

2001 ASSEMBLY BILL 518

September 28, 2001 – Introduced by Representatives KEDZIE, HUEBSCH, MUSSER, GRONEMUS, FREESE, D. MEYER, NASS, PETTIS, SERATTI, SKINDRUD, STONE, SUDER, WALKER, BIES, JENSEN, RHOADES, GUNDERSON, STARZYK, LOEFFELHOLZ, WIECKERT, KREIBICH, F. LASEE, PETROWSKI, HAHN and VRAKAS, cosponsored by Senators SHIBILSKI, BRESKE, MOEN, HANSEN, HUELSMAN, KANAVAS, M. MEYER, ROSENZWEIG and WELCH. Referred to Committee on Information Policy and Technology.

1 **AN ACT** *to renumber* 196.203 (2) and 196.50 (2) (c); *to renumber and amend*
 2 196.499 (15) and 196.50 (4); *to amend* 196.50 (4) (title), 198.12 (6) and 198.22
 3 (6); and *to create* 196.203 (2) (b), 196.499 (15) (b), 196.50 (2) (c) 2., 196.50 (4)
 4 (a), 196.50 (4) (c) and 196.50 (4) (d) of the statutes; **relating to:** prohibiting
 5 certain governmental subdivisions from providing or selling certain
 6 telecommunications services and Internet access services and from making
 7 certain transfers of telecommunications transmission facilities.

Analysis by the Legislative Reference Bureau

This bill prohibits governmental subdivisions from taking certain actions regarding telecommunications and Internet access services. The bill defines “governmental subdivision” as any of the following: 1) a city, village, town, or county; 2) a special purpose district; 3) an instrumentality or corporation of a city, village, town, county, or special purpose district; or 4) a combination or subunit of any of the foregoing. However, “governmental subdivision” does not include a public library board or a public library system.

Under the bill, a governmental subdivision is, with certain exceptions, subject to three prohibitions. First, a governmental subdivision may not provide a telecommunications service, as defined under current law, directly or indirectly to a member of the public. Current law defines “telecommunications service” to include

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the conveyance of voice, data, or other information at any frequency over any part of the electromagnetic spectrum, except that “telecommunications service” does not include cable television service or audio or video broadcast service. The bill defines “member of the public” as any person except a governmental subdivision.

Second, a governmental subdivision may not sell, lease, or transfer for consideration a transmission facility to another person if the transmission facility is used to furnish a telecommunications service directly or indirectly to a member of the public. The bill defines “transmission facility” as any plant or equipment used to transmit a telecommunications service by wire, optics, radio signal, or other means, except that “transmission facility” does not include any conduit, pole, tower, or other structure that supports the plant or equipment used to transmit the telecommunications service.

Third, a governmental subdivision may not sell an Internet access service directly or indirectly to a member of the public. The bill defines “Internet access service” as a service that enables a user to obtain access to content, information, electronic mail, or any other service offered over the Internet.

The bill provides three exceptions to the prohibitions described above. First, the prohibitions do not apply to a governmental subdivision that, under a contract or agreement for the sharing of services or facilities, provides a telecommunications service; sells, leases, or transfers for consideration a telecommunications facility; or sells an Internet access service, to any of the following: 1) a state agency; 2) a school district; 3) a cooperative educational service agency; 4) a technical college district; 5) a public library board or system; 6) a federally recognized Indian tribe or band located in this state; 7) a fire department or volunteer fire company; or 8) a local government unit. The bill defines “local government unit” as any of the following: 1) a political subdivision, as defined under the bill; 2) a special purpose district; 3) an instrumentality or corporation of a political subdivision or special purpose district; 4) a combination or subunit of any of the foregoing; or 5) a combination of a state agency and any of the foregoing.

The second exception applies only to the prohibition on selling, leasing, or transferring for consideration a transmission facility. This prohibition does not apply to sales of substantially all of the transmission facilities owned by a governmental subdivision to a telecommunications carrier, telecommunications utility, or alternative telecommunications utility. The third exception applies to a governmental subdivision that is subject to a contract in effect on the effective date of the bill. If the contract contains provisions that are inconsistent with the bill’s prohibitions, then the governmental subdivision may perform its obligations, or exercise its rights, under the contract until the contract expires, or is extended, modified, or renewed, whichever occurs first.

Finally, the bill prohibits the public service commission from allowing a governmental subdivision to provide telecommunications services as a telecommunications carrier, telecommunications utility, or alternative telecommunications utility.

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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.** 196.203 (2) of the statutes is renumbered 196.203 (2) (a).

2 **SECTION 2.** 196.203 (2) (b) of the statutes is created to read:

3 196.203 (2) (b) The commission may not issue a determination under par. (a)
4 to a governmental subdivision, as defined in s. 196.50 (4) (a) 1.

5 **SECTION 3.** 196.499 (15) of the statutes is renumbered 196.499 (15) (a) and
6 amended to read:

7 196.499 (15) (a) A telecommunications carrier that is not authorized to provide
8 intrastate telecommunications service on January 1, 1994, may not commence the
9 construction of any plant, extension, or facility, or provide intrastate
10 telecommunications service directly or indirectly to the public, unless the
11 telecommunications carrier obtains a certificate from the commission authorizing
12 the telecommunications carrier to provide intrastate telecommunications. ~~The~~
13 Except as provided in par. (b), the commission may issue a certificate if the
14 telecommunications carrier demonstrates that it possesses sufficient technical,
15 financial, and managerial resources to provide intrastate telecommunications
16 services. A telecommunications carrier that is authorized to provide intrastate
17 telecommunications service on January 1, 1994, is not required to be recertified
18 under this subsection paragraph.

19 **SECTION 4.** 196.499 (15) (b) of the statutes is created to read:

20 196.499 (15) (b) The commission may not issue a certificate under par. (a) to
21 a governmental subdivision, as defined in s. 196.50 (4) (a) 1.

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1 **SECTION 5.** 196.50 (2) (c) of the statutes is renumbered 196.50 (2) (c) 1.

2 **SECTION 6.** 196.50 (2) (c) 2. of the statutes is created to read:

3 196.50 **(2)** (c) 2. The commission may not issue a certificate of authority under
4 this subsection to a governmental subdivision, as defined in s. 196.50 (4) (a) 1.

5 **SECTION 7.** 196.50 (4) (title) of the statutes is amended to read:

6 196.50 **(4)** (title) ~~MUNICIPALITY~~ MUNICIPALITIES AND GOVERNMENTAL SUBDIVISIONS
7 RESTRAINED.

8 **SECTION 8.** 196.50 (4) of the statutes is renumbered 196.50 (4) (b) and amended
9 to read:

10 196.50 **(4)** (b) No municipality may construct any public utility if there is in
11 operation under an indeterminate permit in the municipality a public utility
12 engaged in similar service ~~other than a telecommunications service~~, unless it secures
13 from the commission a declaration, after a public hearing of all parties interested,
14 that public convenience and necessity require the municipal public utility. The
15 commission may not issue a declaration under this paragraph that allows a
16 municipality to construct a telecommunications utility or alternative
17 telecommunications utility.

18 **SECTION 9.** 196.50 (4) (a) of the statutes is created to read:

19 196.50 **(4)** (a) In this subsection:

20 1. “Governmental subdivision” means a political subdivision, a special purpose
21 district, an instrumentality or corporation of a political subdivision or a special
22 purpose district, or a combination or subunit of any of the foregoing, but does not
23 include a public library board or public library system.

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1 2. “Internet access service” means a service that enables a user to obtain access
2 to content, information, electronic mail, or any other service offered over the
3 Internet.

4 2e. “Local governmental unit” means any of the following:

5 a. A political subdivision.

6 b. A special purpose district.

7 c. An instrumentality or corporation of a political subdivision or special
8 purpose district.

9 d. A combination or subunit of any person specified in subd. 2e. a. to c.

10 e. A combination of a state agency and any person specified in subd. 2e. a. to
11 d.

12 2m. “Member of the public” means any person except a governmental
13 subdivision.

14 2r. “Political subdivision” means any city, village, town, or county.

15 2w. “State agency” means any office, department, independent agency,
16 institution of higher education, association, society, or other body in state
17 government created or authorized to be created by the constitution or any law,
18 including the legislature and courts.

19 3. “Transfer” means to sell, lease, or transfer for consideration of any interest
20 in ownership, title, or right to use.

21 3m. “Transmission facility” means any plant or equipment used to transmit a
22 telecommunications service by wire, optics, radio signal, or other means.

23 “Transmission facility” does not include any conduit, pole, tower, or other structure
24 that supports the plant or equipment used to transmit the telecommunications
25 service.

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1 **SECTION 10.** 196.50 (4) (c) of the statutes is created to read:

2 196.50 (4) (c) Except as provided in par. (d), no governmental subdivision may
3 do any of the following:

4 1. Provide a telecommunications service in this state directly or indirectly to
5 a member of the public.

6 2. Transfer a transmission facility in this state to another person if the facility
7 is used to furnish a telecommunications service directly or indirectly to a member of
8 the public.

9 3. Sell an Internet access service directly or indirectly to a member of the public.

10 **SECTION 11.** 196.50 (4) (d) of the statutes is created to read:

11 196.50 (4) (d) 1. Paragraph (c) 1., 2., and 3. does not apply to a governmental
12 subdivision that provides a telecommunications service, transfers a transmission
13 facility, or sells an Internet access service to a local governmental unit, state agency,
14 school district, cooperative educational service agency, technical college district,
15 public library board, public library system, federally recognized Indian tribe or band
16 located in this state, or volunteer fire company or fire department organized under
17 ch. 213, under a contract or agreement under s. 66.0301, 66.0303, or 120.25 or a
18 similar contract or agreement for the sharing of services or facilities.

19 2. Paragraph (c) 2. does not apply to sales by a governmental subdivision of
20 substantially all of the transmission facilities owned by the governmental
21 subdivision to a telecommunications carrier, telecommunications utility, or
22 alternative telecommunication utility.

23 3. If a governmental subdivision is subject to a contract that is in effect on the
24 effective date of this subdivision ... [revisor inserts date], and that contains
25 provisions that are inconsistent with par. (c) 1., 2., or 3., then, notwithstanding par.

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1 (c) 1., 2., or 3., the governmental subdivision may perform its obligations, and
2 exercise its rights, under that contract until the contract expires, or is extended,
3 modified, or renewed, whichever occurs first.

4 **SECTION 12.** 198.12 (6) of the statutes is amended to read:

5 198.12 (6) UTILITIES, ACQUIRE, CONSTRUCT, OPERATE; WATER POWER; SALE OF
6 SERVICE; USE OF STREETS. The district shall have power and authority to own, acquire
7 and, subject to the restrictions applying to a municipality under s. 196.50 (4) (b), to
8 construct any utility or portion thereof to operate, in whole or in part, in the district,
9 and to own, acquire and, subject to ss. 196.01 to 196.53 and 196.59 to 196.76 where
10 applicable, to construct any addition to or extension of any such utility, and to own,
11 acquire, and construct any water power and hydroelectric power plant, within or
12 without the district, to be operated in connection with any such utility, and to
13 operate, maintain, and conduct such utility and water power and hydroelectric
14 power plant and system both within and without the district, and to furnish, deliver,
15 and sell to the public and to any municipality and to the state and any state
16 institution heat, light, and power service and any other service, commodity, or
17 facility which may be produced or furnished thereby, and to charge and collect rates,
18 tolls, and charges for the same. For said purposes the district is granted and shall
19 have and exercise the right freely to use and occupy any public highway, street, way,
20 or place reasonably necessary to be used or occupied for the maintenance and
21 operation of such utility or any part thereof, subject, however, to such local police
22 regulations as may be imposed by any ordinance adopted by the governing body of
23 the municipality in which such highway, street, way, or place is located.

24 **SECTION 13.** 198.22 (6) of the statutes is amended to read:

