

2001 ASSEMBLY BILL 889

March 4, 2002 – Introduced by Representatives MONTGOMERY and PETTIS. Referred to Committee on Information Policy and Technology.

1 **AN ACT** *to renumber and amend* 100.207 (1), 196.202 (2) and 196.50 (4); *to*
2 *amend* 15.795 (title), 93.14 (3), 93.15 (1), 93.15 (2), 196.195 (12) (a), 196.196 (1)
3 (g) 1. (intro.), 196.499 (1) (b), 196.50 (4) (title), 198.12 (6) and 198.22 (6); *to*
4 *repeal and recreate* 196.202 (2) (intro.); and *to create* 15.795 (2), 20.155 (3)
5 (title), 20.155 (3) (g), 20.155 (3) (h), 20.155 (3) (i), 20.155 (3) (k), 93.01 (1r), 93.14
6 (1m), 100.207 (1) (a), 100.207 (1) (c), 100.207 (3g), 100.207 (3m), 100.207 (5g),
7 100.207 (5m), 100.207 (6) (br), 146.70 (3m), 196.02 (13), 196.195 (12) (f), 196.196
8 (1) (em), 196.196 (5) (f) 1. g., 196.196 (5) (f) 4., 196.202 (2) (b), 196.202 (6), 196.50
9 (4) (a) and 196.50 (4) (c) of the statutes; **relating to:** creating a wireless 911
10 board; imposing a surcharge on wireless telephone customers; making grants
11 for wireless 911 emergency telephone service; allowing adjustments in
12 telecommunications utility rates for expenses in supporting wireless 911
13 emergency telephone service; requiring wireless number portability;
14 jurisdictional and enforcement authority of the department of agriculture,

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1 trade and consumer protection; construction and ownership of
2 telecommunications facilities by local units of government; services provided by
3 telecommunications providers; authority of the public service commission
4 regarding area codes and telephone numbers; allowing for adjustments in
5 incentive-regulated telecommunication utility rates; requesting the joint
6 legislative council to study retail and wholesale telecommunications services;
7 granting rule-making authority; and making appropriations.

Analysis by the Legislative Reference Bureau

This bill creates a wireless 911 board that makes grants for providing 911 wireless emergency telephone service. The grants are funded by a surcharge paid by wireless customers. These provisions are discussed below. The bill also does all of the following with respect to the regulation of telecommunications providers, which are discussed below: 1) restricts ownership or construction of telecommunications facilities by local units of government; 2) restricts telecommunications providers in initiating service and applying laws of other states to contracts; 3) restricts telecommunications providers in billing other services; 4) requires wireless telephone number portability; and 5) makes various other changes.

911 wireless emergency telephone service

The bill creates a wireless 911 board (board), consisting of the following 12 members: 1) one representative appointed by the speaker of the assembly; 2) one representative appointed by the assembly minority leader; 3) one senator appointed by the president of the senate; 4) one senator appointed by the senate minority leader; 5) four members who represent wireless telecommunications providers and who are appointed by the governor; and 6) four members who represent public agencies that operate emergency telephone service systems and who are appointed by the governor.

The bill requires wireless telecommunications providers to impose a 50-cent surcharge on customer bills and pay the surcharge to the board, except that in fiscal year 2002–03, a wireless telecommunications provider may retain 2% of the surcharge for reimbursing the cost of collecting the surcharge. The surcharge must be imposed on the first bills issued after July 1, 2002. The board may promulgate rules to increase or decrease the surcharge, but the board may increase the surcharge only once per year. In addition, any increase must be uniform statewide and may not exceed 10 cents, and the surcharge may never exceed \$1.

The board must use the surcharge to make grants to wireless telecommunications providers and public agencies that operate emergency telephone systems. A wireless telecommunications provider is eligible for a grant if it is subject to orders of the federal communications commission (FCC) regarding

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wireless 911 emergency telephone service. The grants must be used for specified expenses incurred by wireless telecommunications providers to comply with the FCC's orders. A public agency is eligible for a grant only if the board determines that the agency is providing, or has begun to implement, 911 emergency services for wireless users and the agency has complied with the FCC's orders. A grant to a public agency must be used for specified expenses related to the operation of an emergency telephone system. In addition, the total amount in grants that a public agency may receive may not exceed 50% of the agency's eligible expenses.

The board may use no more than 2.5% of the surcharges collected in a fiscal year for the board's general program operations. Half of the remaining amount must be placed in an account for grants to wireless telecommunications providers, and the other half is placed in an account for grants to public agencies. However, if there is insufficient money for a grant to a wireless telecommunications provider, the board may, under certain circumstances, make a grant to a wireless telecommunications provider from the account for public agencies. If the board makes such a grant, the board must, as soon as practicable, transfer an amount equal to the grant to the public agency account from the wireless telecommunications provider account.

The bill creates other requirements for the grant program, including the following:

1. The bill allows the board to make grants in installments, if there are insufficient funds in a surcharge account.

2. The bill allows the board to withhold from public inspection any information the board receives that would aid the competitor of a wireless provider.

3. The bill requires the board to contract for independent audits of grant applications. The board must also establish procedures that prohibit members of the board from having access to confidential business information submitted by wireless telecommunications providers.

4. The bill prohibits cities, villages, towns, counties, and other state agencies from requiring wireless telecommunications providers to collect or pay a surcharge or fee related to wireless emergency telephone service.

5. The bill requires the board to submit an annual report to the legislature regarding the grant program.

6. The bill's requirements regarding the surcharge and grant program do not apply after the first day of the 60th month beginning after the bill's effective date.

Finally, the bill allows a price-regulated telecommunications utility, subject to approval of the Public Service Commission (PSC), to adjust its rates for the purpose of recovering the utility's expenses incurred exclusively in supporting the provision of 911 emergency services for wireless telephone users under the FCC's orders.

Local government construction and ownership of telecommunications facilities

The bill prohibits local units of government from owning or constructing telecommunications facilities that are used to provide service to the public, unless the local unit of government leases, on a nondiscriminatory basis, the facility to a telecommunications provider that is not a local unit of government. In addition, the electorate of the local unit of government must approve the lease in a referendum and

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the local unit of government must submit a financing plan and budget to the PSC. Also, under certain circumstances, the bill allows the PSC to promulgate additional requirements that must be satisfied. For a local unit of government that owns or has obtained financing for a telecommunications facility on the effective date of the bill, the prohibition does not apply until five years after the effective date. In addition, the bill's prohibition does not apply to certain telecommunications facilities that are leased to other state and local governmental entities for the purpose of sharing facilities or intergovernmental cooperation.

Restrictions on telecommunications providers in initiating service and restrictions on contracts

This bill provides that a telecommunications provider may not provide a telecommunications service that is not always provided during each billing period to a person unless the telecommunications provider reasonably believes that the person knowingly consented to receive the service. The telecommunications provider must also confirm, before providing the telecommunications service, that the person knowingly consented to receive the service. The bill also requires that the telecommunications provider inform the person that he or she may, before the service is activated, withdraw consent to receive the service and requires that the telecommunications provider inform the person of the manner by which that consent may be withdrawn.

This bill also prohibits a telecommunications provider from placing in a contract to provide telecommunications services a clause that provides that the laws of any state other than this state apply to the parties or terms of the contract or to any right or remedy under the contract.

Restrictions on telecommunications providers in billing other services

This bill provides that a telecommunications provider may not bill a customer for goods or services that are not telecommunications services provided by that telecommunications provider unless the telecommunications provider reasonably believes that the customer knowingly consents to receive the bill and the provider confirms that consent with the customer. If a customer consents, the bill requires that the telecommunications provider distinguish on the bill between the billing for telecommunication services and the billing for the other goods or services. Finally, if requested to do so by a customer who has consented to being billed for the other goods or services, the telecommunications provider shall provide a detailed itemized listing of the charges for those goods or services.

Wireless number portability

Under current federal law, with certain exceptions, telecommunications providers are required to provide number portability in the 100 largest metropolitan statistical areas (MSAs) of the country. "Number portability" is defined as the ability of a customer to retain existing telephone numbers at the same location when switching telecommunications providers. Milwaukee is the only area in Wisconsin that is in the 100 largest MSAs. Current federal law also requires, with certain exceptions, a telecommunications provider to provide number portability in an area outside the 100 largest MSAs within six months after another telecommunications provider requests number portability.

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One of the exceptions to the above requirements applies to wireless telecommunications providers, which are referred to under federal and state law as commercial mobile radio service providers. Under current federal law, wireless telecommunications providers must begin providing number portability in the 100 largest MSAs by November 24, 2002. After that date, a wireless telecommunications provider must provide number portability in an area outside the 100 largest MSAs within the same six-month deadline described above.

Under this bill, a wireless telecommunications provider must begin providing number portability in all areas of the state on November 24, 2002. The duty applies only if a customer of a wireless telecommunications provider switches to another telecommunications provider in the same area code. In addition, number portability must be provided in a manner that does not impair the quality or reliability of telecommunications services.

Other changes

The bill makes other changes to the regulation of telecommunications providers, including all of the following:

1. The bill provides that, to the extent authorized under federal law, the PSC has jurisdiction to supervise and regulate telephone numbers and area codes used by any telecommunications provider.

2. The bill allows the PSC to require telecommunications providers and providers of cable television service to provide information that the PSC determines is necessary for the PSC to prepare a biennial report regarding the status of investments in advanced telecommunications infrastructure that the PSC must submit to the joint committee on information policy and technology under current law.

3. The bill allows the PSC to approve basic local exchange rates of a telecommunications utility subject to incentive regulation that match a competitor's rates, even if the result is that the utility's rates do not exceed its total service long-run incremental costs. Under current law, a telecommunications utility's rates must exceed such costs, unless other exceptions apply.

4. The bill request the joint legislative council to study the appropriate level of regulation of retail and wholesale telecommunications services, the quality of such services, and related enforcement issues, with a focus on making the transition toward deregulated markets for such services. If the council undertakes such a study, the bill requires the council to submit a report to the 2003 legislature when it convenes.

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:

ASSEMBLY BILL 889**SECTION 1**

1 **15.795** (title) **Same; attached board and office.**

2 **SECTION 2.** 15.795 (2) of the statutes is created to read:

3 15.795 **(2)** WIRELESS 911 BOARD. (a) There is created a wireless 911 board
4 attached to the public service commission under s. 15.03 consisting of the following
5 members:

6 1. One representative to the assembly, appointed by the speaker of the
7 assembly.

8 2. One representative to the assembly, appointed by the assembly minority
9 leader.

10 3. One senator, appointed by the president of the senate.

11 4. One senator, appointed by the senate minority leader.

12 5. Four persons who represent the interests of commercial mobile radio service
13 providers, as defined in s. 196.01 (2g), appointed by the governor.

14 6. Four persons who represent the interests of public agencies, as defined in s.
15 146.70 (1) (f), or public safety agencies, as defined in s. 146.70 (1) (g), that operate
16 public safety answering points, as defined in s. 146.70 (1) (gm), appointed by the
17 governor.

18 (b) The members appointed under par. (a) 5. and 6. shall serve 3–year terms
19 and may not serve more than 2 consecutive terms.

20 **SECTION 3.** 20.155 (3) (title) of the statutes is created to read:

21 20.155 **(3)** (title) WIRELESS 911 BOARD.

22 **SECTION 4.** 20.155 (3) (g) of the statutes is created to read:

23 20.155 **(3)** (g) *General program operations.* Two and one–half percent of all
24 moneys received under s. 146.70 (3m) (d) 3. for general program operations of the
25 wireless 911 board, including contracting for audits under s. 146.70 (3m) (b) 5.

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1 **SECTION 5.** 20.155 (3) (h) of the statutes is created to read:

2 20.155 (3) (h) *Wireless provider grants.* Forty-eight and three-fourths percent
3 of all moneys received under s. 146.70 (3m) (d) 3. for the wireless 911 board to make
4 grants to wireless providers under s. 146.70 (3m) (b) 2. and to make transfers to the
5 appropriation under par. (k) as provided under s. 146.70 (3m) (b) 3.

6 **SECTION 6.** 20.155 (3) (i) of the statutes is created to read:

7 20.155 (3) (i) *Public agency and wireless provider grants.* Forty-eight and
8 three-fourths percent of all moneys received under s. 146.70 (3m) (d) 3. for the
9 wireless 911 board to make grants to public agencies under s. 146.70 (3m) (b) 1. and
10 to wireless providers under s. 146.70 (3m) (b) 3.

11 **SECTION 7.** 20.155 (3) (k) of the statutes is created to read:

12 20.155 (3) (k) *Public agency grants.* All moneys transferred from the
13 appropriation account under par. (h) for the wireless 911 board to make grants to
14 public agencies under s. 146.70 (3m) (b) 1.

15 **SECTION 8.** 93.01 (1r) of the statutes is created to read:

16 93.01 (1r) “Civil investigative demand” means a written document prepared
17 by the department that is related to the enforcement of chs. 93 to 100 and that orders
18 a person to do any of the following:

19 (a) Provide originals or copies of documents, records, or reports in the person’s
20 custody.

21 (b) Answer specific questions submitted by the department in the form of
22 written depositions, interrogatories, or requests for admissions.

23 (c) Allow employees of the department to review and copy documents, records,
24 or reports in the person’s custody.

25 **SECTION 9.** 93.14 (1m) of the statutes is created to read:

ASSEMBLY BILL 889**SECTION 9**

1 93.14 **(1m)** (a) Any person who has been served with a department complaint,
2 notice, order, or other process as authorized in s. 93.18 (5) shall be subject to the
3 department's authority and jurisdiction, as limited by par. (b).

4 (b) The department's jurisdiction may not exceed the jurisdiction granted to
5 courts under s. 815.05.

6 **SECTION 10.** 93.14 (3) of the statutes is amended to read:

7 93.14 **(3)** Any person who shall unlawfully fail to attend as a witness, fail to
8 comply with a subpoena, order, or civil investigative demand, or refuse to testify may
9 be coerced as provided in s. 885.12.

10 **SECTION 11.** 93.15 (1) of the statutes is amended to read:

11 93.15 **(1)** The department may, by general or special order, require persons
12 ~~engaged in business~~ to file with the department, at such time and in such manner
13 as the department may direct, sworn or unsworn reports or sworn or unsworn
14 answers in writing to specific questions, as to any matter which the department may
15 investigate.

16 **SECTION 12.** 93.15 (2) of the statutes is amended to read:

17 93.15 **(2)** The department or any of its authorized agents may have access to
18 and may copy any document, or any part thereof, which of a document, that is in the
19 possession or under the control of any person ~~engaged in business~~, if such the
20 document, or such part thereof of the document, is relevant to any matter ~~which that~~
21 the department may investigate.

22 **SECTION 13.** 100.207 (1) of the statutes is renumbered 100.207 (1) (intro.) and
23 amended to read:

24 100.207 **(1)** ~~DEFINITION~~ DEFINITIONS. (intro.) In this section,
25 ~~“telecommunications;~~

ASSEMBLY BILL 889**SECTION 13**

1 (b) “Telecommunications service” has the meaning given in s. 196.01 (9m).

2 **SECTION 14.** 100.207 (1) (a) of the statutes is created to read:

3 100.207 (1) (a) “Telecommunications provider” has the meaning given in s.
4 196.01 (8p).

5 **SECTION 15.** 100.207 (1) (c) of the statutes is created to read:

6 100.207 (1) (c) “Telecommunications subscription” means a contract between
7 a telecommunications provider and a customer for a telecommunications service that
8 is always provided to the customer during each billing period.

9 **SECTION 16.** 100.207 (3g) of the statutes is created to read:

10 100.207 (3g) BILLING FOR OTHER SERVICES. (a) A telecommunications provider
11 may not bill a customer for any goods or services, other than telecommunications
12 service provided by the telecommunications provider, unless all of the following
13 apply:

14 1. The telecommunications provider reasonably believes that the customer
15 knowingly consented to the billing.

16 2. The telecommunications provider confirms with the customer, before
17 providing the telecommunications service, that the customer knowingly consented
18 to the billing.

19 (b) If a customer consents to being billed under par. (a), all of the following shall
20 apply:

21 1. The telecommunications provider shall distinguish the billing for the other
22 goods or services from the billing for the telecommunications service in a conspicuous
23 manner approved by the department.

24 2. The telecommunications provider shall provide a detailed itemized listing
25 of the charges for the goods or services if requested to do so by the customer.

ASSEMBLY BILL 889**SECTION 17**

1 **SECTION 17.** 100.207 (3m) of the statutes is created to read:

2 **100.207 (3m) TELECOMMUNICATIONS SERVICE CONFIRMATION.** (a) A
3 telecommunications provider may not provide a telecommunications service to a
4 customer unless all of the following apply:

5 1. The telecommunications provider reasonably believes that the customer
6 knowingly consented to receive the service.

7 2. The telecommunications provider confirms with the customer, before
8 providing the telecommunications service, that the customer knowingly consented
9 to receive the service.

10 3. At the time that the telecommunications provider provides confirmation
11 under subd. 2., the telecommunications provider informs the customer that he or she
12 may, before the service is activated, withdraw his or her consent to receive the service
13 and informs the customer of the manner by which that consent may be withdrawn.

14 (b) Paragraph (a) does not apply to a telecommunications service that is
15 provided as part of a telecommunications subscription.

16 **SECTION 18.** 100.207 (5g) of the statutes is created to read:

17 **100.207 (5g) RESTRICTIONS ON CONTRACTS.** No telecommunications provider
18 may place in a contract entered into with a customer located in this state a clause that
19 provides that a law of a state other than this state applies to the parties or terms of
20 the contract or the rights and remedies under the contract.

21 **SECTION 19.** 100.207 (5m) of the statutes is created to read:

22 **100.207 (5m) RECORD REQUIREMENTS.** Any person who provides
23 telecommunications service to any customer in this state shall maintain each billing
24 and collection record that is made in providing the telecommunications service for
25 a period of 5 years beginning on the date that the record is made.

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1 **SECTION 20.** 100.207 (6) (br) of the statutes is created to read:

2 100.207 (6) (br) Any person who fails to comply with a subpoena, order, or civil
3 investigative demand that is served upon the person for the purposes of
4 administering or enforcing this section or for the purpose of conducting an
5 investigation under this section may be coerced to comply as provided in s. 885.12.

6 **SECTION 21.** 146.70 (3m) of the statutes is created to read:

7 146.70 (3m) WIRELESS PROVIDERS. (a) *Definitions.* In this subsection:

8 1. “Board” means the wireless 911 board.

9 2. “Federal wireless orders” means the orders of the federal communications
10 commission regarding 911 emergency services for wireless telephone users in FCC
11 docket no. 94–102.

12 3. “Wireless provider” means a commercial mobile radio service provider, as
13 defined in s. 196.01 (2g), that is subject to the federal wireless orders.

14 4. “Wireless public safety answering point” means a facility to which a call on
15 a wireless provider’s system is initially routed for response, and on which a public
16 agency directly dispatches the appropriate emergency service provider, relays a
17 message to the appropriate emergency service provider, or transfers the call to the
18 appropriate emergency services provider.

19 (b) *Grants.* 1. From the appropriations under s. 20.155 (3) (i) and (k), the board
20 shall make grants to public agencies that operate public safety answering points for
21 eligible expenses under par. (c). A public agency is eligible for a grant under this
22 subdivision only if the board determines that the public agency is providing, or has
23 begun to implement, 911 emergency services for wireless telephone users and has
24 complied with the federal wireless orders. The total amount in grants that a public

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1 agency may receive under this subdivision may not exceed 50% of the public agency's
2 total eligible expenses under par. (c).

3 2. From the appropriation under s. 20.155 (3) (h), the board shall make grants
4 to wireless providers for actual expenses incurred by wireless providers to upgrade,
5 purchase, lease, program, install, test, operate, or maintain all data, hardware, and
6 software necessary to comply with the federal wireless orders.

7 3. If the board determines that there are insufficient funds in the appropriation
8 account under s. 20.155 (3) (h) to make a grant under subd. 2., and the board has not
9 paid a grant under subd. 1. or an installment under subd. 4. in the preceding 3
10 months, the board may make the grant to the wireless provider from the
11 appropriation account under s. 20.155 (3) (i). If the board makes a grant under this
12 subdivision, the board shall, as soon as practicable, transfer moneys from the
13 appropriation account under s. 20.155 (3) (h) to the appropriation account under s.
14 20.155 (3) (k) in an amount equal to the amount of the grant.

15 4. If the board determines that there are insufficient funds in an appropriation
16 to make a grant under this paragraph, the board may make the grant in
17 installments.

18 5. The board shall contract for independent audits of applications for grants
19 under this paragraph. An applicant shall provide an auditor with any relevant
20 confidential business information.

21 (c) *Public agency eligible expenses.* 1. A public agency may receive a grant
22 under par. (b) 1. for actual expenses that the public agency directly and primarily
23 incurred for leasing, purchasing, operating, or maintaining a wireless public safety
24 answering point, including expenses for all of the following:

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1 a. Necessary network equipment, computer hardware and software, database
2 equipment, and radio and telephone equipment, that are located within the public
3 safety answering point.

4 b. Training operators of a public safety answering point.

5 c. Network costs for delivery of calls from a wireless provider to a public safety
6 answering point.

7 2. Except for expenses under subd. 1., a public agency may not receive a grant
8 under par. (b) 1. for any of the following:

9 a. Emergency service dispatch, including personnel, training, equipment,
10 software, records management, radio communications, and mobile data network
11 systems.

12 b. Vehicles and equipment in vehicles.

13 c. Communications equipment and software used to communicate with
14 vehicles.

15 d. Real estate and improvements to real estate, other than improvements
16 necessary to maintain the security of a public safety answering point.

17 e. Salaries and benefits of operators of a public safety answering point.

18 (d) *Wireless surcharge.* 1. Each wireless provider shall impose a surcharge of
19 50 cents per month for each telephone number that has a billable address in this state
20 and shall identify the surcharge on a customer's bill on a separate line that is
21 identified as "Wisconsin Wireless 911 Surcharge." The board may promulgate rules
22 that increase or decrease the surcharge, except that the board may not increase the
23 surcharge more than once per year, any increase must be uniform statewide and may
24 not exceed 10 cents, and the surcharge may not exceed \$1.

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1 2. A wireless provider may not prorate the surcharge and shall collect the entire
2 amount of the surcharge for a month of partial service.

3 3. The board shall promulgate rules establishing requirements for wireless
4 providers to collect the surcharge from their customers beginning with the first bills
5 issued after July 1, 2002. Except as provided in subd. 4., a wireless provider shall
6 pay the surcharges to the board no more than 60 days after the end of the calendar
7 month in which the surcharges are collected. The board shall bring an action to
8 collect a surcharge that is not paid by a customer and the customer's wireless
9 provider is not liable for the unpaid surcharge.

10 4. Wireless providers may retain 2% of the surcharges collected in fiscal year
11 2002–03 for reimbursing costs related to collecting the surcharge, including
12 reprogramming billing systems.

13 (e) *Confidentiality of information.* The board may withhold from public
14 inspection any information that would aid a competitor of a wireless provider in
15 competition with the wireless provider. The board shall establish procedures for
16 internal management that prohibit members of the board from having access to
17 confidential business information submitted by wireless providers.

18 (f) *Public information.* The board shall promulgate rules establishing
19 requirements and procedures for informing the public about the purpose and uses
20 of the surcharge required under this subsection. The rules shall require the board
21 to maintain a toll-free telephone number to provide such information to the public
22 and require wireless providers to identify the toll-free number on bills and direct
23 customers to contact the board regarding questions about the surcharge.

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1 (g) *Other charges prohibited.* No city, village, town, county, or state agency, as
2 defined in s. 16.375 (1), except the board, may require a wireless provider to collect
3 or pay a surcharge or fee related to wireless emergency telephone service.

4 (h) *Liability exemption.* A wireless provider shall not be liable to any person
5 who uses a wireless emergency telephone number system for which a grant is made
6 under par. (b).

7 (i) *Report to governor and legislature.* Annually, the board shall submit a report
8 to the governor, and to the chief clerk of each house of the legislature for distribution
9 to the legislature under s. 13.172 (2), that describes the costs incurred by wireless
10 providers and public agencies in providing wireless emergency telephone service and
11 the grants made by the board.

12 (j) *Board powers.* The board shall possess all powers necessary or convenient
13 for administering the requirements of this subsection.

14 (k) *Sunset.* This subsection does not apply after the first day of the 60th month
15 beginning after the effective date of this paragraph [revisor inserts date].

16 **SECTION 22.** 196.02 (13) of the statutes is created to read:

17 **196.02 (13) TELEPHONE NUMBERS AND AREA CODES.** To the extent authorized
18 under federal law, the commission has jurisdiction to supervise and regulate
19 telephone numbers and area codes used by any telecommunications provider in this
20 state and to do all things necessary and convenient to such jurisdiction. The
21 commission may withhold from public inspection any information obtained from a
22 telecommunications provider under this subsection that would aid a competitor of
23 the telecommunications provider.

24 **SECTION 23.** 196.195 (12) (a) of the statutes is amended to read:

ASSEMBLY BILL 889**SECTION 23**

1 196.195 (12) (a) To provide incentives for telecommunications utilities to
2 achieve any of the goals listed in par. (b) 1. a., the commission may suspend any of
3 the provisions listed in sub. (5) except ss. 196.19, 196.20 (1m), 196.22, 196.26, 196.37,
4 196.60 and 196.604, may grant an approval under par. (f), or may approve a
5 regulatory method alternative to traditional rate-of-return regulation that does not
6 require suspension of any provisions listed in sub. (5).

7 **SECTION 24.** 196.195 (12) (f) of the statutes is created to read:

8 196.195 (12) (f) Notwithstanding pars. (d) 2. and (e) and s. 196.204 (5) (a) and
9 (6) (b) 2., the commission may approve the provision of basic local exchange service
10 by a telecommunications utility that is subject to this subsection at rates that match
11 a competitor's rates for such service.

12 **SECTION 25.** 196.196 (1) (em) of the statutes is created to read:

13 196.196 (1) (em) Notwithstanding pars. (c), (d), and (e), a price-regulated
14 telecommunications utility may, subject to the approval of the commission, adjust its
15 rates for the purpose of recovering the utility's expenses incurred exclusively in
16 supporting the provision of 911 emergency services for wireless telephone users
17 under the federal wireless orders, as defined in s. 146.70 (3m) (a) 2.

18 **SECTION 26.** 196.196 (1) (g) 1. (intro.) of the statutes is amended to read:

19 196.196 (1) (g) 1. (intro.) Five years after a telecommunications utility elects
20 to become a price-regulated telecommunications utility or, if subd. 4. applies, within
21 the dates specified in that subdivision, the commission shall hold a hearing, and at
22 any time thereafter, upon complaint or on the commission's own motion, the
23 commission may hold a hearing, to determine whether it is in the public interest to
24 suspend one or more of the provisions of this subsection, except par. (em), as it applies
25 to a price-regulated telecommunications utility or to approve an alternative

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1 regulatory method for that utility. In making a determination under this
2 subdivision, the commission shall identify all of the following:

3 **SECTION 27.** 196.196 (5) (f) 1. g. of the statutes is created to read:

4 196.196 (5) (f) 1. g. Competition for telecommunications services throughout
5 the state.

6 **SECTION 28.** 196.196 (5) (f) 4. of the statutes is created to read:

7 196.196 (5) (f) 4. The commission may require a telecommunications provider
8 or provider of cable television service to submit to the commission any information
9 that the commission determines is necessary to prepare the report under subd. 1.
10 The commission may withhold from public inspection any information obtained
11 under this subdivision that would aid a competitor of a telecommunications provider
12 or provider of cable television service.

13 **SECTION 29.** 196.202 (2) of the statutes, as affected by 2001 Wisconsin Act 16,
14 is renumbered 196.202 (2) (intro.) and amended to read:

15 196.202 (2) SCOPE OF REGULATION. (intro.) A commercial mobile radio service
16 provider is not subject to ch. 201 or this chapter, except as provided in sub. (5), and
17 except that ~~a~~ as follows:

18 (a) A commercial mobile radio service provider is subject to s. 196.218 (3) if the
19 commission promulgates rules that designate commercial mobile radio service
20 providers as eligible to receive universal service funding under both the federal and
21 state universal service fund programs. If the commission promulgates such rules,
22 a commercial mobile radio service provider shall respond, subject to the protection
23 of the commercial mobile radio service provider's competitive information, to all
24 reasonable requests for information about its operations in this state from the
25 commission necessary to administer the universal service fund.

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SECTION 30

1 **SECTION 30.** 196.202 (2) (intro.) of the statutes, as affected by 2001 Wisconsin
2 Act (this act), is repealed and recreated to read:

3 196.202 (2) SCOPE OF REGULATION. (intro.) A commercial mobile radio service
4 provider is not subject to ch. 201 or this chapter, except as provided in subs. (5) and
5 (6), and except as follows:

6 **SECTION 31.** 196.202 (2) (b) of the statutes is created to read:

7 196.202 (2) (b) A commercial mobile radio service provider is subject to ss.
8 196.02 (13) and 196.196 (5) (f) 4.

9 **SECTION 32.** 196.202 (6) of the statutes is created to read:

10 196.202 (6) NUMBER PORTABILITY. (a) In this subsection, “number portability”
11 means the ability of a customer of a commercial mobile radio service provider who
12 switches service to another telecommunications provider in the same area code to
13 retain the telephone numbers that the customer used with that commercial mobile
14 radio service provider.

15 (b) Each commercial mobile radio service provider shall provide number
16 portability in all areas of the state in a manner that does not impair the quality or
17 reliability of telecommunications services.

18 **SECTION 33.** 196.499 (1) (b) of the statutes is amended to read:

19 196.499 (1) (b) A telecommunications carrier shall be treated under ss. 196.02
20 (13), 196.196 (5) (f) 4., 196.209, 196.218 (8) and 196.219 as a telecommunications
21 provider.

22 **SECTION 34.** 196.50 (4) (title) of the statutes is amended to read:

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

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1 **SECTION 35.** 196.50 (4) of the statutes is renumbered 196.50 (4) (b) and
2 amended to read:

3 196.50 **(4)** (b) No municipality may construct any public utility if there is in
4 operation under an indeterminate permit in the municipality a public utility
5 engaged in similar service ~~other than a telecommunications service~~, unless it secures
6 from the commission a declaration, after a public hearing of all parties interested,
7 that public convenience and necessity require the municipal public utility and unless
8 the requirements of par. (c) are satisfied.

9 **SECTION 36.** 196.50 (4) (a) of the statutes is created to read:

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

11 1. “Local governmental unit” means a town, village, city, county, or special
12 purpose district, a subunit of a town, village, city, county, or special purpose district,
13 or any combination of a town, village, city, county, special purpose district, or such
14 a subunit.

15 2. “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. “Telecommunications facility” means any plant or equipment used to provide
20 a telecommunications service to the public by wire, fiber optics, radio signal, or other
21 means.

22 **SECTION 37.** 196.50 (4) (c) of the statutes is created to read:

23 196.50 **(4)** (c) 1. Except as provided in subd. 2., a local governmental unit may
24 not construct or own a telecommunications facility, unless all of the following are
25 satisfied:

ASSEMBLY BILL 889**SECTION 37**

1 a. The local governmental unit leases, on a nondiscriminatory basis, the
2 telecommunications facility to a telecommunications provider that is not owned or
3 controlled by any local governmental unit.

4 b. Before beginning construction or taking ownership of the
5 telecommunications facility, whichever occurs first, the local governmental unit
6 submits to the commission a financing plan and budget for constructing or owning
7 the telecommunications facility. The information submitted under this subd. 1. b.
8 shall be open to public inspection.

9 c. The lease specified in subd. 1. a. is approved at a referendum pursuant to this
10 subdivision. The governing body of each town, village, city, county, or special purpose
11 district that comprises the local governmental unit or that has a subunit that
12 comprises the local governmental unit may adopt a resolution calling for a
13 referendum under this subdivision on whether that local governmental entity or
14 subunit should construct or purchase a telecommunications facility and enter into
15 a lease specified in subd. 1. a. The referendum shall be held at the next succeeding
16 spring election or general election to be held not earlier than 42 days after the
17 adoption of the resolution. The referendum question shall be substantially as
18 follows: “Shall the [name of town, village, city, county, special purpose district, or
19 subunit] [construct or purchase] a telecommunications facility for the purpose of
20 leasing that facility to a private telecommunications provider?” If a majority of the
21 electors of each town, village, city, county, or special purpose district that comprises
22 the local governmental unit or that has a subunit that comprises the local
23 governmental unit who vote in the referendum vote “Yes,” the local governmental
24 unit may enter into the lease specified in subd. 1. a., provided the local governmental
25 unit complies with subd. 1. b.

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1 d. Any other requirement established in rules promulgated by the commission
2 under subd. 3.

3 2. a. Subdivision 1. does not apply to a telecommunications facility that is
4 owned, or for which a financial institution has agreed in writing to finance, in whole
5 or in part, the cost of construction or ownership, before the effective date of this
6 subdivision [revisor inserts date]. This subdivision paragraph does not apply 5
7 years after the effective date of this subdivision paragraph [revisor inserts date].

8 b. Subdivision 1. does not apply to a telecommunications facility leased to a
9 local government unit, state agency, school district, cooperative educational service
10 agency, technical college district, public library board, public library system,
11 federally recognized Indian tribe or band located in this state, or volunteer fire
12 company or fire department organized under ch. 213, if the lease is under a contract
13 or agreement under s. 66.0301, 66.0303, or 120.25, or a similar contract or agreement
14 for the sharing of facilities.

15 3. If the commission determines that the requirements under subd. 1. a., b., and
16 c. do not adequately protect the public interest from any unfair competitive
17 advantage that a local governmental unit may gain from its status as a local
18 governmental unit, the commission may promulgate rules establishing additional
19 requirements that a local governmental unit must satisfy before constructing or
20 owning a telecommunications facility, including any of the following:

21 a. That the cost of owning or constructing the telecommunications facility must
22 be funded only from revenues generated from leasing the facility under subd. 1. a.

23 b. That construction and operation of the telecommunications facility must be
24 subject to the same requirements, fees, and penalties relating to the use of public

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1 rights-of-way that apply to a telecommunications facility that is not owned or
2 controlled by a local unit of government.

3 c. That the local unit of government must comply with any other requirement
4 that the commission determines is necessary to protect the public interest.

5 **SECTION 38.** 198.12 (6) of the statutes is amended to read:

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

25 **SECTION 39.** 198.22 (6) of the statutes is amended to read:

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1 198.22 (6) ACQUISITION; CONSTRUCTION; OPERATION; SALE OF SERVICE; USE OF
2 STREETS. The district shall have power and authority to own, acquire, and, subject
3 to the restrictions applying to a municipality under s. 196.50 (4) (b), to construct any
4 water utility or portion thereof, to operate, in whole or in part, in the district and to
5 construct any addition or extension to any such utility. For such purpose the district
6 is granted and shall have and exercise the right freely to use and occupy any public
7 highway, street, way or place reasonably necessary to be used or occupied for the
8 construction, operation or maintenance of such utility or any part thereof, subject,
9 however, to the obligation of the district to replace said grounds in the same condition
10 as they previously were in.

SECTION 40. Nonstatutory provisions.

11 (1) WIRELESS 911 SURCHARGE RULES.

12 (a) *Definition.* In this subsection, “board” means the wireless 911 board.

13 (b) *Board rules.* If all of the members of the board are appointed and qualified
14 on July 1, 2002, the board shall, using the procedure under section 227.24 of the
15 statutes, promulgate the rules under section 146.70 (3m) (d) 3. of the statutes, as
16 created by this act, for the period before permanent rules become effective, but not
17 to exceed the period authorized under section 227.24 (1) (c) and (2) of the statutes.
18 Notwithstanding section 227.24 (1) (a), (2) (b), and (3) of the statutes, the board is not
19 required to provide evidence that promulgating a rule under this paragraph as an
20 emergency rule is necessary for the preservation of the public peace, health, safety,
21 or welfare and is not required to provide a finding of emergency for a rule
22 promulgated under this paragraph.

23 (c) *Public service commission rules.* Notwithstanding section 146.70 (3m) (d)
24 3. of the statutes, as created by this act, if all of the members of the board are not
25

ASSEMBLY BILL 889**SECTION 40**

1 appointed and qualified on July 1, 2002, the public service commission shall, using
2 the procedure under section 227.24 of the statutes, promulgate the rules under
3 section 146.70 (3m) (d) 3. of the statutes, as created by this act, for the period before
4 permanent rules become effective, but not to exceed the period authorized under
5 section 227.24 (1) (c) and (2) of the statutes. Notwithstanding section 227.24 (1) (a),
6 (2) (b), and (3) of the statutes, the commission is not required to provide evidence that
7 promulgating a rule under this paragraph as an emergency rule is necessary for the
8 preservation of the public peace, health, safety, or welfare and is not required to
9 provide a finding of emergency for a rule promulgated under this paragraph.

10 (2) INITIAL MEMBERS OF WIRELESS 911 BOARD. Notwithstanding section 15.795 (2)
11 (b) of the statutes, as created by this act, the initial members of the wireless 911 board
12 under section 15.795 (2) (a) 5. and 6. of the statutes, as created by this act, shall be
13 appointed to serve the following terms:

14 (a) One member appointed under section 15.795 (2) (a) 5. of the statutes, as
15 created by this act, and one member appointed under section 15.795 (2) (a) 6. of the
16 statutes, as created by this act, for terms expiring on May 1, 2004.

17 (b) One member appointed under section 15.795 (2) (a) 5. of the statutes, as
18 created by this act, and one member appointed under section 15.795 (2) (a) 6. of the
19 statutes, as created by this act, for terms expiring on May 1, 2005.

20 (c) One member appointed under section 15.795 (2) (a) 5. of the statutes, as
21 created by this act, and one member appointed under section 15.795 (2) (a) 6. of the
22 statutes, as created by this act, for terms expiring on May 1, 2006.

23 (d) One member appointed under section 15.795 (2) (a) 5. of the statutes, as
24 created by this act, and one member appointed under section 15.795 (2) (a) 6. of the
25 statutes, as created by this act, for terms expiring on May 1, 2007.

