

DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-1362/1dn
MDK:cjs:cph

January 28, 2003

Representative Montgomery:

Please note the following about this bill:

1. Please review the timing issues. Wireless providers and local governments have about six months to apply for grants. In addition, counties have about six months to pass resolutions specifying the local governments eligible for grants. The PSC has about nine months to submit proposed rules establishing the amount of the fee. The PSC has about one year to submit proposed rules on how it will make the grants. The PSC is also required to promulgate emergency rules before the proposed rules go into effect.
2. Please review the requirements for joint applications by local governments and supplemental grants. Note that the PSC may not impose any restrictions on the use of supplemental grants. I think that if the bill did not include this prohibition, the PSC might be able to impose restrictions under its authority to promulgate rules interpreting the bill.
3. I allowed the PSC to give a grant applicant the opportunity to provide a reasonable estimate, if the PSC determines that the application has an estimate that is unreasonable. However, there isn't a deadline for this opportunity. Presumably, the PSC could address this issue in rules. Is that okay?
4. The basic limit on the total amount of grants (except for supplemental grants) that a particular recipient may receive is total costs the recipient has or will incur during the "reimbursement period," which is the three-year period after the bill's effective date. Therefore, costs incurred before or after the three-year date are not reimbursable. Is that approach okay?
5. I allowed the PSC to make grants in installments, which makes it clear that the PSC does not have reimburse all of a recipient's costs with one payment. This approach should allow the PSC to the flexibility to schedule payments based on the collection of surcharges.
6. The bill requires the PSC to set the fee in an amount sufficient to administer and make the grants. My intent regarding the word "administer" is to allow the PSC to set the fee at an amount that will, in addition to allowing the PSC to make the grants, allow

the PSC to defray its administrative expenses. If you want to impose a limit on the amount of administrative expenses, please let me know.

7. The bill does not affect the exemption from the PSC's authority over wireless providers in s. 196.202, stats. Therefore, the bill gives the PSC authority over wireless providers only to the extent necessary to administer the grant program.

8. Some cities are in more than one county. (For example, Milwaukee and Appleton are each in three counties; Eau Claire, Marshfield and Menasha are each in two counties; and several smaller cities are in more than one county.) I don't think any changes are necessary to address this issue, but perhaps we should revisit this issue to make sure that it doesn't present any problems.

9. I moved the liability exemption for wireless providers to the same exemption under current law for telecommunications utilities. See the amendment of s. 146.70 (7), stats. As a result, the exemption will remain in effect after the sunset date that applies to the other provisions of the bill. As for the liability of local governments, I agree with John Stolzenberg that the issue is addressed under current law. Note that, in general, local governments and their employees and officials are immune from tort liability for discretionary acts, especially those related to law enforcement. See *Hoskins v. Dodge County*, 251 Wis. 2d 276, 290 (Ct. App. 2002), *rev. denied*, 653 N.W. 2d 889 (Wis. 2002). There is an exception to this immunity for a "known present danger" that involves no discretion regarding the response to the danger. See 251 Wis. 2d at 291-92. However, most 911 calls probably involve emergencies that require discretionary responses.

10. I added to the bill the following provisions of 2001 Assembly Bill 889: 1) the PSC is allowed to promulgate rules that increase or decrease the surcharge, but increases are limited to once per year and must be uniform statewide; 2) the PSC is allowed to bring an action to collect unpaid surcharges and wireless providers aren't liable for unpaid surcharges; 3) a wireless provider may not prorate the surcharge and must collect the entire amount for a month of partial service; 4) the PSC must not release information that would aid competitors of wireless providers; and 5) no local government or other state agency may impose a surcharge related to wireless emergency telephone service. Are these additions okay, or should they be eliminated?

11. I did *not* add the following provisions of 2001 Assembly Bill 889: 1) the requirements that surcharge increases may not exceed ten cents and that the surcharge may not exceed one dollar; 2) the ability of wireless providers to retain a portion of the surcharges for a limited period of time to defray collection costs; 3) the requirement for PSC to contract for independent audits of grant applications; 4) the public information requirements, including maintaining a toll-free telephone number and identifying the toll-free number on customer bills; and 5) the annual report to the governor and legislature. Please let me know whether you want to include any of these provisions.

12. The PSC, like any other independent agency, has the power to appoint advisory councils and committees. See s. 15.04 (1) (c), stats. Therefore, it isn't necessary to create such authority in this bill.

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