

State of Wisconsin



2013 Assembly Bill 595

Date of enactment: **February 5, 2014**

Date of publication*: **February 6, 2014**

2013 WISCONSIN ACT 125

AN ACT to repeal 196.01 (1d) (a), 196.01 (1d) (b), 196.01 (1r), 196.01 (4m), 196.01 (12), 196.203 (1m) and 196.21; **to amend** 13.92 (4) (c), 13.92 (4) (d), 13.92 (4) (e), 13.92 (4) (f), 20.395 (3) (jh), 35.93 (2) (b) 4., 35.93 (2) (c) 1., 35.93 (3), 35.93 (3) (e) (intro.), 35.93 (3) (e) 1., 101.862 (4) (f), 196.19 (3), 196.19 (4), 196.192 (3) (b), 196.194, 196.49 (5g) (a) (intro.), 196.491 (3) (g), 196.50 (2) (i), 197.10 (4), 227.01 (13) (intro.), 227.11 (2) (intro.), 227.27 (2) and 941.40 (3) and (4) (b); and **to create** 13.92 (4) (bm) and 227.265 of the statutes; **relating to:** Public Service Commission certificates for certain activities; tampering with telecommunications or electric wires; regulation of pay telephone service providers and cable television telecommunications service providers; accident reporting by telecommunications utilities; the definition of transmission facility; availability of public utility rate schedules; and rule-making procedures.

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

SECTION 1. 13.92 (4) (bm) of the statutes is created to read:

13.92 (4) (bm) If 2 or more rules filed under s. 227.20 or modified under s. 227.265 affect the same unit of the Wisconsin administrative code without taking cognizance of the effect thereon of the other rules and if the legislative reference bureau finds that there is no mutual inconsistency in the changes made by each such rule, the legislative reference bureau shall incorporate the changes made by each rule into the text of the unit and document the incorporation in a note to the unit. For each such incorporation, the legislative reference bureau shall include in a correction bill a provision formally validating the incorporation. Section 227.27 (2) is not affected by printing decisions made by the legislative reference bureau under this paragraph.

SECTION 2. 13.92 (4) (c) of the statutes is amended to read:

13.92 (4) (c) The legislative reference bureau may insert in the Wisconsin administrative code a note explaining any change made under par. (b) or (bm).

SECTION 3. 13.92 (4) (d) of the statutes is amended to read:

13.92 (4) (d) Sections 227.114, 227.116, 227.135, and 227.14 to 227.24 do not apply to any change made by the legislative reference bureau under par. (b) or (bm).

SECTION 4. 13.92 (4) (e) of the statutes is amended to read:

13.92 (4) (e) The legislative reference bureau shall prepare and keep on file a record of each change made under par. (b) or (bm).

SECTION 5. 13.92 (4) (f) of the statutes is amended to read:

13.92 (4) (f) The legislative reference bureau shall notify the agency involved of each change made under par. (b) or (bm).

SECTION 6. 20.395 (3) (jh) of the statutes is amended to read:

* 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."

20.395 (3) (jh) *Utility facilities within highway rights-of-way state funds.* From the general fund, all moneys received from telecommunications providers, as defined in s. 196.01 (8p), or cable television telecommunications service providers, as defined in s. 196.01 (1r), 2011 stats., for activities related to locating, accommodating, operating, or maintaining utility facilities within highway rights-of-way, for such purposes.

SECTION 7. 35.93 (2) (b) 4. of the statutes, as affected by [2013 Wisconsin Act 20](#), is amended to read:

35.93 (2) (b) 4. Copies of all rules filed with the legislative reference bureau under s. 227.20 (1) or modified under s. 227.265 since the compilation of the preceding register, including emergency rules filed under s. 227.24 (3).

SECTION 8. 35.93 (2) (c) 1. of the statutes, as affected by [2013 Wisconsin Act 20](#), is amended to read:

35.93 (2) (c) 1. Each chapter of the Wisconsin administrative code that has been affected by rules filed with legislative reference bureau under s. 227.20 (1) or modified under s. 227.265, in accordance with sub. (3) (e) 1.

SECTION 9. 35.93 (3) of the statutes is amended to read:

35.93 (3) The legislative reference bureau shall compile and deliver to the department for printing copy for a register which shall contain all the rules filed under s. 227.20 or modified under s. 227.265 since the compilation of rules for the preceding issue of the register was made and those executive orders which are to be in effect for more than 90 days or an informative summary thereof. The complete register shall be compiled and published before the first day of each month and a notice section of the register shall be compiled and published before the 15th day of each month. Each issue of the register shall contain a title page with the name "Wisconsin administrative register", the number and date of the register, and a table of contents. Each page of the register shall also contain the date and number of the register of which it is a part in addition to the other necessary code titles and page numbers. The legislative reference bureau may include in the register such instructions or information as in the bureau's judgment will help the user to correctly make insertions and deletions in the code and to keep the code current.

SECTION 10. 35.93 (3) (e) (intro.) of the statutes, as affected by [2013 Wisconsin Act 20](#), is amended to read:

35.93 (3) (e) (intro.) The legislative reference bureau shall incorporate into the appropriate chapters of the Wisconsin administrative code each permanent rule filed with the legislative reference bureau under s. 227.20 (1) or modified under s. 227.265 and, for each chapter of the administrative code affected by a rule, do all of the following:

SECTION 11. 35.93 (3) (e) 1. of the statutes, as affected by [2013 Wisconsin Act 20](#), is amended to read:

35.93 (3) (e) 1. Publish the chapter in the appropriate end-of-month register in accordance with the filing deadline for publication established in the rules procedures manual published under s. 227.15 (7) ~~or~~, in an end-of-month register agreed to by the submitting agency and the legislative reference bureau, or, in the case of a rule modified under s. 227.265, in the end-of-month register for the month in which the bill modifying the rule is enacted.

SECTION 12. 101.862 (4) (f) of the statutes, as created by [2007 Wisconsin Act 63](#), is amended to read:

101.862 (4) (f) A person engaged in installing, repairing, or maintaining electrical wiring of transmission facilities, as defined in s. 196.01 (12), 2011 stats.

SECTION 13. 196.01 (1d) (a) of the statutes is repealed.

SECTION 14. 196.01 (1d) (b) of the statutes is repealed.

SECTION 15. 196.01 (1r) of the statutes is repealed.

SECTION 16. 196.01 (4m) of the statutes is repealed.

SECTION 17. 196.01 (12) of the statutes is repealed.

SECTION 18. 196.19 (3) of the statutes is amended to read:

196.19 (3) A copy of as much of the schedules filed under sub. (1) as the commission determines necessary for the use of the public shall be ~~printed~~ produced in plain type, and kept on file ~~in every at the public utility station or office where payments are made by consumers, and made available to the public at least 10 days before the schedules take effect, unless the commission prescribes a shorter time period. In making a copy available to the public, a public utility may make the copy available at locations where customer payments are accepted, on the public utility's Internet site, or in a form and place that is otherwise readily accessible to the public.~~

SECTION 19. 196.19 (4) of the statutes is amended to read:

196.19 (4) If a schedule of joint rates or charges is in force between public utilities, the schedule shall be ~~printed and~~ filed with the commission under sub. (1). The commission shall determine the portion of the schedule necessary for the use of the public. The public utilities shall ~~file~~ make the portion of the schedule available to the public as provided under sub. (3).

SECTION 20. 196.192 (3) (b) of the statutes is amended to read:

196.192 (3) (b) Nothing in s. 196.20, ~~196.21~~, 196.22, 196.37, 196.60 or 196.604 prohibits the commission from approving a filing under sub. (2) or approving market-based rates under par. (a).

SECTION 21. 196.194 of the statutes is amended to read:

196.194 Gas utility individual contracts. Nothing in ss. 196.03, 196.19, 196.20, ~~196.21~~, 196.22, 196.37, 196.60, 196.604 and 196.625 prohibits the commission

from approving the filing of a tariff which permits a gas utility to enter into an individual contract with an individual customer if the term of the contract is no more than 5 years, or a longer period approved by the commission, and if the commission determines that substitute gas services are available to customers or potential customers of the gas utility and the absence of such a tariff will cause the gas utility to be disadvantaged in competing for business. A tariff filed under this section shall include the condition that any such contract shall be compensatory. The tariff shall include any other condition and procedure required by the commission in the public interest. Within 20 days after a contract authorized under this section or an amendment to such a contract has been executed, the gas utility shall submit the contract to the commission. The commission shall give notice to any person, upon request, that a contract authorized under this section has been received by the commission. The notice shall identify the gas utility that has entered into the contract. Within 6 months after receiving substantial evidence that a contract may be noncompensatory, or upon its own motion, the commission shall investigate and determine whether the contract is compensatory. If the commission determines that the contract is noncompensatory, the commission may make appropriate adjustments in the rates or tariffs of the gas utility that has entered into the contract, in addition to other remedies under this chapter. The dollar amount of the adjustment may not be less than the amount by which the contract was found to be noncompensatory.

SECTION 22. 196.203 (1m) of the statutes is repealed.

SECTION 23. 196.21 of the statutes is repealed.

SECTION 24. 196.49 (5g) (a) (intro.) of the statutes is amended to read:

196.49 (5g) (a) (intro.) A public utility is exempt from the requirement to obtain a certification or approval of the commission under ~~this section sub. (2) or (3)~~ before beginning a proposed project if the estimated gross cost of the proposed project is not more than one of the following cost thresholds:

SECTION 25. 196.491 (3) (g) of the statutes is amended to read:

196.491 (3) (g) The commission shall take final action on an application filed under par. (a) 1. within 180 days after the application is determined or considered to be complete under par. (a) 2. If the commission fails to take final action within the 180-day period, the commission is considered to have issued a certificate of public convenience and necessity with respect to the application, unless the commission, within the 180-day period, petitions the circuit court for Dane County for an extension of time for taking final action on the application and the court grants an extension. Upon a showing of good cause, the court may extend the 180-day chairperson of the commission extends the time period for no more than an additional 180 days for good cause. If the commission

fails to take final action within the extended period, the commission is considered to have issued a certificate of public convenience and necessity with respect to the application.

SECTION 26. 196.50 (2) (i) of the statutes is amended to read:

196.50 (2) (i) A telecommunications utility certified under this subsection is exempt from ss. 196.02 (2) and (6), 196.05, 196.06, 196.07, 196.08, 196.09, 196.10, 196.12, 196.13, 196.16, 196.18, 196.19, 196.20, ~~196.21~~, 196.219 (3) (c), (e), (g), and (L), (4d), (4m), and (5), 196.24, 196.395 (1), 196.49, 196.52, 196.58, 196.60, 196.64, 196.72, 196.78, and 196.79 and, except with respect to wholesale telecommunications service, is exempt from s. 196.219 (4).

SECTION 27. 197.10 (4) of the statutes is amended to read:

197.10 (4) Insofar as the use, operation, service, management, control, sale, lease, purchase, extension, improvement, rates, value or earnings of the properties of the public utility or provisions looking toward the ultimate acquisition of the same are made subject to the terms of any contract provided for in sub. (1), and so long as said contract remains in force, the following sections of the statutes shall be inapplicable to the same: ss. 196.02 (1) and (2), 196.05, 196.09, 196.10, 196.11, 196.15, 196.16, 196.19 (6), 196.20, ~~196.21~~, 196.22, 196.26, 196.28, 196.30, 196.37, 196.39, 196.40, 196.58, 196.70, 197.01 (2) to (4), 197.02, 197.03, 197.04, 197.05, 197.06, 197.08 and 197.09; provided that nothing in any contract made hereunder shall operate to prevent an appeal to the public service commission by any person, other than a party to said contract, upon any complaint alleging that any rate, fare, charge or classification, or any joint rate, or any regulation, act or practice relating to the production, transmission, delivery or furnishing of gas, heat, light or power, or any service in connection therewith, is unjustly discriminatory, or that any such service is inadequate or cannot be obtained. Upon said appeal the commission shall, as provided by law, determine and by order fix a rate, fare, charge, classification, joint rate or regulation, act or practice or service to be imposed, observed or followed in the future in lieu of that found to be unjustly discriminatory or inadequate.

SECTION 28. 227.01 (13) (intro.) of the statutes is amended to read:

227.01 (13) (intro.) "Rule" means a regulation, standard, statement of policy, or general order of general application which has the effect of law and which is issued by an agency to implement, interpret, or make specific legislation enforced or administered by the agency or to govern the organization or procedure of the agency. "Rule" includes a modification of a rule under s. 227.265. "Rule" does not include, and s. 227.10 does not apply to, any action or inaction of an agency, whether it would

otherwise meet the definition under this subsection, which:

SECTION 29. 227.11 (2) (intro.) of the statutes is amended to read:

227.11 (2) (intro.) Rule-making authority is expressly conferred on an agency as follows:

SECTION 30. 227.265 of the statutes is created to read:

227.265 Repeal or modification of rules. If a bill to repeal or modify a rule is enacted, the procedures under ss. 227.114 to 227.21 and 227.26 do not apply. Instead, the legislative reference bureau shall publish the repeal or modification in the Wisconsin administrative code and register as required under s. 35.93, and the repeal or modification shall take effect as provided in s. 227.22.

SECTION 31. 227.27 (2) of the statutes is amended to read:

227.27 (2) The code shall be prima facie evidence in all courts and proceedings as provided by s. 889.01, but this does not preclude reference to or, in case of a discrepancy, control over a rule filed with the legislative reference bureau ~~or the secretary of state under s. 227.20 or modified under s. 227.265~~, and the certified copy of a rule shall also and in the same degree be prima facie evidence in all courts and proceedings.

SECTION 32. 941.40 (3) and (4) (b) of the statutes are amended to read:

941.40 (3) Any person who, for any purpose, intentionally makes or causes to be made a physical electrical connection with any wire, cable, conductor, ground, equipment, facility, or other property of any telegraph, telecommunications, electric light, or electric power company, including a cooperative association organized under ch. 185, is guilty of a Class A misdemeanor.

(4) (b) Subsections (2) and (3) do not apply to a person who acts with the permission of the telegraph, telecommunications, electric light, or electric power company, including a cooperative association organized under ch. 185, ~~that is affected or that owns the wire, pole, cable, conductor, ground, equipment, facility, or other affected property or with the permission of the person who owns the property on which the wire, pole, cable, conductor, ground, equipment, facility, or other affected property is located.~~

SECTION 33. PSC ch. 171 of the administrative code is repealed.

SECTION 34. Nonstatutory provisions.

(1) CABLE TELEVISION TELECOMMUNICATIONS SERVICE PROVIDERS.

(a) In this subsection, “cable television telecommunications provider” means a person whom the public service commission has, prior to the effective date of this paragraph, certified as an alternative telecommunications utility defined in section 196.01 (1d) (a), 2011 stats.

(b) On the effective date of this paragraph, a cable television telecommunications service provider is considered certified as an alternative telecommunications utility defined in section 196.01 (1d) (f) of the statutes, notwithstanding the absence of a finding required under section 196.01 (1d) (f). The public service commission shall issue a certification as an alternative telecommunications utility defined in section 196.01 (1d) (f) to each such cable television telecommunications service provider.

SECTION 35. Initial applicability.

(1) AVAILABILITY OF PUBLIC UTILITY SCHEDULES. The treatment of sections 196.19 (3) and (4) and 196.21 of the statutes first applies to schedules that are filed on the effective date of this subsection.

(2) PROJECT CERTIFICATES AND APPROVALS. The treatment of section 196.49 (5g) (a) (intro.) of the statutes first applies to projects that begin on the effective date of this subsection.

(3) CERTIFICATES OF PUBLIC CONVENIENCE AND NECESSITY; DEADLINE EXTENSION. The treatment of section 196.491 (3) (g) of the statutes first applies to applications received on the effective date of this subsection.

(4) TAMPERING WITH TELECOMMUNICATIONS OR ELECTRIC WIRES. The treatment of section 941.40 (3) and (4) (b) of the statutes first applies to an act committed on the effective date of this subsection.

SECTION 36. Effective dates. This act takes effect on the day after publication, except as follows:

(1) The treatment of section 35.93 (2) (b) 4. and (c) 1. and (3) (e) (intro.) and 1. of the statutes takes effect on January 1, 2015.

(2) The treatment of section 101.862 (4) (f) of the statutes takes effect on April 1, 2014.