

**2001 DRAFTING REQUEST**

**Bill**

Received: 01/03/2001

Received By: **kunkemd**

Wanted: As time permits

Identical to LRB:

For: **Michael Huebsch (608) 266-0631**

By/Representing: **Himself**

This file may be shown to any legislator: **NO**

Drafter: **kunkemd**

May Contact:

Addl. Drafters:

Subject: **Education - miscellaneous  
Public Util. - telco  
Higher Education - miscellaneous**

Extra Copies:

Submit via email: **NO**

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**Pre Topic:**

No specific pre topic given

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**Topic:**

Prohibiting certain governmental subdivisions from providing telecommunications and Internet services

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**Instructions:**

See Attached

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**Drafting History:**

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Typed</u>	<u>Proofed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
/?	kunkemd 03/12/2001	wjackson 03/13/2001		_____			S&L
/1	kunkemd 03/29/2001	wjackson 04/03/2001	martykr 03/14/2001	_____	lrb_docadmin 03/14/2001		S&L
/2	kunkemd 04/23/2001	wjackson 04/24/2001	martykr 04/03/2001	_____	lrb_docadmin 04/03/2001		S&L
/3			pgreensl	_____	lrb_docadmin	lrb_docadmin	

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04/24/2001 \_\_\_\_\_

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04/24/2001

lrb\_docadmin

09/05/2001

09/05/2001

FE Sent For:

→ At  
Intro.

<END>

Sent To  
Rep. Kedzie  
per MDK

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re-submitted  
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/3			pgreensl	_____	lrb_docadmin		
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/2		<u>13 wij 4/24</u>	martykr		lrb_docadmin		

4/23/01

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/1		12 Wlj 4/3	martykr 03/14/2001 Km 4/3		lrb_docadmin 03/14/2001		

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1/?	kunkemd	1 WLj 3/13	<i>km 3/13</i>	<i>JA 3/14</i>			

FE Sent For:

<END>

**B I L L**  
**REQUEST FORM**

**LEGISLATIVE REFERENCE BUREAU**  
**Legal Section Telephone: 266-3561**  
**5th Floor, 100 N. Hamilton Street**

*-1756*

Use of this form is optional. It is often better to talk directly with the LRB attorney who will draft the bill.

Use this form only for **BILL** drafts. Attach more pages if necessary.

Legislator, agency or other body requesting this draft: Rep HUBSCH

Date: 1-2-01 Person submitting request (name, phone number): \_\_\_\_\_

Persons to contact for questions about this draft (names, phone numbers): \_\_\_\_\_

Describe the problem, including any helpful examples.

How do you want to solve the problem?

*Please redraft minus pg 5 <sup>lines</sup> 7-12*

Please attach a copy of any correspondence or other material that may help us.

If you know of any statute sections that might be affected, list them or provide a marked-up (not re-typed) copy. \_\_\_\_\_

You may attach a marked-up (not retyped) copy of any LRB draft, or provide its number (e.g., 1995 LRB-2345/1 or 1993 AB-67): \_\_\_\_\_

Requests are confidential unless stated otherwise.

- May we tell others that we are working on this for you?  Yes  No
- If yes: Anyone who asks?  Yes  No Any legislator?  Yes  No Only the following persons: \_\_\_\_\_

Do you consider this request urgent?  Yes  No If yes, please indicate why: \_\_\_\_\_

Should we give this request priority over any other pending request of this legislator, agency or body?  Yes  No If yes, sign your name here: \_\_\_\_\_

**ASSEMBLY SUBSTITUTE AMENDMENT 1,  
TO 1999 ASSEMBLY BILL 747**

March 8, 2000 - Offered by COMMITTEE ON INFORMATION POLICY.

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.

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

8         **SECTION 1.** 196.203 (2) of the statutes is renumbered 196.203 (2) (a).

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

10         196.203 (2) (b) The commission may not issue a determination under par. (a)  
11         to a governmental subdivision, as defined in s. 196.50 (4) (a) 1.

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

3           196.499 (15) (a) A telecommunications carrier that is not authorized to provide  
4 intrastate telecommunications service on January 1, 1994, may not commence the  
5 construction of any plant, extension or facility, or provide intrastate  
6 telecommunications service directly or indirectly to the public, unless the  
7 telecommunications carrier obtains a certificate from the commission authorizing  
8 the telecommunications carrier to provide intrastate telecommunications. The  
9 Except as provided in par. (b), the commission may issue a certificate if the  
10 telecommunications carrier demonstrates that it possesses sufficient technical,  
11 financial and managerial resources to provide intrastate telecommunications  
12 services. A telecommunications carrier that is authorized to provide intrastate  
13 telecommunications service on January 1, 1994, is not required to be recertified  
14 under this ~~subsection~~ paragraph.

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

16           196.499 (15) (b) The commission may not issue a certificate under par. (a) to  
17 a governmental subdivision, as defined in s. 196.50 (4) (a) 1.

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

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

20           196.50 (2) (c) 2. The commission may not issue a certificate of authority under  
21 this subsection to a governmental subdivision, as defined in s. 196.50 (4) (a) 1.

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

23           196.50 (4) (title) ~~MUNICIPALITY~~ MUNICIPALITIES AND GOVERNMENTAL SUBDIVISIONS  
24 RESTRAINED.

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

3           196.50 (4) (b) No municipality may construct any public utility that is not a  
4 telecommunications utility or alternative telecommunications utility if there is in  
5 operation under an indeterminate permit in the municipality a public utility  
6 engaged in similar service ~~other than a telecommunications service~~, unless it secures  
7 from the commission a declaration, after a public hearing of all parties interested,  
8 that public convenience and necessity require the municipal public utility.

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

10          196.50 (4) (a) In this subsection:

11          1. "Governmental subdivision" means a political subdivision, an  
12 instrumentality or corporation of a political subdivision or a combination or subunit  
13 of any of the foregoing, but does not include a public library board or public library  
14 system.

15          2. "Internet access service" means a service that enables a user to obtain access  
16 to content, information, electronic mail or any other service offered over the Internet.

17          2e. "Local governmental unit" means any of the following:

18          a. A political subdivision.

19          b. A special purpose district.

20          c. An instrumentality or corporation of a political subdivision or special  
21 purpose district.

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

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

24          d.

1           2m. "Member of the public" means any person except a governmental  
2 subdivision.

3           2r. "Political subdivision" means any city, village, town or county.

4           2w. "State agency" means any office, department, independent agency,  
5 institution of higher education, association, society or other body in state  
6 government created or authorized to be created by the constitution or any law,  
7 including the legislature and courts.

8           3. "Transfer" means to sell, lease or transfer for consideration of any interest  
9 in ownership, title or right to use.

10          3m. "Transmission facility" means any plant or equipment used to transmit a  
11 telecommunications service by wire, optics, radio signal or other means.  
12 "Transmission facility" does not include any conduit, pole, tower or other structure  
13 that supports the plant or equipment used to transmit the telecommunications  
14 service.

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

16          196.50 (4) (c) Except as provided in par. (d), no governmental subdivision may  
17 do any of the following:

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

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

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

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

25          196.50 (4) (d) 1. Paragraph (c) 1., 2. and 3. does not apply to any of the following:

1 a. A governmental subdivision that provides a telecommunications service,  
2 transfers a transmission facility or sells an Internet access service to a local  
3 governmental unit, state agency, federally recognized Indian tribe or band located  
4 in this state or volunteer fire company or fire department organized under ch. 213,  
5 under a contract or agreement under s. 66.30 or a similar contract or agreement for  
6 the sharing of services or facilities.

7 b. A governmental subdivision to which the commission has issued a  
8 determination under s. 196.203 (2), 1997 stats., a certificate under s. 196.499 (15),  
9 1997 stats., or a certificate of authority under s. 196.50 (2), 1997 stats., and that, on  
10 the effective date of this subdivision 1. b. .... [revisor inserts date], is providing  
11 telecommunications service as an alternative telecommunications utility,  
12 telecommunications carrier or telecommunications utility.

13 2. Paragraph (c) 2. does not apply to any of the following:

14 a. Sales by a governmental subdivision of substantially all of the transmission  
15 facilities owned by the governmental subdivision to a telecommunications carrier,  
16 telecommunications utility or alternative telecommunication utility.

17 b. Leases entered into before the effective date of this subdivision 2. b. ....  
18 [revisor inserts date].

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

20 198.12 (6) UTILITIES, ACQUIRE, CONSTRUCT, OPERATE; WATER POWER; SALE OF  
21 SERVICE; USE OF STREETS. The district shall have power and authority to own, acquire  
22 and, subject to the restrictions applying to a municipality under s. 196.50 (4) (b), to  
23 construct any utility or portion thereof to operate, in whole or in part, in the district,  
24 and to own, acquire and, subject to ss. 196.01 to 196.53 and 196.59 to 196.76 where  
25 applicable, to construct any addition to or extension of any such utility, and to own,

REMOVE



1 acquire and construct any water power and hydroelectric power plant, within or  
2 without the district, to be operated in connection with any such utility, and to  
3 operate, maintain and conduct such utility and water power and hydroelectric power  
4 plant and system both within and without the district, and to furnish, deliver and  
5 sell to the public and to any municipality and to the state and any state institution  
6 heat, light and power service and any other service, commodity or facility which may  
7 be produced or furnished thereby, and to charge and collect rates, tolls and charges  
8 for the same. For said purposes the district is granted and shall have and exercise  
9 the right freely to use and occupy any public highway, street, way or place reasonably  
10 necessary to be used or occupied for the maintenance and operation of such utility  
11 or any part thereof, subject, however, to such local police regulations as may be  
12 imposed by any ordinance adopted by the governing body of the municipality in  
13 which such highway, street, way or place is located.

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

15 198.22 (6) ACQUISITION; CONSTRUCTION; OPERATION; SALE OF SERVICE; USE OF  
16 STREETS. The district shall have power and authority to own, acquire, and, subject  
17 to the restrictions applying to a municipality under s. 196.50 (4) (b), to construct any  
18 water utility or portion thereof, to operate, in whole or in part, in the district and to  
19 construct any addition or extension to any such utility. For such purpose the district  
20 is granted and shall have and exercise the right freely to use and occupy any public  
21 highway, street, way or place reasonably necessary to be used or occupied for the  
22 construction, operation or maintenance of such utility or any part thereof, subject,  
23 however, to the obligation of the district to replace said grounds in the same condition  
24 as they previously were in.

25 **SECTION 14. Initial applicability.**



D-NOTE

ASSEMBLY SUBSTITUTE AMENDMENT 1,  
TO 1999 ASSEMBLY BILL 747

-1756/1

RM NOT  
RUN

INSERT ANALYSIS

March 8, 2000 - Offered by COMMITTEE ON INFORMATION POLICY.

LPG: Please proof amended  
Stats. w/ stats.

REGEN

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

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SOON

1           **SECTION 3.** 196.499 (15)<sup>✓</sup> of the statutes is renumbered 196.499 (15) (a) and  
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3           196.499 (15) (a) A telecommunications carrier that is not authorized to provide  
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6 telecommunications service directly or indirectly to the public, unless the  
7 telecommunications carrier obtains a certificate from the commission authorizing  
8 the telecommunications carrier to provide intrastate telecommunications. The  
9 Except as provided in par. (b),<sup>!</sup> the commission may issue a certificate if the  
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12 services. A telecommunications carrier that is authorized to provide intrastate  
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19           **SECTION 6.** 196.50 (2) (c) 2.<sup>✓</sup> of the statutes is created to read:

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22           **SECTION 7.** 196.50 (4) (title)<sup>✓</sup> of the statutes is amended to read:

23           196.50 (4) (title) ~~MUNICIPALITY~~ MUNICIPALITIES AND GOVERNMENTAL SUBDIVISIONS

24           RESTRAINED.

1 SECTION 8. 196.50 (4) of the statutes is renumbered 196.50 (4) (b) and amended  
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3 196.50 (4) (b) No municipality may construct any public utility that is not a  
4 telecommunications utility or alternative telecommunications utility if there is in  
5 operation under an indeterminate permit in the municipality a public utility  
6 engaged in similar service ~~other than a telecommunications service~~, unless it secures  
7 from the commission a declaration, after a public hearing of all parties interested,  
8 that public convenience and necessity require the municipal public utility.

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

10 196.50 (4) (a) In this subsection:

11 1. "Governmental subdivision" means a political subdivision, an  
12 instrumentality or corporation of a political subdivision or a combination or subunit  
13 of any of the foregoing, but does not include a public library board or public library  
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15 2. "Internet access service" means a service that enables a user to obtain access  
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17 2e. "Local governmental unit" means any of the following:

18 a. A political subdivision.

19 b. A special purpose district.

20 c. An instrumentality or corporation of a political subdivision or special  
21 purpose district.

22 d. A combination or subunit of any person specified in <sup>11/1/00</sup> subd. 2e. a. to c. ✓

23 e. A combination of a state agency and any person specified in subd. 2e. a. to ✓

24 d. ✓

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3           2r. "Political subdivision" means any city, village, town or county.

4           2w. "State agency" means any office, department, independent agency,  
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6 government created or authorized to be created by the constitution or any law,  
7 including the legislature and courts.

8           3. "Transfer" means to sell, lease or transfer for consideration of any interest  
9 in ownership, title or right to use.

10           3m. "Transmission facility" means any plant or equipment used to transmit a  
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23           3. Sell an Internet access service directly or indirectly to a member of the public.

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

25           196.50 (4) (d) 1. Paragraph (c) 1., 2., and 3. does not apply to any of the following

*Handwritten:* same subd. No ff

66.0301, 66.0303, of 120.25

Same subd.

1 A governmental subdivision that provides a telecommunications service,  
 2 transfers a transmission facility, or sells an Internet access service to a local  
 3 governmental unit, state agency, federally recognized Indian tribe or band located  
 4 in this state, or volunteer fire company or fire department organized under ch. 213,  
 5 under a contract or agreement under s. 66.030, or a similar contract or agreement for  
 6 the sharing of services or facilities.

~~7 b. A governmental subdivision to which the commission has issued a  
 8 determination under s. 196.203 (2), 1997 stats., a certificate under s. 196.499 (15),  
 9 1997 stats., or a certificate of authority under s. 196.50 (2), 1997 stats., and that, on  
 10 the effective date of this subdivision 1. b. .... [revisor inserts date], is providing  
 11 telecommunications service as an alternative telecommunications utility,  
 12 telecommunications carrier or telecommunications utility.~~

13 2. Paragraph (c) 2. does not apply to any of the following:

14 a. Sales by a governmental subdivision of substantially all of the transmission  
 15 facilities owned by the governmental subdivision to a telecommunications carrier,  
 16 telecommunications utility, or alternative telecommunication utility.

17 b. Leases entered into before the effective date of this subdivision 2. b. ....  
 18 [revisor inserts date].

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

20 198.12 (6) UTILITIES, ACQUIRE, CONSTRUCT, OPERATE; WATER POWER; SALE OF  
 21 SERVICE; USE OF STREETS. The district shall have power and authority to own, acquire  
 22 and, subject to the restrictions applying to a municipality under s. 196.50 (4) (b), to  
 23 construct any utility or portion thereof to operate, in whole or in part, in the district,  
 24 and to own, acquire and, subject to ss. 196.01 to 196.53 and 196.59 to 196.76 where  
 25 applicable, to construct any addition to or extension of any such utility, and to own,

1 acquire and construct any water power and hydroelectric power plant, within or  
2 without the district, to be operated in connection with any such utility, and to  
3 operate, maintain and conduct such utility and water power and hydroelectric power  
4 plant and system both within and without the district, and to furnish, deliver and  
5 sell to the public and to any municipality and to the state and any state institution  
6 heat, light and power service and any other service, commodity or facility which may  
7 be produced or furnished thereby, and to charge and collect rates, tolls and charges  
8 for the same. For said purposes the district is granted and shall have and exercise  
9 the right freely to use and occupy any public highway, street, way or place reasonably  
10 necessary to be used or occupied for the maintenance and operation of such utility  
11 or any part thereof, subject, however, to such local police regulations as may be  
12 imposed by any ordinance adopted by the governing body of the municipality in  
13 which such highway, street, way or place is located.

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

15 198.22 (6) ACQUISITION; CONSTRUCTION; OPERATION; SALE OF SERVICE; USE OF  
16 STREETS. The district shall have power and authority to own, acquire, and, subject  
17 to the restrictions applying to a municipality under s. 196.50 (4) (b), to construct any  
18 water utility or portion thereof, to operate, in whole or in part, in the district and to  
19 construct any addition or extension to any such utility. For such purpose the district  
20 is granted and shall have and exercise the right freely to use and occupy any public  
21 highway, street, way or place reasonably necessary to be used or occupied for the  
22 construction, operation or maintenance of such utility or any part thereof, subject,  
23 however, to the obligation of the district to replace said grounds in the same condition  
24 as they previously were in.

25 SECTION 14. Initial applicability.



1           (1) The treatment of section 196.50 (4) (c)✓ of the statutes first applies to services  
2 provided or sold or facilities transferred under contracts entered into, extended,  
3 modified or renewed on the effective date of this subsection.  
4

(END)

### ANALYSIS:

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) an instrumentality or corporation of a city, village, town, or county; or 3) 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 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 two 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 federally recognized Indian tribe or band located in this state; 3) a fire department or volunteer fire company; or 4) 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 either: 1) sales of substantially all of the transmission facilities owned by a governmental subdivision to a telecommunications carrier, telecommunications

utility, or alternative telecommunications utility; or 2) leases entered into before the effective date of the bill, which is the day after the bill's publication.

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.

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

**DRAFTER'S NOTE**  
**FROM THE**  
**LEGISLATIVE REFERENCE BUREAU**

LRB-1756/1dn

MDK./.....

WJ

Representative Huebsch:

Please review this bill, which is based on ASA 1 to 1999 AB<sup>①</sup> 747 and the changes that you requested, very carefully to make sure that it achieves your intent.

In reviewing ASA 1, I uncovered an issue that may need clarifying. There is an exception in this bill that covers transfers or sales under shared service or facility contracts or agreements with, among other persons, a "volunteer fire company or fire department organized under ch. 213." See proposed s. 196.50 (4) (d) 1. The reference to ch. 213, stats., may be confusing. Although it's not clear, it seems to me that only towns and, in some cases, villages may organize a fire department under ch. 213, stats. Do you want to limit the exception only to town and village fire departments, and not make it available to city fire departments? If you want the exception to apply to any type of fire department (town, village, or city), then I recommend redrafting the bill to remove the reference to ch. 213, stats. Please contact me if you have any questions about this issue.

Mark D. Kunkel  
Legislative Attorney  
Phone: (608) 266-0131  
E-mail: mark.kunkel@legis.state.wi.us

**DRAFTER'S NOTE**  
**FROM THE**  
**LEGISLATIVE REFERENCE BUREAU**

LRB-1756/1dn  
MDK:wlj:km

March 13, 2001

Representative Huebsch:

Please review this bill, which is based on ASA 1 to 1999 AB-747 and the changes that you requested, very carefully to make sure that it achieves your intent.

In reviewing ASA 1, I uncovered an issue that may need clarifying. There is an exception in this bill that covers transfers or sales under shared service or facility contracts or agreements with, among other persons, a "volunteer fire company or fire department organized under ch. 213." See proposed s. 196.50 (4) (d) 1. The reference to ch. 213, stats., may be confusing. Although it's not clear, it seems to me that only towns and, in some cases, villages may organize a fire department under ch. 213, stats. Do you want to limit the exception only to town and village fire departments and not make it available to city fire departments? If you want the exception to apply to any type of fire department (town, village, or city), then I recommend redrafting the bill to remove the reference to ch. 213, stats. Please contact me if you have any questions about this issue.

Mark D. Kunkel  
Legislative Attorney  
Phone: (608) 266-0131  
E-mail: mark.kunkel@legis.state.wi.us

**Kunkel, Mark**

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**From:** Chris LaRowe [chrislar@chorus.net]  
**Sent:** Thursday, March 29, 2001 2:16 PM  
**To:** 'mark.kunkel@legis.state.wi.us'  
**Subject:** LRB #1756/1

Mark:

Thanks for all of your help re this issue - WSTA really appreciates it. After discussing it further internally, could you please also remove the Initial Applicability provision as well? Thanks!

Chris LaRowe  
Manager of Legislative Affairs  
WSTA  
(608) 833-8800 ext #20

D-NOTE

2

2001 BILL

SOON

RM NOT RUN

2) a special purpose district;

REGEN

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) an instrumentality or corporation of a city, village, town, ~~or~~ county; or 3) 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 the conveyance of voice, data, or other information at any frequency over any part

3

Keep

4

5 or special purpose district;

**BILL**

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 two 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 federally recognized Indian tribe or band located in this state; 3) a fire department or volunteer fire company; or 4) 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 ~~either 1) sales of substantially all of the transmission facilities owned by a governmental subdivision to a telecommunications carrier, telecommunications utility, or alternative telecommunications utility; or 2) leases entered into before the effective date of the bill, which is the day after the bill's publication.~~ 6

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.

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

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***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).



**BILL**

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

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

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

6           196.499 (15) (a) A telecommunications carrier that is not authorized to provide  
7 intrastate telecommunications service on January 1, 1994, may not commence the  
8 construction of any plant, extension, or facility, or provide intrastate  
9 telecommunications service directly or indirectly to the public, unless the  
10 telecommunications carrier obtains a certificate from the commission authorizing  
11 the telecommunications carrier to provide intrastate telecommunications. ~~The~~  
12 Except as provided in par. (b), the commission may issue a certificate if the  
13 telecommunications carrier demonstrates that it possesses sufficient technical,  
14 financial, and managerial resources to provide intrastate telecommunications  
15 services. A telecommunications carrier that is authorized to provide intrastate  
16 telecommunications service on January 1, 1994, is not required to be recertified  
17 under this subsection ~~paragraph~~.

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

19           196.499 (15) (b) The commission may not issue a certificate under par. (a) to  
20 a governmental subdivision, as defined in s. 196.50 (4) (a) 1.

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

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

23           196.50 (2) (c) 2. The commission may not issue a certificate of authority under  
24 this subsection to a governmental subdivision, as defined in s. 196.50 (4) (a) 1.

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

**BILL**

1           196.50 (4) (title) ~~MUNICIPALITY~~ MUNICIPALITIES AND GOVERNMENTAL SUBDIVISIONS  
2 RESTRAINED.

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

5           196.50 (4) (b) No municipality may construct any public utility ~~that is not a~~  
6 ~~telecommunications utility or alternative telecommunications utility~~ if there is in  
7 operation under an indeterminate permit in the municipality a public utility  
8 engaged in similar service ~~other than a telecommunications service~~, unless it secures  
9 from the commission a declaration, after a public hearing of all parties interested,  
10 that public convenience and necessity require the municipal public utility.

INSERT  
4-10

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

12           196.50 (4) (a) In this subsection:

13           1. "Governmental subdivision" means a political subdivision, an  
14 instrumentality or corporation of a political subdivision, or a combination or subunit  
15 of any of the foregoing, but does not include a public library board or public library  
16 system.

a special purpose district

of a special purpose district

17           2. "Internet access service" means a service that enables a user to obtain access  
18 to content, information, electronic mail, or any other service offered over the  
19 Internet.

20           2e. "Local governmental unit" means any of the following:

21           a. A political subdivision.

22           b. A special purpose district.

23           c. An instrumentality or corporation of a political subdivision or special  
24 purpose district.

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

**BILL**

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

3 2m. "Member of the public" means any person except a governmental  
4 subdivision.

5 2r. "Political subdivision" means any city, village, town, or county.

6 2w. "State agency" means any office, department, independent agency,  
7 institution of higher education, association, society, or other body in state  
8 government created or authorized to be created by the constitution or any law,  
9 including the legislature and courts.

10 3. "Transfer" means to sell, lease, or transfer for consideration of any interest  
11 in ownership, title, or right to use.

12 3m. "Transmission facility" means any plant or equipment used to transmit a  
13 telecommunications service by wire, optics, radio signal, or other means.  
14 "Transmission facility" does not include any conduit, pole, tower, or other structure  
15 that supports the plant or equipment used to transmit the telecommunications  
16 service.

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

18 196.50 (4) (c) Except as provided in par. (d), no governmental subdivision may  
19 do any of the following:

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

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

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

## BILL

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

2 196.50 (4) (d) 1. Paragraph (c) 1., 2., and 3. does not apply to a governmental  
3 subdivision that provides a telecommunications service, transfers a transmission  
4 facility, or sells an Internet access service to a local governmental unit, state agency,  
5 federally recognized Indian tribe or band located in this state, or volunteer fire  
6 company or fire department organized under ch. 213, under a contract or agreement  
7 under s. 66.0301, 66.0303, or 120.25 or a similar contract or agreement for the  
8 sharing of services or facilities.

9 2. Paragraph (c) 2. does not apply to ~~any of the following~~

10 *ad* Sales by a governmental subdivision of substantially all of the transmission  
11 facilities owned by the governmental subdivision to a telecommunications carrier,  
12 telecommunications utility, or alternative telecommunication utility.

13 ~~b. Leases entered into before the effective date of this subd. 2. b. .... [revisor~~  
14 ~~inserts date].~~

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

16 198.12 (6) UTILITIES, ACQUIRE, CONSTRUCT, OPERATE; WATER POWER; SALE OF  
17 SERVICE; USE OF STREETS. The district shall have power and authority to own, acquire  
18 and, subject to the restrictions applying to a municipality under s. 196.50 (4) (b), to  
19 construct any utility or portion thereof to operate, in whole or in part, in the district,  
20 and to own, acquire and, subject to ss. 196.01 to 196.53 and 196.59 to 196.76 where  
21 applicable, to construct any addition to or extension of any such utility, and to own,  
22 acquire, and construct any water power and hydroelectric power plant, within or  
23 without the district, to be operated in connection with any such utility, and to  
24 operate, maintain, and conduct such utility and water power and hydroelectric  
25 power plant and system both within and without the district, and to furnish, deliver,

**BILL**

1 and sell to the public and to any municipality and to the state and any state  
2 institution heat, light, and power service and any other service, commodity, or  
3 facility which may be produced or furnished thereby, and to charge and collect rates,  
4 tolls, and charges for the same. For said purposes the district is granted and shall  
5 have and exercise the right freely to use and occupy any public highway, street, way,  
6 or place reasonably necessary to be used or occupied for the maintenance and  
7 operation of such utility or any part thereof, subject, however, to such local police  
8 regulations as may be imposed by any ordinance adopted by the governing body of  
9 the municipality in which such highway, street, way, or place is located.

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

11 198.22 (6) ACQUISITION; CONSTRUCTION; OPERATION; SALE OF SERVICE; USE OF  
12 STREETS. The district shall have power and authority to own, acquire, and, subject  
13 to the restrictions applying to a municipality under s. 196.50 (4) (b), to construct any  
14 water utility or portion thereof, to operate, in whole or in part, in the district and to  
15 construct any addition or extension to any such utility. For such purpose the district  
16 is granted and shall have and exercise the right freely to use and occupy any public  
17 highway, street, way, or place reasonably necessary to be used or occupied for the  
18 construction, operation, or maintenance of such utility or any part thereof, subject,  
19 however, to the obligation of the district to replace said grounds in the same condition  
20 as they previously were in.

21 **SECTION 14. Initial applicability.**

22 (1) The treatment of section 196.50 (4) (c) of the statutes first applies to services  
23 provided or sold or facilities transferred under contracts entered into, extended,  
24 modified, or renewed on the effective date of this subsection.

25 (END)

2001-2002 DRAFTING INSERT  
FROM THE  
LEGISLATIVE REFERENCE BUREAU

LRB-1756/2ins  
MDK.....

1  
2  
3  
4

NOT

**INSERT 4-10:**

The commission may not issue a declaration under this paragraph that allows a municipality to construct a telecommunications utility or alternative telecommunications utility.

**DRAFTER'S NOTE**  
**FROM THE**  
**LEGISLATIVE REFERENCE BUREAU**

LRB-1756/2dn

MDK:/.....

WJ

Representative Huebsch:

an

Please review this version, which is based on instructions from Chris Larowe, <sup>very</sup> carefully to make sure that it achieves your intent. In particular, please note the following:

1. A fire department established by a city, village, or town is a "local government unit" under the bill. This results because a fire department either is identical to the city, village, or town, or is considered to be instrumentality or subunit of the city, village, or town. However, volunteer fire companies or departments organized under ch. 213, stats., are different because they are not established by a city, village, or town. Therefore, this version retains the reference to volunteer fire companies or departments in proposed s. 196.50 (4) (d) 1. ✓
2. This version eliminates an exception for leases entered into before the effective date. It also eliminates the initial applicability provision. Note that, without an initial applicability provision, the bill could be challenged as an unconstitutional impairment of contracts. I can't predict how a court would resolve such a challenge, but I thought you should be aware of it.

Mark D. Kunkel  
Legislative Attorney  
Phone: (608) 266-0131  
E-mail: mark.kunkel@legis.state.wi.us

**DRAFTER'S NOTE**  
**FROM THE**  
**LEGISLATIVE REFERENCE BUREAU**

LRB-1756/2dn  
MDK:wlj:km

April 3, 2001

Representative Huebsch:

Please review this version, which is based on instructions from Chris Larowe, carefully to make sure that it achieves your intent. In particular, please note the following:

1. A fire department established by a city, village, or town is a "local government unit" under the bill. This results because a fire department either is identical to the city, village, or town, or is considered to be an instrumentality or subunit of the city, village, or town. However, volunteer fire companies or departments organized under ch. 213, stats., are different because they are not established by a city, village, or town. Therefore, this version retains the reference to volunteer fire companies or departments in proposed s. 196.50 (4) (d) 1.
2. This version eliminates an exception for leases entered into before the effective date. It also eliminates the initial applicability provision. Note that, without an initial applicability provision, the bill could be challenged as an unconstitutional impairment of contracts. I can't predict how a court would resolve such a challenge, but I thought you should be aware of it.

Mark D. Kunkel  
Legislative Attorney  
Phone: (608) 266-0131  
E-mail: mark.kunkel@legis.state.wi.us



## Kunkel, Mark

---

**From:** Kunkel, Mark  
**Sent:** Monday, April 23, 2001 10:23 AM  
**To:** 'chrislar@chorus.net'  
**Subject:** Latest impairment of contracts language (LRB-1756/2)

Chris:

Here is my latest attempt at language dealing with the impairment of contracts issue. Rather than put language in the nonstatutory section of the bill, I would create a new subdivision in s. 196.50 (4) (c). In the bill, insert the following at page 6 after line 16:

"3. If a governmental subdivision is subject to a contract that is in effect on the effective date of this subdivision .... [revisor inserts date] and that contains provisions that are inconsistent with par. (c) 1., 2., or 3., then, notwithstanding par. (c) 1., 2., or 3., the governmental subdivision may perform its obligations, and exercise its rights, under that contract until the contract expires, is extended, modified, or renewed, whichever occurs first."

Let me know what you think.

---

Mark Kunkel  
Legislative Attorney  
Legislative Reference Bureau  
(608) 266-0131 mark.kunkel@legis.state.wi.us

3

O-NOTE

2001 BILL

TOMORROW  
(TUES 4/24)  
PM

REGEN

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

**BILL**

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 ~~the~~ <sup>three</sup> 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 federally recognized Indian tribe or band located in this state; 3) a fire department or volunteer fire company; or 4) 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.

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.

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).

8

INSERT  
2 B

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**BILL**

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

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

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

6           196.499 (15) (a) A telecommunications carrier that is not authorized to provide  
7 intrastate telecommunications service on January 1, 1994, may not commence the  
8 construction of any plant, extension, or facility, or provide intrastate  
9 telecommunications service directly or indirectly to the public, unless the  
10 telecommunications carrier obtains a certificate from the commission authorizing  
11 the telecommunications carrier to provide intrastate telecommunications. ~~The~~  
12 Except as provided in par. (b), the commission may issue a certificate if the  
13 telecommunications carrier demonstrates that it possesses sufficient technical,  
14 financial, and managerial resources to provide intrastate telecommunications  
15 services. A telecommunications carrier that is authorized to provide intrastate  
16 telecommunications service on January 1, 1994, is not required to be recertified  
17 under this subsection paragraph.

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

19           196.499 (15) (b) The commission may not issue a certificate under par. (a) to  
20 a governmental subdivision, as defined in s. 196.50 (4) (a) 1.

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

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

23           196.50 (2) (c) 2. The commission may not issue a certificate of authority under  
24 this subsection to a governmental subdivision, as defined in s. 196.50 (4) (a) 1.

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

**BILL**

1           196.50 (4) (title) ~~MUNICIPALITY~~ MUNICIPALITIES AND GOVERNMENTAL SUBDIVISIONS

2           RESTRAINED.

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

5           196.50 (4) (b) No municipality may construct any public utility if there is in  
6           operation under an indeterminate permit in the municipality a public utility  
7           engaged in similar service ~~other than a telecommunications service~~, unless it secures  
8           from the commission a declaration, after a public hearing of all parties interested,  
9           that public convenience and necessity require the municipal public utility. The  
10          commission may not issue a declaration under this paragraph that allows a  
11          municipality to construct a telecommunications utility or alternative  
12          telecommunications utility.

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

14          196.50 (4) (a) In this subsection:

15          1. “Governmental subdivision” means a political subdivision, a special purpose  
16          district, an instrumentality or corporation of a political subdivision or a special  
17          purpose district, or a combination or subunit of any of the foregoing, but does not  
18          include a public library board or public library system.

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

22          2e. “Local governmental unit” means any of the following:

23          a. A political subdivision.

24          b. A special purpose district.

**BILL**

1 c. An instrumentality or corporation of a political subdivision or special  
2 purpose district.

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

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

6 2m. “Member of the public” means any person except a governmental  
7 subdivision.

8 2r. “Political subdivision” means any city, village, town, or county.

9 2w. “State agency” means any office, department, independent agency,  
10 institution of higher education, association, society, or other body in state  
11 government created or authorized to be created by the constitution or any law,  
12 including the legislature and courts.

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

15 3m. “Transmission facility” means any plant or equipment used to transmit a  
16 telecommunications service by wire, optics, radio signal, or other means.  
17 “Transmission facility” does not include any conduit, pole, tower, or other structure  
18 that supports the plant or equipment used to transmit the telecommunications  
19 service.

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

21 196.50 (4) (c) Except as provided in par. (d), no governmental subdivision may  
22 do any of the following:

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

**BILL**

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

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

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

6           196.50 (4) (d) 1. Paragraph (c) 1., 2., and 3. does not apply to a governmental  
7 subdivision that provides a telecommunications service, transfers a transmission  
8 facility, or sells an Internet access service to a local governmental unit, state agency,  
9 federally recognized Indian tribe or band located in this state, or volunteer fire  
10 company or fire department organized under ch. 213, under a contract or agreement  
11 under s. 66.0301, 66.0303, or 120.25 or a similar contract or agreement for the  
12 sharing of services or facilities.

13           2. Paragraph (c) 2. does not apply to sales by a governmental subdivision of  
14 substantially all of the transmission facilities owned by the governmental  
15 subdivision to a telecommunications carrier, telecommunications utility, or  
16 alternative telecommunication utility.

INSERT  
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↓

INSERT 6-10 ↓

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

18           198.12 (6) UTILITIES, ACQUIRE, CONSTRUCT, OPERATE; WATER POWER; SALE OF  
19 SERVICE; USE OF STREETS. The district shall have power and authority to own, acquire  
20 and, subject to the restrictions applying to a municipality under s. 196.50 (4) (b), to  
21 construct any utility or portion thereof to operate, in whole or in part, in the district,  
22 and to own, acquire and, subject to ss. 196.01 to 196.53 and 196.59 to 196.76 where  
23 applicable, to construct any addition to or extension of any such utility, and to own,  
24 acquire, and construct any water power and hydroelectric power plant, within or  
25 without the district, to be operated in connection with any such utility, and to

**BILL**

1 operate, maintain, and conduct such utility and water power and hydroelectric  
2 power plant and system both within and without the district, and to furnish, deliver,  
3 and sell to the public and to any municipality and to the state and any state  
4 institution heat, light, and power service and any other service, commodity, or  
5 facility which may be produced or furnished thereby, and to charge and collect rates,  
6 tolls, and charges for the same. For said purposes the district is granted and shall  
7 have and exercise the right freely to use and occupy any public highway, street, way,  
8 or place reasonably necessary to be used or occupied for the maintenance and  
9 operation of such utility or any part thereof, subject, however, to such local police  
10 regulations as may be imposed by any ordinance adopted by the governing body of  
11 the municipality in which such highway, street, way, or place is located.

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

13 198.22 (6) ACQUISITION; CONSTRUCTION; OPERATION; SALE OF SERVICE; USE OF  
14 STREETS. The district shall have power and authority to own, acquire, and, subject  
15 to the restrictions applying to a municipality under s. 196.50 (4) (b), to construct any  
16 water utility or portion thereof, to operate, in whole or in part, in the district and to  
17 construct any addition or extension to any such utility. For such purpose the district  
18 is granted and shall have and exercise the right freely to use and occupy any public  
19 highway, street, way, or place reasonably necessary to be used or occupied for the  
20 construction, operation, or maintenance of such utility or any part thereof, subject,  
21 however, to the obligation of the district to replace said grounds in the same condition  
22 as they previously were in.

23 (END)



2001-2002 DRAFTING INSERT  
FROM THE  
LEGISLATIVE REFERENCE BUREAU

LRB-1756/3ins  
MDK:.....

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**INSERT PAGE 2A:**

2) a school district; 3) a cooperative educational service agency; 4) a technical college district; 5) a public library board or system;

**INSERT PAGE 2B:**

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.

**INSERT PAGE 6-8:**

school district, cooperative educational service agency, technical college district, public library board, public library system,

**INSERT PAGE 6-16:**

3. If a governmental subdivision is subject to a contract that is in effect on the effective date of this subdivision ... [revisor inserts date] and that contains provisions that are inconsistent with par. (c) 1., 2., or 3., then, notwithstanding par. (c) 1., 2., or 3., the governmental subdivision may perform its obligations, and exercise its rights, under that contract until the contract expires, or is extended, modified, or renewed, whichever occurs first.

**DRAFTER'S NOTE**  
**FROM THE**  
**LEGISLATIVE REFERENCE BUREAU**

LRB-1756/3dn  
MDK:.....

Representative Huebsch:

This version is identical to the previous version, except for the following:

1. Proposed s. 196.50 (4) (d) 1. adds the following to the exception: school districts, cooperative educational service agencies, technical college districts, public library boards, and public library systems.
2. Proposed s. 196.50 (4) (d) 3. is created to deal with the impairment of contracts issue.

Mark D. Kunkel  
Legislative Attorney  
Phone: (608) 266-0131  
E-mail: mark.kunkel@legis.state.wi.us

**DRAFTER'S NOTE**  
**FROM THE**  
**LEGISLATIVE REFERENCE BUREAU**

LRB-1756/3dn  
MDK.wlj.pg

April 24, 2001

Representative Huebsch:

This version is identical to the previous version, except for the following:

1. Proposed s. 196.50 (4) (d) 1. adds the following to the exception: school districts, cooperative educational service agencies, technical college districts, public library boards, and public library systems.
2. Proposed s. 196.50 (4) (d) 3. is created to deal with the impairment of contracts issue.

Mark D. Kunkel  
Legislative Attorney  
Phone: (608) 266-0131  
E-mail: mark.kunkel@legis.state.wi.us

## **Barman, Mike**

---

**From:** Kunkel, Mark  
**Sent:** Wednesday, September 05, 2001 11:19 AM  
**To:** Barman, Mike  
**Subject:** FW: LRB 1756/3

Mike:

Can you take care of this? I'm not sure what he needs regarding the request for jacketing.

-- Mark

-----Original Message-----

**From:** Johnson, Dan (Legislature)  
**Sent:** Wednesday, September 05, 2001 11:07 AM  
**To:** Kunkel, Mark  
**Subject:** LRB 1756/3

Hello Mark,

By now, you should have been contacted by Rep. Huebsch's office regarding LRB 1756/3, prohibiting municipalities from offer telecommunication services. Rep. Huebsch is handing this bill off to Rep. Kedzie.

Therefore, if you could e-mail the LRB to me for my review and request for jacketing, I would appreciate it.

Thanks Mark!

Dan Johnson  
Research Assistant  
Clerk, Committee on Environment  
**State Representative Neal Kedzie**  
43rd Assembly District

(608) 266-9650  
(608) 282-3643 fax

On the World Wide Web at: <http://www.legis.state.wi.us/assembly/asm43/news/index.htm>  
Assembly Environment Committee Web page:  
<http://www.legis.state.wi.us/assembly/asm43/news/environment.htm>

## Barman, Mike

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**From:** Barman, Mike  
**Sent:** Wednesday, September 05, 2001 11:42 AM  
**To:** Rep.Kedzie  
**Subject:** LRB-1756/3 (attached - requested by Dan Johnson)



01-1756/3



01-1756/3dn

*Mike Barman*

Mike Barman - Senior Program Asst. (PH. 608-266-3561)  
(E-Mail: [mike.barman@legis.state.wi.us](mailto:mike.barman@legis.state.wi.us)) (FAX: 608-264-6948)

State of Wisconsin  
Legislative Reference Bureau - Legal Section - Front Office  
100 N. Hamilton Street - 5th Floor  
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# State of Wisconsin

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STEPHEN R. MILLER  
CHIEF

LEGAL SECTION: (608) 266-3561  
LEGAL FAX: (608) 264-6948

April 24, 2001

### MEMORANDUM

To: Representative Huebsch

✓  
Kedzie

From: Mark D. Kunkel, Legislative Attorney

Re: LRB-1756/3 Prohibiting certain governmental subdivisions from providing telecommunications and Internet services

The attached draft was prepared at your request. Please review it carefully to ensure that it is accurate and satisfies your intent. If it does and you would like it jacketed for introduction, please indicate below for which house you would like the draft jacketed and return this memorandum to our office. If you have any questions about jacketing, please call our program assistants at 266-3561. Please allow one day for jacketing.

JACKET FOR ASSEMBLY  JACKET FOR SENATE

If you have any questions concerning the attached draft, or would like to have it redrafted, please contact me at (608) 266-0131 or at the address indicated at the top of this memorandum.

If the last paragraph of the analysis states that a fiscal estimate will be prepared, the LRB will request that it be prepared after the draft is introduced. You may obtain a fiscal estimate on the attached draft before it is introduced by calling our program assistants at 266-3561. Please note that if you have previously requested that a fiscal estimate be prepared on an earlier version of this draft, you will need to call our program assistants in order to obtain a fiscal estimate on this version before it is introduced.

Please call our program assistants at 266-3561 if you have any questions regarding this memorandum.