



2017 ASSEMBLY BILL 348

May 25, 2017 - Introduced by Representatives KUGLITSCH, FIELDS, QUINN, MASON, TAUCHEN, ZEPNICK and R. BROOKS, cosponsored by Senator COWLES. Referred to Committee on Jobs and the Economy.

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

Analysis by the Legislative Reference Bureau

This bill 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 bill also authorizes political subdivisions to impose setback requirements for certain mobile service support structures.

Rights-of-way

With regard to ROW, the bill does the following:

1. Prohibits the state and political subdivisions from entering into an exclusive agreement with any person for the use of ROW or the construction, operation, or maintenance of wireless facilities, wireless support structures, or the collocation of small wireless facilities (collectively, wireless facilities and structures). The bill defines “wireless facility” as equipment at a fixed location that enables wireless service between user equipment and a wireless network. Under the bill, a “small wireless facility” is a facility that has specified dimensions.

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2. Provides that the state and political subdivisions may impose rates or fees on wireless providers only if they charge other communications service providers or utilities for the use of ROW, subject to a number of conditions and limitations.

3. Subject to a number of exceptions, and notwithstanding a political subdivision's zoning ordinances, authorizes a wireless provider to collocate wireless facilities and construct, modify, maintain, and operate (collectively, construct and operate) utility poles, wireless support structures, cable, and related appurtenances and facilities along, across, upon, and under ROW, provided such activity does not obstruct or hinder travel or public safety or impede other uses of ROW by communications service providers, public utilities, or cooperatives.

4. Limits the height of utility poles, wireless support structures, and wireless facilities. With regard to the rights of a wireless provider to construct wireless facilities or modify utility poles, wireless support structures, and related appurtenances, the bill allows a political subdivision to propose an alternate location within 50 feet of the proposed location, which the wireless provider must use if it has the right to do so and the alternate location is reasonable and does not impose additional cost or technical issues, as determined by the wireless provider.

5. Allows the state or political subdivisions to require a wireless provider to repair all damage that is directly caused by its activities in ROW that involve wireless facilities and structures.

Collocation of small wireless facilities

With regard to the activities of a wireless provider within and outside a ROW, the bill does the following:

1. Subject to a number of exceptions, prohibits the state and political subdivisions from prohibiting, regulating, or charging any person for the collocation of small wireless facilities.

2. Notwithstanding a political subdivision's zoning ordinances, classifies small wireless facilities as a permitted use that is not subject to such zoning ordinances if they are collocated in or outside a ROW if the property is not zoned exclusively for single-family residential use.

3. Subject to a number of conditions, authorizes the state and political subdivisions to require an application for a permit to collocate a small wireless facility and to construct and operate a new or replacement utility pole or wireless support structure if the permit is of general applicability and does not apply exclusively to wireless facilities. The bill imposes various time limits relating to the permit application and approval process. Generally, permits for collocation involving construction, building, or encroachment must be approved or denied within 90 days of receipt, and permits for collocation that does not involve construction or installation of new wireless facilities and structures must be approved or denied within 60 days of receipt.

4. Requires the state or political subdivisions to approve permit applications unless the application does not meet applicable codes, which are defined as state codes related to electrical wiring, plumbing, and fire prevention; commercial building codes; uniform dwelling codes; and local amendments to those codes.

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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 bill prohibits the state and political subdivisions from placing any time limit on an application related to the permit.

7. Prohibits the state and political subdivisions from imposing a moratorium on filing, receiving, or processing applications, or issuing permits for the collocation of small wireless facilities.

8. Allows the state and political subdivisions to require a permit application to collocate wireless facilities and construct and operate utility poles and wireless facilities and structures with regard to property that, on the effective date of the bill, is located in historic places or in an area that is used for the underground transmission or delivery of electrical power, heat, water, gas, sewer, or telecommunications equipment.

9. Subject to a number of conditions, authorizes the state and political subdivisions to charge an application fee for permits if an application fee is required for similar types of permit applications related to other types of commercial development. Generally, neither the state nor a political subdivision may require applications, permits, or fees for routine maintenance of wireless facilities; the replacement of such facilities with substantially similar or smaller facilities; or installation, maintenance, operation, or replacement of microwireless facilities strung on cables between existing utility poles or wireless support structures.

Access to governmental structures

With regard to regulating access to governmental structures, the bill 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, a utility district, or a cooperative association.

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. Limits the rate an owner of a UPDS may charge to collocate on the pole to \$100 per year per pole.

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5. Subject to a number of conditions, limits the rate an owner of a governmental pole 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 the limit specified in item 4.

6. Provides that if collocation rates charged on the effective date of the bill by a person who owns or controls a governmental pole or UPDS are inconsistent with the rates specified in the bill, the pole owner must revise its rates to be in compliance with the rates specified in the bill, not later than the first day of the seventh month beginning after the bill takes effect.

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

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

Local authority, dispute resolution

With regard to the authority of a political subdivision, the bill does the following:

1. Subject to the limitations contained in the bill, 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. Provides a mechanism for political subdivisions to allow the placement of a wireless facility or wireless support structure at a temporary rate pending the resolution of a ROW dispute.

Indemnification

In general, the bill 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.

Contracts

If a person is affected by a contract that is in effect on the effective date of the bill, and the contract contains provisions inconsistent with provisions in the bill related to rates and fees for the use of ROW or charges for the use of a governmental pole or a UPDS, the person may follow the terms of the contract until the contract expires.

ASSEMBLY BILL 348***Setback requirements for a mobile service support structure***

Generally, under current law, a political subdivision may not impose a setback requirement for a mobile service support structure. This bill grants a political subdivision limited authority to impose a setback requirement on the placement of such a structure with regard to new or substantially modified structures. Under the bill, a requirement could apply only to a structure that is constructed on land that is zoned for only single-family residential use. 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.

Also under the bill, 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.

For further information see the ***state and local*** fiscal estimate, which will be printed as an appendix to this bill.

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

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

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

7 (b) A setback requirement may apply only to a mobile service support structure
8 that is constructed on a parcel of land that is subject to a zoning ordinance that
9 permits only single-family residential use on that parcel.

10 (c) A setback requirement may create a setback only from the lot line of a parcel
11 that is zoned for only single-family residential use or for which only single-family
12 residential use is a permitted use.

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

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

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

11 **66.0414 Small wireless facilities. (1) DEFINITIONS.** In this section:

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

14 (b) "Applicable codes" means the state electrical wiring code, as defined in s.
15 101.80 (4), the state plumbing code specified in s. 145.13, the fire prevention code
16 under ch. SPS 314, Wis. adm. code, the Wisconsin commercial building code under
17 chs. SPS 361 to 366, the Wisconsin uniform dwelling code under chs. SPS 320 to 325,
18 and local amendments to those codes enacted solely to address imminent threats of
19 destruction of property or injury to persons.

20 (c) "Applicant" means a wireless provider that submits an application.

21 (d) "Application" means an application for a permit under this section to
22 collocate a small wireless facility or to install or modify a utility pole or wireless
23 support structure.

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

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

7 (g) “Fee” means a one-time charge.

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

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

16 (j) “Microwireless facility” means a small wireless facility that does not exceed
17 24 inches in length, 15 inches in width, and 12 inches in height and that has no
18 exterior antenna longer than 11 inches.

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

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

22 (m) “Rate” means a recurring charge.

23 (n) “Right-of-way” means the area on, below, or above a highway, as defined
24 in s. 340.01 (22), other than a federal interstate highway; sidewalk; utility easement;

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1 or other similar property, including property owned or controlled by the department
2 of transportation.

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

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

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

14 (p) "Utility pole" means a structure that is used in whole or in part by a
15 communications service provider or for electric distribution, lighting, traffic control,
16 signage, or a similar function but does not include a structure that supports only a
17 wireless facility. "Utility pole" does not include poles owned or operated by an
18 investor-owned electric utility.

19 (q) "Utility pole for designated services" means a utility pole owned or operated
20 in a right-of-way by the state or a political subdivision, a utility district, a
21 cooperative association organized under ch. 185 for purposes of producing or
22 furnishing electricity to its members only that is designed to, or used to, carry electric
23 distribution lines, or cables or wires for telecommunications, cable, or electric
24 service.

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

6 1. A wireline backhaul facility.

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

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

13 (t) “Wireless provider” means a wireless infrastructure provider or a wireless
14 services provider.

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

18 (v) “Wireless services provider” means any person who provides wireless
19 services.

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

23 (x) “Wireline backhaul facility” means a facility for providing wireline backhaul
24 service.

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1 (y) "Wireline backhaul service" means the transport of communications
2 services by wire from wireless facilities to a network.

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

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

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

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

18 2. The fee or rate must be competitively neutral with regard to other users of
19 the right-of-way.

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

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

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

5 (d) *Rate or fee adjustment.* If the state or a political subdivision charges a
6 wireless provider a fee or rate for the use of a right-of-way on the effective date of
7 this paragraph [LRB inserts date], that is inconsistent with par. (c), the state or
8 political subdivision shall revise its fee or rate to be in compliance with par. (c) not
9 later than the first day of the 7th month beginning after the effective date of this
10 paragraph [LRB inserts date].

11 (e) *Right of access.* 1. Except as otherwise provided in this subsection and subs.
12 (3) (c) 4. and (4), and notwithstanding any zoning ordinance enacted by a political
13 subdivision under s. 59.69, 60.61, or 62.23, a wireless provider shall have the right
14 to collocate wireless facilities and construct, modify, maintain, and operate utility
15 poles, wireless support structures, conduit, cable, and related appurtenances and
16 facilities along, across, upon, and under a right-of-way. Such facilities and
17 structures may not obstruct or hinder travel or public safety on or around the
18 right-of-way, or obstruct the legal use of the right-of-way by other communications
19 providers, public utilities, or cooperative associations organized under ch. 185 for the
20 purpose of producing or furnishing heat, light, power, or water to their members only.

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

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

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1 b. Fifty feet above ground level.

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

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

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

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

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

19 (f) *Damage and repair.* The state or a political subdivision may require a
20 wireless provider to repair all damage that is directly caused by the activities of the
21 wireless provider in a right-of-way involving its wireless facilities, wireless support
22 structures, or utility poles, and to return the right-of-way to its former condition
23 before it was so damaged. If the wireless provider fails to make the required repairs
24 within a reasonable amount of time after receiving a written request to do so from

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1 the state or a political subdivision, the state or political subdivision may make the
2 necessary repairs and charge the liable party for the cost of the repairs.

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

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

11 (b) *Zoning*. Notwithstanding an ordinance enacted under s. 59.69, 60.61, or
12 62.23, and except as provided in par. (c) 4., small wireless facilities shall be classified
13 as permitted uses and are not subject to a political subdivision's zoning ordinances
14 if they are collocated in a right-of-way or outside a right-of-way if the property is
15 not zoned exclusively for single-family residential use.

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

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

24 b. Neither the state nor a political subdivision may require an applicant that
25 is a wireless provider to provide more information in its permit application than such

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1 a governmental unit requires from a communications service provider that is not a
2 wireless provider and that applies for the same type of permit.

3 c. The state or a political subdivision shall notify an applicant in writing, within
4 10 days of receiving the application, whether it is complete. If it is incomplete, the
5 state or political subdivision shall specify why the application is incomplete.

6 d. Except as provided in subd. 1. e., with regard to any type of construction,
7 building, or encroachment permit required by a political subdivision that relates to
8 a collocation conducted under this subsection, if the state or a political subdivision
9 fails to approve or deny a permit application under this section not later than 90 days
10 after its receipt, the applicant may consider its permit application approved.

11 e. If a permit described in subd. 1. d. does not relate to collocation involving the
12 construction or installation of new wireless facilities, utility poles, wireless support
13 structures, conduits, cables, or related appurtenances and facilities described in sub.
14 (2) (e) 1., and the political subdivision fails to approve or deny the permit application
15 under this section not later than 60 days after its receipt, the applicant may consider
16 its permit application approved.

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

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1 g. An applicant seeking to collocate more than one small wireless facility within
2 the jurisdiction of a single political subdivision may, at the applicant's discretion, file
3 a consolidated application and receive a single permit for the collocation of multiple
4 small wireless facilities.

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

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

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

14 b. The issuance of permits or other approvals for the collocation of small
15 wireless facilities.

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

20 4. The state or a political subdivision may require an application for a permit
21 to collocate wireless facilities and construct, modify, maintain, and operate utility
22 poles, wireless support structures, conduit, cable, and related appurtenances and
23 facilities on property to which any of the following applies:

24 a. As of the effective date of this subd. 4. a. [LRB inserts date], the property
25 is located within a historic district, as designated by a political subdivision; listed on

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1 the national register of historic places in Wisconsin; or listed on the state register of
2 historic places.

3 b. As of the effective date of this subd. 4. b. [LRB inserts date], the property
4 is located in an area in which any pipe, pipeline, duct, wire, line, conduit, or other
5 equipment, which is used for the transmission, distribution, or delivery of electrical
6 power, heat, water, gas, sewer, or telecommunications equipment, is located
7 underground.

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

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

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

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

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

21 4. Notwithstanding subs. 1. to 3., an application fee may not exceed the lesser
22 of the following:

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

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

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

6 1. Routine maintenance.

7 2. The replacement of a wireless facility with a wireless facility that is
8 substantially similar to, or the same size or smaller than, the existing wireless
9 facility, except that the governmental unit may require the person seeking to replace
10 the wireless facility to obtain a permit to work within a right-of-way to complete
11 such a replacement.

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

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

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

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

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1 3. The rate an owner of a utility pole for designated services charges another
2 person to collocate on the owner's pole may not exceed \$100 per year per pole.

3 4. The rate an owner of a governmental pole charges another person to collocate
4 on the owner's pole shall be sufficient to recover the actual, direct, and reasonable
5 costs related to the applicant's application for, and use of, space on the pole, except
6 that the total annual rate for a collocation and any related activities may not exceed
7 the lesser of the actual, direct, and reasonable costs related to the collocation or the
8 amount specified in subd. 3. If a dispute arises concerning the appropriateness of a
9 rate charged by the state or political subdivision under this subdivision, the
10 governmental unit bears the burden of proving that the fee is reasonably related to
11 the actual, direct, and reasonable costs incurred by the governmental unit.

12 5. If a person owning or controlling a governmental pole or a utility pole for
13 designated services charges any person a fee or rate for a service described under
14 subd. 2., 3., or 4. on the effective date of this subdivision [LRB inserts date], that
15 is inconsistent with the fees or rates described under subds. 2., 3., and 4., the person
16 owning such a pole shall revise its fee or rate to be in compliance with those
17 subdivisions not later than the first day of the 7th month beginning after the effective
18 date of this subdivision [LRB inserts date].

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

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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. Make-ready work,
6 including any pole replacement, must be completed within 60 days of written
7 acceptance of the good faith estimate by the applicant.

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

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

24 **(5) LOCAL AUTHORITY.** (a) Subject to the provisions of this section and applicable
25 federal law, and except as provided under par. (b), a political subdivision may

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1 exercise zoning, land use, planning, and permitting authority with respect to
2 wireless support structures and utility poles.

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

8 (c) Except as provided in this section or required by federal law, a political
9 subdivision may not adopt or enforce any regulation on the placement or operation
10 of communications facilities in a right-of-way where an entity is authorized on the
11 effective date of this paragraph [LRB inserts date], to operate in the right-of-way,
12 or its wireless provider affiliate, and may not regulate or impose or collect fees on
13 communications services except to the extent specifically provided for in that
14 authorization, and unless expressly required by state or federal statute.

15 (6) DISPUTE RESOLUTION. A court of competent jurisdiction shall determine all
16 disputes arising under this section. Unless otherwise agreed to by the parties to a
17 dispute, and pending resolution of a right-of-way access rate dispute, a political
18 subdivision controlling access to and use of a right-of-way shall allow the placement
19 of a wireless facility or wireless support structure at a temporary rate of one-half of
20 the political subdivision's proposed annual rate, or \$20, whichever is less. Rates
21 shall be reconciled and adjusted upon final resolution of the dispute. Pending the
22 resolution of a dispute concerning rates for collocation of small wireless facilities on
23 government poles or utility poles for designated services, the person owning or
24 controlling the pole shall allow the collocating person to collocate on its poles, at

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1 annual rates of no more than \$20 per year per pole, with rates to be reconciled and
2 adjusted upon final resolution of the dispute.

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

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

SECTION 3. Nonstatutory provisions.

16 (1) If a person is affected by a contract that is in effect on the effective date of
17 this subsection and that contains provisions that are inconsistent with section
18 66.0414 (2) (d) or (4) (a) 5. of the statutes but that are not inconsistent with any
19 applicable law in effect immediately before the effective date of this subsection, then,
20 notwithstanding section 66.0414 (2) (d) or (4) (a) 5. of the statutes, the person may
21 perform its obligations, and exercise its rights, under those provisions of the contract
22 until the contract expires.
23

SECTION 4. Initial applicability.
24

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

5 (END)