

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

(g) *Nondiscrimination.* The state and political subdivisions must administer and regulate a right-of-way in

a competitively neutral manner with regard to all users of the right-of-way.

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

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

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

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

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

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

d. Except as provided in subd. 1. g., if a permit application involves a new or replacement utility pole, and the state or a political subdivision fails to approve or deny the permit application under this section not later than 90

days after its receipt, the applicant may consider its permit application approved.

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

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

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

h. Subject to subd. 1. i., the state or a political subdivision shall approve a permit application unless it does not meet the applicable codes, sub. (2) (e) 1., or the standards of an ordinance enacted pursuant to sub. (2) (e) 1. If the permit application is denied for any of these reasons, the state or political subdivision shall provide the applicant with written documentation explaining the basis for the denial no later than the date that the permit application is denied. An applicant may cure the deficiencies identified in the documentation and resubmit the permit application no later than 30 days after receipt of the documentation without being required to pay an additional application fee. The state or a political subdivision shall approve or deny the revised permit application not later than 30 days after its receipt.

i. The state or a political subdivision may 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 rights-of-way.

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

k. If an applicant's permit application is approved, the applicant shall commence the activity authorized by the permit no later than 365 days after its receipt and shall pursue work on the activity until completion. Neither the

state nor a political subdivision may place any time limitation on an applicant that is related to the permit. An applicant may request that the state or a political subdivision terminate the applicant's permit.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

5. A political subdivision may enact an ordinance to prohibit, in a nondiscriminatory way, a communications service provider from installing structures in the right-of-way of a historic district or an underground district, except that the ordinance may not prohibit collocations or the replacement of existing structures. In this subdivision, a historic district is an area designated as historic by the political subdivision, listed on the national register of historic places in Wisconsin, or listed on the state register of historic places. In this subdivision, an underground district is an area designated by the political subdivision in which all pipes, pipelines, ducts, wires, lines, conduits, or other equipment, which are used for the transmission, distribution, or delivery of electrical power, heat, water, gas, sewer, or telecommunications equipment, are located underground. A political subdivision may require any collocation on or replacement of an existing structure to reasonably conform to the design aesthetics of the original structure in a historic or underground district. Any design or concealment measures are not considered a part of the small wireless facility for purposes of the size restrictions in the definition of "small wireless facility" under sub. (1) (u). The requirements of an ordinance enacted under this subdivision must be objective, technically feasible, no more burdensome than requirements applied to other types of infrastructure deployment, and reasonably directed at avoiding or remedying the intangible public harm of unsightly or out-of-character deployments. A political subdivision may not apply

any requirements under an ordinance enacted under this subdivision in a manner that results in an effective prohibition of wireless service.

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

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

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

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

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

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

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

1. Routine maintenance.

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

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

(f) *Traffic work permits.* Nothing in this section prohibits a political subdivision from requiring a work permit for work that will unreasonably affect traffic patterns or obstruct vehicular traffic in a right-of-way, provided that such permits are issued to any applicant on a nondiscriminatory basis upon terms and conditions that apply to the activities of any other person performing work in the right-of-way that requires excavation or the closing of sidewalks or traffic lanes.

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

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

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

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

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

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

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

2. Agreements between a wireless provider and the state or a political subdivision that are in effect on the

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

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

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

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

(5) DISPUTE RESOLUTION. Except as provided in sub. (4) (c), and notwithstanding ss. 182.017 (8) (a) and 196.58 (4) (a), a court of competent jurisdiction shall determine all disputes arising under this section. Unless otherwise agreed to by the parties to a dispute, and pending resolution of a right-of-way access rate dispute, a political subdivision controlling access to and use of a right-of-way shall allow the placement of a small wireless facility or utility pole at a temporary rate of one-half of the political subdivision's proposed annual rate, or

\$20, whichever is less. Rates shall be reconciled and adjusted upon final resolution of the dispute. Pending the resolution of a dispute concerning rates for collocation of small wireless facilities on governmental poles or utility poles for designated services, the person owning or controlling the pole shall allow the collocating person to collocate on its poles, at annual rates of no more than \$20 per year per pole, with rates to be reconciled and adjusted upon final resolution of the dispute.

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

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

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

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

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

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

2. Regulate any communications service.

3. Impose or collect any tax, fee, or other charge for the provision of additional communications services

over a communications service provider's communications facilities in a right-of-way.

### **SECTION 3. Nonstatutory provisions.**

#### **(1) RIGHTS-OF-WAY STUDY COMMITTEE.**

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

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

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

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

1. The governor or his or her designee.

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

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

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

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

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

- a. The Wisconsin Counties Association.

- b. The League of Wisconsin Municipalities.

- c. The Wisconsin Towns Association.

- d. The Wisconsin State Telecommunications Association.

- e. The Wisconsin Cable Communications Association.

- f. The Wisconsin Utilities Association.

7. Two representatives of the wireless community appointed jointly by the speaker of the assembly and the senate majority leader.

8. Two representatives of the electric distribution community appointed jointly by the speaker of the assembly and the senate majority leader.



9. One representative of a cooperative association appointed jointly by the speaker of the assembly and the senate majority leader.

10. One representative of a municipal electric utility appointed jointly by the speaker of the assembly and the senate majority leader.

(c) The study committee shall commence no later than June 1, 2020, and terminate on the date that it completes its study, or January 1, 2021, whichever occurs first.

**SECTION 4. Initial applicability.**

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

