

2003 DRAFTING REQUEST

Bill

Received: **01/08/2003**

Received By: **mkunkel**

Wanted: **As time permits**

Identical to LRB:

For: **Phil Montgomery (608) 266-5840**

By/Representing: **Rose**

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

Drafter: **mkunkel**

May Contact:

Addl. Drafters:

Subject: **Public Util. - telco**

Extra Copies: **RJM**

Submit via email: **YES**

Requester's email: **Rep.Montgomery@legis.state.wi.us**

Carbon copy (CC:) to:

Pre Topic:

No specific pre topic given

Topic:

Funding for emergency 911 telephone services

Instructions:

See Attached

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>
/?				_____			S&L Tax
/P1	mkunkel 01/28/2003	csicilia 01/28/2003	chaskett 01/28/2003	_____			S&L Tax
/1	mkunkel	csicilia	chaskett	_____	sbasford		S&L

Per MDK

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Typed</u>	<u>Proofed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
	01/28/2003	01/28/2003	01/28/2003	_____	01/28/2003		Tax
/2	mkunkel 02/03/2003	chanaman 02/04/2003	pgreensl 02/04/2003	_____	sbasford 02/04/2003	amentkow 02/11/2003	

FE Sent For:

02-12-2003
("1/2")

<END>

mike -
MDK needs
a FE Rush for
this Draft

- A

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1/2 j's 2/3 03 2/4 ps

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Carbon copy (CC:) to:

PA - Please email the "1" to John Stolzenberg at Leg. Council.

ADD A-NOTE

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1?	mkunkel	/pl cjs 1/28 03	1/28 pl	JF/cob 1/28			
FE Sent For:		/1 cjs 1/28 03	1 cr- 1/28	1 pg com <END>			

Major Wireless 911 Issues

1. Surcharge
 - a. Initial size (50 cents vs. 70 cents per customer per month) - PSC sets fee by rule - what other states do? - Don Schmidt - NEANA?
 - b. Cap. - maintain \$1 max
2. Funding distribution
 - a. Portion of grant funds going to PSAPs vs. wireless providers. 50%/50% - PSAP/wireless
3. Grants to PSAPs - fund only 1 PSAP per county - intergovt aspect (aft admin. (PSC) & wireless admin)
 - a. Portion of eligible expenses covered by grants. (50% ~~100%~~) - 50%
 - b. Definition of eligible expenses (including personnel costs?). - same
 - c. Commitment to provide wireless 911 service as a condition of getting grants. - instructions? or just operation?
 - d. Apportionment of grants among PSAPs. (Milwaukee County treatment, etc.) - only 1 PSAP per county
 - e. Supplemental grants.
 - f. Consolidation of PSAPs.
4. Grants to wireless providers
 - a. Definition of eligible expenses -> stick w/ AB 889 - p12 lines 3-6
 - b. Amount and duration of retaining collected surcharges for collection start-up costs. - no - 21m. p. 14 lines 10-12
 - c. ~~Geographic apportionment of grants.~~
5. Program administrators and policymakers
 - a. Board vs. department. PSC (and direct exempt - s from ch. 196)
 - b. ~~If Board, department to attached to.~~ - TDA - technical support 146.70(4) - PSC change
6. Funding for the Board's operations
 - a. Cap, as a percentage of surcharge revenues. / staff positions?
7. Program Sunset
 - a. Include? (5 vs. 10 years) - 7 years

more instructions

2441/3
AAI to
NSTI to
AAI

waiting for more instructions

RP

Prepared by John Stolzenberg, Legislative Council
At the request of Rep. Phil Montgomery

check creation of advisory bd - if already have authority, then don't mention - 15.04(3) indep agency in create

Kunkel, Mark

From: Smyrski, Rose
Sent: Wednesday, January 22, 2003 2:35 PM
To: Stolzenberg, John; Kunkel, Mark
Subject: Major Wireless 911 Issues



Major Wireless 911
Issues.doc

Please disregard the eariler version of this proposal.

One outstanding question is about liability. John, what is it for landline 911?

To give you both an idea of our timeline...we would like to have this proposal go before committees on either Feb 5 or 6. It is my hope that we can meet that goal.

John, what I would like to ask you to do, similar to what you did for the taskforce. A document that details the program that we can use for show n' tells to Legislators.

Rose

REVISED---Major Wireless 911 Issues

1. PSC will oversee program
 - a. PSC will administer the program and make rules.
 - b. PSC has the authority to create an Advisory Board, if necessary. → *verify that PSC has this authority under current law*
 - c. Give PSC authority to recover cost associated with administering the program.
 - d. Any requests ^{what request} must go to before the Joint Committee on Finance for passive review.
2. Language to restrict PSC oversight of Wireless providers—limited to Wireless 911. *Re-affirm the concept that the state will defer regulatory oversight of wireless providers to the FCC.*
3. Surcharge
 - a. PSC would set the initial size (waiting for information on how to administratively set the surcharge—PSC will need guidance on what to consider—don't want onerous like Public Benefits program)
 - b. Require that any fee increase that the PSC determines is necessary must go to Joint Committee on Finance for passive review.
 - c. Surcharge will be tax exempt from state sales tax.
4. Funding
 - a. PSAPs and wireless providers will submit (actual/real) costs to the PSC for review. *- independent*
 - b. PSC must have the authority to reject any submitted. → *on what basis*
- not eligible
- not part of estimate
- not incurred
5. Grants to PSAPs
 - a. Definition of eligible expenses—tight definition of expenses *- need actual*
 - b. 100% of (actual / real /eligible) expenses re-covered. *PSC review*
 - c. Only 1 PSAPs per county is eligible to recover costs --to encourage consolidation.
 - d. (Waiting to see if there is precedence on how and who would determine which PSAP received the grant.)
6. Grants to wireless providers
 - a. Definition of eligible expenses—tight definition of expenses
 - b. 100% of (actual / real /eligible) expenses re-covered.
7. Program Sunset
 - a. 3 years *- at 3 years after enactment*
8. Liability ????? Checking on current law for landline 911—will mirror language.
 - a. Wireless companies
 - b. PSAPs
9. Delineate the surcharge on the wireless providers bills—“Wisconsin Wireless 911 Surcharge”

— SUPERCEDED —

Major Wireless 911 Issues

1. Surcharge
 - a. PSC would set the initial size (waiting for information on how to administratively set the surcharge—PSC will need guidance on what to consider—don't want onerous like Public Benefits program)
 - b. PSC cannot increase the surcharge more than \$0.10 per year. Maximum amount of fee is \$1.00.
2. Funding distribution
 - a. 50/50 split of grant funds going to PSAPs & wireless providers.
3. Grants to PSAPs
 - a. 50% of eligible expenses covered by grants.
 - b. Definition of eligible expenses –actual costs (NOT including personnel costs).
 - c. Commitment to provide wireless 911 service as a condition of getting grants. (will only receive funding upon implementation of wireless 911)
 - d. Grants will be dispersed 1 PSAPs per county to encourage consolidation. (Waiting to see if there is precedence on how and who would determine which PSAP received the grant.)
4. Grants to wireless providers
 - a. Definition of eligible expenses
 - b. Amount and duration of retaining collected surcharges for collection start-up costs.
 - c. Geographic apportionment of grants.—DO WE GIVEN CONSIDERATION TO RURAL AREAS CURRENTLY WITHOUT LANDLINE 911?
5. Program administrators and policymakers
 - a. PSC will administer the program and make rules.
 - b. PSC has the authority to create an Advisory Board, if necessary.
6. Funding for the Board's operations
 - a. Cap, as a percentage of surcharge revenues.
7. Program Sunset
 - a. Include 5 years
8. Liability ?
 - a. Wireless companies
 - b. PSAPs

Kunkel, Mark

From: Kreye, Joseph
Sent: Monday, January 27, 2003 3:09 PM
To: Kunkel, Mark
Subject: Sales and use tax exemption

Mark,

create 77.51 (4) (b) 8. The surcharge established by the public service commission under s. 146.70 (3m) (c) for wireless
INSERT APPROPRIATE DESCRIPTION. ✓

create 77.51 (15) (b) 7. The surcharge established by the public service commission under s. 146.70 (3m) (c) for wireless
INSERT APPROPRIATE DESCRIPTION. ✓

The above will result in the surcharge being excluded from the base for calculating the sales tax and the use tax. For analysis purposes, it's accurate to say that the bill exempts the surcharge from the imposition of the sales tax and the use tax. The analysis will need a "TAX-EM" tag and "FE S&L" tag.

Joseph T. Kreye
Legislative Attorney
Legislative Reference Bureau
(608) 266-2263

Kunkel, Mark

From: Stolzenberg, John
Sent: Monday, January 27, 2003 9:22 AM
To: Kunkel, Mark; Smyrski, Rose
Subject: Municipal liability

Rose and Mark,

The best current summary of municipal liability statutory and case law that I've found is the summary in the new *Handbook for Municipal Officials* by the League of Wisconsin Municipalities (2002). I've copied this summary and am having a page deliver the copy to you this morning.

I don't see anything in this summary that would steer us away from our earlier conclusion that the wireless 911 bill should rely upon current law to address municipal 911 liability. I'd suggest that, if municipal officials can point to a specific problem in current law, then we'd need to take a look at the problem and determine if it warrants being addressed in the bill .

John

John Stolzenberg,
Legislative Council Staff Scientist
Suite 401, One East Main Street
PO Box 2536
Madison, WI 53701-2536
Direct: 608-266-2988
Fax: 608-266-3830

MDK
12

**A
LEAGUE
MANUAL**

RECEIVED
DEC 16 2002
WISCONSIN
LEGISLATIVE COUNCIL

Excerpt

**HANDBOOK FOR
WISCONSIN
MUNICIPAL OFFICIALS**

*League of Wisconsin Municipalities
202 State Street, Suite 300
Madison, Wisconsin 53703
2002*

EMTs and volunteer fire fighters (sec. 66.0501(4), Stats.)

Volunteer fire fighters, emergency medical technicians, or first responders whose annual compensation from one or more of those positions, including fringe benefits, does not exceed the amount specified in sec. 946.13(2)(a) (\$15,000 at the time of this writing) may also hold an elective office in the city or village.

Local governing body member can also be county supervisor

Section 59.10(4), Stats., used to clearly authorize a village or city governing body member to simultaneously serve as county supervisor. Through what appears to be poor legislative drafting skills rather than a purposeful attempt to modify the provision, the statute no longer clearly makes the two offices compatible. However, the League has opined that the offices are still nonetheless compatible. League legal opinion Compatibility of Office 604.

Municipal and Public Official Liability⁸⁸

MUNICIPAL LIABILITY GENERALLY

Municipal and Personal Liability under Wisconsin Law

Persons or organizations that feel they have suffered an injury as a result of the actions of a municipal official or employee may file a law suit against the individual and the municipality to recover damages. In general, municipal liability in the State of Wisconsin is controlled by secs. 893.80 and 895.46 of the Wisconsin Statutes. These sections, along with published court decisions interpreting these statutes, define the liability of municipalities in state tort actions. As a general rule, municipal officials and employees need fear no personal loss or liability for the honest performance of their duties and exercise of powers granted by law. Municipal employees and officials are often shielded by statute and judicially imposed immunities from liability for injuries to others arising out of acts performed within the scope of their public employment. The public policy behind this practice is to encourage service to municipal government and reduce fear of personal liability stemming from acts taken in good faith while in an official government position.

Indemnification

State law requires a municipality to pay any judgment for damages and costs entered against a municipal official or employee for acts performed within the scope of employment. Under sec. 895.46 Stats., municipal officials and employees will be indemnified by the municipality for negligent acts taken within the "scope of their employment." This requirement has been construed to mean that the official or employee's action must have been taken, in some measure, to serve the municipal employer. *Olson v. Connerly*, 156 Wis.2d 488, 457 N.W.2d 479 (1990). Once the determination is made that the official or employee was acting in the scope of employment, the indemnification requirement may apply even if the act taken is outside what the employer may have desired. *Graham v. Sauk Prairie Police Comm.*, 915 F.2d 1085 (7th Cir. 1990). Indemnification may extend to cases where punitive damages are assessed. *Kolar v. County of Sangamon*, 756 F.2d 564 (7th Cir. 1985). The indemnification statute applies to

88. This section was written in part by Attorneys Marianne Belke and Raymond J. Pollen, Crivello, Carlson & Mentkowski SC.

most foreseeable actions taken by municipal officials and employees in the scope of their employment, including operating motor vehicles or machinery, employment and civil rights claims, environmental lawsuits and property damage claims. However, failure of an employee or officer to give notice to the municipality of an action commenced against them as soon as reasonably possible can be a bar to recovery of the costs of defending the action by the employee or officer.

Federal Law

Under the federal Civil Rights Act of 1871, 42 U.S.C. sec. 1983, a municipality or municipal official may be sued for actions that violate an individual's rights under the United States Constitution. An action taken under color of state or local law that deprives a person or entity of a constitutional right, may give rise to an action under federal law. Individuals, officers and employees may be sued under this section. *Monroe v. Pape*, 365 U.S. 167 (1961).

Municipalities and other political subdivisions of the state can be sued directly under this section. *Monell v. Department of Social Services*, 436 U.S. 658 (1978). However there is no *respondereat superior* for civil rights claims. In other words, there is no vicarious liability under the statute. Supervisors must have personally participated in the violation for liability to accrue. *Maltby v. Winston*, 36 F.3d 548, 559 (7th Cir. 1994) *cert. denied* 515 U.S. 1141.

Suing municipal officers in their official capacity is the same thing as suing the municipality itself. In order for there to be liability in an "official capacity" claim, the person involved must be a final decision maker or policy maker, and they must be within the scope of employment. *Pembaur v. City of Cincinnati*, 475 U.S. 469 (1986). In these cases, the municipality may indemnify the employee for their actions.

A claimant may also allege that deliberate indifference in the training or supervision of the employee or employees gives rise to a claim under 42 U.S.C. sec. 1983. *City of Canton v. Harris*, 489 US 379 (1989). A municipality may rebut this assertion by showing training for employees in a manner consistent with current applicable law. However, liability can be found if it is shown that there have been past acts that demonstrate a consistent failure to prevent unconstitutional conduct of the employees. *Bd. of Com. v. Brown*, 520 U.S. 397 (1997).

In order to state a valid claim under 42 U.S.C. sec. 1983, a constitutional right must clearly be implicated, and must be a "substantial factor" in the injury, *Mt. Healthy School Dist. Bd. of Education v. Doyle*, 429 U.S. 274 (1997). In addition there must be an actual, compensable injury before recovery is allowed. *Carey v. Piphus*, 435 U.S. 247 (1978).

In contrast to state law claims, suits brought under federal civil rights law may entitle a claimant to damages and attorney fees. 42 U.S.C. sec. 1988.

NOTICE OF INJURY AND NOTICE OF CLAIM

Under sec. 893.80(1), Stats., persons seeking to make a state law claim against a municipality or its officers or employees must follow certain procedural requirements prior to filing suit. State law imposes a mandatory two-step notice procedure. Failing to comply with the statute can result in a bar to a claim against the municipality or its officers or employees. The first requirement is that all claimants file a timely notice of injury and events giving rise to the claim. The second requirement is that all claimants submit a written notice of claim, itemizing all damages allegedly resulting from the municipal entity's actions.

Notice of Injury and Circumstances

Under sec. 893.80(1)(a), Stats., municipalities must be provided notice of the circumstances of the claim. This "notice of injury" must be received by the municipality within 120 days of the

incident giving rise to the claim. There are two ways of fulfilling this first requirement. First, a claimant can serve upon the municipality a written notice of injury within 120 days of the incident. *Nielsen v. Town of Silver Cliff*, 112 Wis.2d 574, 580, 334 NW.2d 242 (1983). The notice must be a simple statement of the events giving rise to a claim in order to facilitate investigation by the municipality.

The second manner in which the notice of injury requirement may be fulfilled is when the claimant can prove that the municipal government had actual notice of the events giving rise to the claim and the claimant's failure to provide written notice within 120 days was not prejudicial to the municipal entity. *Vanstone v. Town of Delafield*, 191 Wis.2d 587, 530, NW.2d 16 (Ct. App. 1995). Under this "constructive" notice provision, the burden is on the claimant to prove the municipal entity knew of the incident in question and that the claimant was a potential injured party. *Markweise v. City of Milwaukee*, 205 Wis.2d 207, 556 NW.2d 326 (Ct. App. 1996). This "constructive" notice requirement makes it crucial for municipalities to investigate an incident with the potential for personal injury, property damage or other types of exposure.

Notice of Claim.

The second requirement under sec. 893.80, Stats., is a written "notice of claim." Under sec. 893.80(1)(b), Stats, an itemized claim of damages must be presented, considered and disallowed by the municipality prior to the claimant filing a lawsuit. The claim must set forth the specific dollar amount of claimed damages. *Sambis v. Nowak*, 47 Wis.2d 158, 161, 177 NW.2d 144 (1970). A notice of claim must also contain the address of the claimant or the claimant's attorney. *DNR v. City of Waukesha*, 184 Wis.2d 178, 515 NW.2d 888 (1994); *City of Racine v. Waste Facility*, 217 Wis.2d 616, 575 NW.2d 712 (1998).

In order for the claim to proceed, the municipality must disallow the claim. There are three ways this can be accomplished: actual disallowance, statutory disallowance, or "substantial" disallowance. Actual disallowance, as the name implies, is a formal written denial of the claim sent to the claimant within 120 days after the claim has been presented. If a claimant is served with a disallowance by a municipality, the claimant is required to bring a lawsuit within six months of service of that disallowance, or the claim is barred. *Linstrom v. Christianson*, 161 Wis.2d 635, 469 NW.2d 189 (Ct. App. 1991).

Statutory disallowance takes place when a claim is presented to a municipality and the municipality does not respond within 120 days. If the municipality fails to act within 120 days, the claim is deemed disallowed and the claimant may file a lawsuit against the municipality. *Blackbourn v. Onalaska School Dist.*, 174 Wis.2d 496, 500, 497 NW.2d 460 (Ct. App. 1993). Statutory disallowance differs from actual disallowance in that claimants who do not receive a written disallowance are not bound by the six-month deadline for commencing an action, and may bring suit anytime within the applicable statute of limitations. *Coleman v. Milwaukee*, 107 Wis.2d 528, 531, 319 NW.2d 863 (1982). Municipalities should establish a centralized procedure for reviewing, considering, and disallowing (if appropriate) any notice of claim received by the municipality within the requisite 120 day period in order to take advantage of the six-month deadline for commencing a lawsuit against the municipality.

Finally, "substantial disallowance" may be found when a municipality informs a claimant it has no desire to negotiate a resolution to the claim. *DNR v. City of Waukesha*, *supra*. A written statement, such as a letter, affirmatively declaring the municipality will not pay a claim may be found to be a substantial disallowance.

The notice requirements of sec. 893.80, Stats. are not applicable in federal civil rights actions.

LIABILITY LIMITS

State law limits the amount a person can recover in a lawsuit filed against a municipality and its officers and employees to \$50,000 per cause of action. Sec. 893.80(3), Stats. It should be emphasized that this "damage cap" applies to each cause of action arising out of a single wrongful or negligent act. For example, if three persons are injured in a particular accident caused by a municipal official, all three persons may recover up to the statutory limit. Also, any derivative claims (independent claims of a third person deriving from the injury) have separate liability caps. *Boles v. Milwaukee Co.*, 150 Wis.2d 801, 443 NW.2d 679 (Ct. App. 1988). (An example of a derivative claim might be a spouse's claim for loss of consortium in an accident that results in personal injuries.)

A higher liability limit applies when a motor vehicle owned or leased by a municipality is involved in an accident. A plaintiff may recover up to \$250,000 in an action for damages arising from the negligent operation of municipal motor vehicles. Sec. 345.05, Stats.

These statutory liability limits do not apply to civil rights claims under 42 U.S.C. sec. 1983.

IMMUNITIES

Municipalities and their officers and employees are granted broad immunity from liability under Wisconsin law. Municipal officers and employees may be immune from suit when performing "discretionary" duties. A discretionary duty is one that calls for reasoned opinion and judgment on the part of an officer or employee. *Kimps v. Hill*, 200 Wis.2d 1, 546 NW.2d 151 (1996). "Discretionary" duties can be contrasted with what are termed "ministerial" duties. Ministerial duties are those duties that are "absolute certain and imperative involving only the performance of a specific task."

The Wisconsin Supreme Court in *Barillari v. City of Milwaukee*, 194 Wis.2d 247, 533 NW.2d 759, 763 (1995), outlined three exceptions to the general rule of public official immunity. A public official or employee is not immune from liability if the official or employee:

1. engages in conduct which is malicious, willful or intentional;
2. negligently performs a ministerial duty ("A duty is ministerial when it is absolute, certain and imperative, involving only the performance of a specific task which the law imposes, prescribes and defines the time, mode and occasion for its performance with such certainty that nothing remains for judgment or discretion.") or
3. is aware of a danger that is of "such quality that the public officer's duty to act becomes absolute, certain and imperative."

Many actions taken by municipal officers and employees are discretionary in nature, calling for some subjective evaluation of the situation. For example, law enforcement generally requires persons to make moment-to-moment decisions in crisis management that are entitled the discretionary immunity, *Barillari v. City of Milwaukee*, 194 Wis.2d 247, 533 NW.2d 759 (1995). Actions taken as part of the general enforcement of a municipal code, including the issuance of permits may be entitled to immunity. *Allstate v. Metro Sewer Comm.*, 80 Wis.2d 10, 358 N.W.2d 148 (1977). Similarly, immunity may extend to independent contractors who follow governmental directives. *Estate of Lyons v. CNA Insurance*, 207 Wis.2d 448, 558 N.W.2d 658 (Ct. App. 1996).

There are other exceptions to the application of statutory immunity. For example, the terms of a contract may create duties between the parties, for which there is no immunity. *Major v. Milwaukee Co.*, 196 Wis. 2d 939, 539 N.W.2d 472 (Ct. App. 1995). Further, a "known" danger may create a ministerial duty for which there is no immunity. This exception involves a two prong test:

- clear duty for a specific task; where;
- official "knows" of a specific danger;

Larsen v. Wisconsin Power & Light, 120 Wis.2d 508, 355 N.W.2d 557 (Ct. App. 1984).

For example, repeated attacks by a dog created a ministerial duty for removal or destruction by municipal officials, *Turner v. City of Milwaukee*, 193 Wis.2d 412, 535 N.W.2d 15 (Ct. App. 1995). Courts have recognized that it is wise to encourage government actors to rectify dangerous situations of which they have become aware.

Statutory immunity also does not extend to damages caused by highway defects, or from a negligent failure to maintain and prepare the roadway. Examples of this could be potholes on paved surfaces, worn ruts in a gravel shoulder, or other obvious dangers existing on the roadways. *Morris v. Juneau County*, 219 Wis. 2d 544, 579 N.W.2d 690 (1998).

Immunity Under Federal Law.

As under state law, certain immunities from liability are available to municipal officers when defending against federal civil rights lawsuits. Under federal law, a full or "absolute" immunity from suit is accorded to various government officials and employees including: prosecutors, *Buckley v. Fitzsimmons*, 509 U.S. 259 (1993); judges, *Pulliam v. Allen*, 466 U.S. 522 (1984); legislators, *Bogan v. Scott-Harris*, 523 U.S. 44 (1998); court clerks, *Ford v. Kenosha Co.*, 160 Wis.2d 485, 466 N.W.2d 646 (1991); guardians ad litem, *Paige K.B. v. Molepeske*, 219 Wis.2d 418, 580 N.W.2d 289 (1998); and social workers for court related acts and recommendations, *Millsbaugh v. Co. Dept. of Welfare*, 937 F.2d 1172 (7th Cir. 1991).

A "qualified" or conditional immunity is accorded to other municipal employees in certain circumstances. Conditional immunity is allowed if conduct does not violate clearly established constitutional or statutory rights of which a reasonable person would have known. *Henes v. Morrissey*, 194 Wis.2d 339, 533 N.W.2d 802 (1995). This qualified immunity extends to all government officials and employees, *Hunter v. Bryant*, 502 U.S. 224 (1991). Qualified immunity applies unless the conduct is clearly contrary to existing precedent, *Rakovich v. Wade*, 850 F.2d 1180 (7th Cir. 1988), *cert. denied* 488 U.S. 968. The issue of qualified immunity is a question of law for the court to decide. *McNair v. Coffey* 279 F.3d 463 (7th Cir. 2002).

Memo

To: Drafting File: LRB-1362

From: Mark Kunkel

Date: 01/28/2003

Re: January 24 meeting

I met with Rose from Rep. Montgomery's office and John Stolzenberg of Leg. Council regarding the wireless 911 draft and received the following instructions:

1. Require rule making by the PSC and put in ch. 146, stats., in order to maintain the wireless exemptions in ch. 196, stats. By giving the PSC the authority to administer the grants, it's probably not necessary to also include enforcement provisions, etc. The authority to administer probably includes the authority to require information, etc.
2. The fee amounts should be established by rule, but should go into effect as soon as possible, because grants should start to be made about a year after the effective date of the bill.
3. The PSC should be allowed to adjust cost estimates based on reasonableness or the public interest, or some other standard.
4. The PSC should be allowed to limit the amount of grants based on reasonableness, the public interest, or some other standard, including anti-duplication of costs or efforts.
5. The county should determine the local government that is eligible for grants for that county.
6. Counties should be able to consolidate programs.
7. Create immunity for wireless providers that is similar to the exemption under current law for telecommunications utilities.
8. Check the need for governmental immunity. (John Stolzenberg will do some leg work on this issue.)
9. In general, the PSC should figure out the details of the program by rule.



State of Wisconsin
2003 - 2004 LEGISLATURE

LRB-1362/P1

MDK:.....

SA ✓
new cen ✓
K-reb

CS

PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION

TOOAY
by
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gen cat

- 1 AN ACT ~~relating to~~; relating to: creating a wireless 911 fund; imposing a surcharge on
- 2 wireless telephone customers; making grants for wireless 911 emergency
- 3 telephone service; providing an exemption from emergency rule procedures; ✓
- 4 granting rule-making authority; and making appropriations. (e) ✓

Analysis by the Legislative Reference Bureau

This is a preliminary draft. An analysis will be prepared for a subsequent version of the draft.

This bill will be referred to the Joint Survey Committee on Tax Exemptions for a detailed analysis, which will be printed as an appendix to this bill.

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:

- 5 SECTION 1. 20.155 (3) of the statutes is created to read:
- 6 20.155 (3) WIRELESS 911 GRANTS. (q) General program operations and grants. ✓
- 7 From the wireless 911 fund, all moneys received under s. 146.70 (3m) (e) 1. to

(e)

1 administer and make grants to wireless providers and local governments under s.
2 146.70 (3m) (b) and (c).

3 SECTION 2. 25.17 (1) (yo) of the statutes is created to read:

4 25.17 (1) (yo) Wireless 911 fund (s. 25.98);

5 SECTION 3. 25.98 of the statutes is created to read:

6 25.98 Wireless 911 fund. There is established a separate nonlapsible trust
7 fund designated as the wireless 911 fund, consisting of deposits by the public service
8 commission under s. 146.70 (3m) (d) 1. e

9 SECTION 4. 77.51 (4) (b) 8. of the statutes is created to read:

10 77.51 (4) (b) 8. The surcharge established in rules of the public service
11 commission under s. 146.70 (3m) (d) for customers of wireless providers, as defined
12 in s. 146.70 (3m) (a) 5. e

13 SECTION 5. 77.51 (15) (b) 7. of the statutes is created to read:

14 77.51 (15) (b) 7. The surcharge established in rules of the public service
15 commission under s. 146.70 (3m) (d) for customers of wireless providers, as defined
16 in s. 146.70 (3m) (a) 5. e

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

18 146.70 (3m) WIRELESS PROVIDERS. (a) *Definitions*. In this subsection:

- 19 1. "Commission" means the public service commission.
- 20 2. "Federal wireless orders" means the orders of the federal communications
21 commission regarding 911 emergency services for wireless telephone users in FCC
22 docket no. 94-102.
- 23 3. "Local government" means a city, village, town, or county.

1 4. “Reimbursement period” means the period of time between the effective date
2 of this subdivision [revisor inserts date] and the first day of the 37th month after
3 the effective date of this subdivision [revisor inserts date].

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

6 6. “Wireless public safety answering point” means a facility to which a call on
7 a wireless provider’s system is initially routed for response, and on which a public
8 agency directly dispatches the appropriate emergency service provider, relays a
9 message to the appropriate emergency service provider, or transfers the call to the
10 appropriate emergency services provider.

11 (b) *Grants; wireless providers.* 1. A wireless provider may not receive a grant
12 under subd. 2. unless, no later than the first day of the 7th month after the effective
13 date of this subdivision [revisor inserts date], the wireless provider applies to the
14 commission with an estimate, and supporting documentation, of the costs that it has
15 or will incur during the reimbursement period to upgrade, purchase, lease, program,
16 install, test, operate, or maintain all data, hardware, and software necessary to
17 comply with the federal wireless orders. The commission shall determine whether
18 the estimate is reasonable. If the commission determines that the estimate is
19 unreasonable, the commission shall provide the wireless provider with the reasons for the
20 determination and give the wireless provider an opportunity to provide a reasonable
21 estimate.

22 2. From the appropriation under s. 20.155 (3) (q), the commission shall make
23 grants to reimburse an eligible wireless provider for the costs estimated under subd.
24 1., except that the commission shall limit the grants to an amount that the
25 commission determines is reasonable.

1 (c) *Grants; local governments.* 1. A local government may not receive a grant
2 under subd. 5. unless the requirements under subd. 3. are satisfied and, no later than
3 the first day of the 7th month after the effective date of this subdivision [revisor
4 inserts date], the local government applies to the commission with an estimate, and
5 supporting documentation, of the costs that it has directly and primarily incurred
6 or will directly and primarily incur
7 during the reimbursement period for leasing, purchasing, operating, or maintaining
8 a wireless public safety answering point, including costs for all of the following:

9 a. Necessary network equipment, computer hardware and software, database
10 equipment, and radio and telephone equipment, that are located within the wireless
11 public safety answering point. ✓

12 b. Training operators of a wireless public safety answering point. ✓

13 c. Network costs for delivery of calls from a wireless provider to a wireless
14 public safety answering point. ✓

15 2. Counties that jointly operate, or intend to jointly operate, a wireless public
16 safety answering point may submit a joint application under subd. 1. ✓

17 3. A city, village, or town in a county, or the county itself, is eligible for grants
18 under subd. 5. ✓ only if, no later than the first day of the 7th month beginning after the
19 effective date of this subdivision [revisor inserts date], the county has passed a
20 resolution specifying that the city, village, or town, or the county itself, is eligible for
21 the grants. Only one city, village, or town in a county, or the county itself, may receive
22 grants under subd. 5. ✓

23 4. If the commission determines that the estimate of a local government under
24 subd. 1. is unreasonable, the commission shall provide the local government with the
25 reasons for the determination and give the local government an opportunity to
provide a reasonable estimate.

1 5. From the appropriation under s. 20.155 (3) (q), the commission shall make
2 grants to reimburse an eligible local government for the costs estimated under subd.
3 1., except that the commission shall limit the grants to an amount that the
4 commission determines is reasonable and except that grants may not be used to
5 reimburse costs for any of the following:

6 a. Emergency service dispatch, including personnel, training, equipment,
7 software, records management, radio communications, and mobile data network
8 systems.

9 b. Vehicles and equipment in vehicles.

10 c. Communications equipment and software used to communicate with
11 vehicles.

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

14 e. Salaries and benefits of operators of a wireless public safety answering point. ✓

15 (d) *Grants; rule making.* The commission shall promulgate rules establishing
16 requirements and procedures for making grants under pars. (b) and (c). The ~~grants~~
17 shall allow the commission to make grants in installments. *rules*

18 (e) *Wireless surcharge.* 1. The commission shall promulgate rules requiring
19 each wireless provider to impose a monthly surcharge for each telephone number of
20 a customer that has a billable address in this state and pay the surcharge to the
21 commission for deposit in the wireless 911 fund. The rules may not require the
22 surcharge to be imposed after the first day of the 37th month beginning after the
23 effective date of this subdivision ... [revisor inserts date]. The amount of the
24 surcharge shall be sufficient for the commission to administer and make the grants
25 under pars. (b) and (c).

consists of

1 2. The commission may promulgate rules that increase or decrease the
2 surcharge, except that the commission may not increase the surcharge more than
3 once per year and any increase must be uniform statewide. ✓

4 3. A wireless provider shall identify the surcharge on a customer's bill on a
5 separate line that ~~is identified as~~ "Wisconsin Wireless 911 Surcharge." ✓
~~the words~~

6 4. A wireless provider may not prorate the surcharge and shall collect the entire
7 amount of the surcharge for a month of partial service. ✓

8 5. The commission shall bring an action to collect a surcharge that is not paid
9 by a customer and the customer's wireless provider is not liable for the unpaid
10 surcharge. ✓

11 (f) (e) Confidentiality of information. The commission may withhold from public
12 inspection any information received under this subsection that would aid a
13 competitor of a wireless provider in competition with the wireless provider. ✓

14 (g) (f) Other charges prohibited. No local government or state agency, as defined
15 in s. 16.375 (1), except the commission, may require a wireless provider to collect or
16 pay a surcharge or fee related to wireless emergency telephone service. ✓

17 (h) (g) Sunset. This subsection does not apply after the first day of the 37th month
18 beginning after the effective date of this paragraph [revisor inserts date].

19 SECTION 7. 146.70 (7) of the statutes is amended to read:

20 146.70 (7) TELECOMMUNICATIONS ~~AND WIRELESS PROVIDERS~~ UTILITY NOT LIABLE. A
21 telecommunications utility shall not be liable to any person who uses an emergency
22 number system created under this section and a wireless provider, as defined in sub.

1 (3m) (a) ⁵ shall not be liable to any person who uses an emergency telephone number
2 system for which a grant is made under sub. (3m) (b) or (c).

History: 1977 c. 392; 1979 c. 34, 361; 1981 c. 20 s. 2202 (1) (b); 1981 c. 383; 1983 a. 27; 1983 a. 53 s. 114; 1983 a. 189 s. 329 (31); 1985 a. 29, 120; 1985 a. 297 ss. 12, 76; 1985 a. 332; 1987 a. 27, 403; 1989 a. 31; 1991 a. 39, 267; 1993 a. 16, 388, 496; 1997 a. 218, 283; 1999 a. 185; 2001 a. 109.

3 SECTION 8. Nonstatutory provisions.

4 (1) WIRELESS 911 SURCHARGE RULES. ^{public service}

5 (a) *Emergency rules.* The commission may, using the procedure under section
6 227.24 of the statutes, promulgate the rules under section 146.70 (3m) (e) 1. of the
7 statutes, as created by this act, for the period before permanent rules become
8 effective, but not to exceed the period authorized under section 227.24 (1) (c) and (2)
9 of the statutes. Notwithstanding section 227.24 (1) (a), (2) (b), and (3) of the statutes,
10 the commission is not required to provide evidence that promulgating a rule under
11 this paragraph as an emergency rule is necessary for the preservation of the public
12 peace, health, safety, or welfare and is not required to provide a finding of emergency
13 for a rule promulgated under this paragraph. ^{public service}

14 (b) *Proposed rules.* The commission shall submit in proposed form the rules
15 required under section 149.70 (3m) (e) 1. of the statutes, as created by this act, to the
16 legislative council staff under section 227.15 (1) of the statutes no later than the first
17 day of the 10th month beginning after the effective date of this paragraph.

18 (2) WIRELESS 911 GRANT RULES. ^{public service}

19 (a) *Emergency rules.* The commission may, using the procedure under section
20 227.24 of the statutes, promulgate the rules under section 146.70 (3m) (e) of the
21 statutes, as created by this act, for the period before permanent rules become
22 effective, but not to exceed the period authorized under section 227.24 (1) (c) and (2)
23 of the statutes. Notwithstanding section 227.24 (1) (a), (2) (b), and (3) of the statutes,
24 the commission is not required to provide evidence that promulgating a rule under

1 this paragraph as an emergency rule is necessary for the preservation of the public
 2 peace, health, safety, or welfare and is not required to provide a finding of emergency
 3 for a rule promulgated under this paragraph. public service

4 (b) *Proposed rules.* The commission shall submit in proposed form the rules
 5 required under section 149.70 (3m) (•) of the statutes, as created by this act, to the
 6 legislative council staff under section 227.15 (1) of the statutes no later than the first
 7 day of the 13th month beginning after the effective date of this paragraph.

(END)

146

d



State of Wisconsin
2003 - 2004 LEGISLATURE

LRB-1362/P1-0

MDK:cs:cph

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D-NOTE

PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION

Today by
3:30pm

INSERTS

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been
run

INSERT A

1 AN ACT to amend 146.70 (7); and to create 20.155 (3), 25.17 (1) (yo), 25.98, 77.51
2 (4) (b) 8., 77.51 (15) (b) 7. and 146.70 (3m) of the statutes; relating to: creating
3 a wireless 911 fund; imposing a surcharge on wireless telephone customers;
4 making grants for wireless 911 emergency telephone service; providing an
5 exemption from emergency rule procedures; granting rule-making authority;
6 and making appropriations.

Analysis by the Legislative Reference Bureau

This is a preliminary draft. An analysis will be prepared for a subsequent version of the draft.

This bill will be referred to the Joint Survey Committee on Tax Exemptions for a detailed analysis, which will be printed as an appendix to this bill.

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:

7 SECTION 1. 20.155 (3) of the statutes is created to read:

1 20.155 (3) WIRELESS 911 GRANTS. (q) *General program operations and grants.*

2 From the wireless 911 fund, all moneys received under s. 146.70 (3m) (e) 1. to
3 administer and make grants to wireless providers and local governments under s.

4 146.70 (3m) (b) and (c). *and supplemental grants to local governments*

5 SECTION 2. 25.17 (1) (yo) of the statutes is created to read:

6 25.17 (1) (yo) Wireless 911 fund (s. 25.98);

7 SECTION 3. 25.98 of the statutes is created to read:

8 **25.98 Wireless 911 fund.** There is established a separate nonlapsible trust
9 fund designated as the wireless 911 fund, consisting of deposits by the public service
10 commission under s. 146.70 (3m) (e) 1.

11 SECTION 4. 77.51 (4) (b) 8. of the statutes is created to read:

12 77.51 (4) (b) 8. The surcharge established in rules of the public service
13 commission under s. 146.70 (3m) (e) for customers of wireless providers, as defined
14 in s. 146.70 (3m) (a) 5.

15 SECTION 5. 77.51 (15) (b) 7. of the statutes is created to read:

16 77.51 (15) (b) 7. The surcharge established in rules of the public service
17 commission under s. 146.70 (3m) (e) for customers of wireless providers, as defined
18 in s. 146.70 (3m) (a) 5.

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

20 146.70 (3m) WIRELESS PROVIDERS. (a) *Definitions.* In this subsection:

21 1. “Commission” means the public service commission.

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

25 3. “Local government” means a city, village, town, or county.

1 4. “Reimbursement period” means the period of time between the effective date
2 of this subdivision [revisor inserts date], and the first day of the 37th month after
3 the effective date of this subdivision [revisor inserts date].

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

6 6. “Wireless public safety answering point” means a facility to which a call on
7 a wireless provider’s system is initially routed for response, and on which a public
8 agency directly dispatches the appropriate emergency service provider, relays a
9 message to the appropriate emergency service provider, or transfers the call to the
10 appropriate emergency services provider.

11 (b) *Grants; wireless providers.* 1. A wireless provider may not receive a grant
12 under subd. 2. unless, no later than the first day of the 7th month after the effective
13 date of this subdivision [revisor inserts date], the wireless provider applies to the
14 commission with an estimate, and supporting documentation, of the costs that it has
15 incurred or will incur during the reimbursement period to upgrade, purchase, lease,
16 program, install, test, operate, or maintain all data, hardware, and software
17 necessary to comply with the federal wireless orders. The commission shall
18 determine whether the estimate is reasonable. If the commission determines that
19 the estimate is unreasonable, the commission shall provide the wireless provider
20 with the reasons for the determination and give the wireless provider an opportunity
21 to provide a reasonable estimate.

22 2. From the appropriation under s. 20.155 (3) (q), the commission shall make
23 grants to reimburse an eligible wireless provider for the costs estimated under subd.
24 1., except that the commission shall limit the grants to an amount that the
25 commission determines is reasonable.

1 (c) *Grants; local governments.* 1. A local government may not receive a grant
 2 under subd. 5. unless the requirements under subd. 3. are satisfied and, no later than
 3 the first day of the 7th month after the effective date of this subdivision [revisor
 4 inserts date], the local government applies to the commission with an estimate, and
 5 supporting documentation, of the costs that it has directly and primarily incurred or
 6 will directly and primarily incur during the reimbursement period for leasing,
 7 purchasing, operating, or maintaining a wireless public safety answering point,
 8 including costs for all of the following:

9 a. Necessary network equipment, computer hardware and software, database
 10 equipment, and radio and telephone equipment, that are located within the wireless
 11 public safety answering point.

12 b. Training operators of a wireless public safety answering point.

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

15 2. ~~Counties~~ ^{Local governments} that jointly operate, or intend to jointly operate, a wireless public
 16 safety answering point may submit a joint application under subd. 1.

17 3. A city, village, or town in a county, ~~or~~ the county itself, is eligible for grants
 18 under subd. 5. only if, no later than the first day of the 7th month beginning after the
 19 effective date of this subdivision [revisor inserts date], the county has passed a
 20 resolution specifying that the city, village, or town, ~~or~~ the county itself, is eligible for
 21 the grants. Only one city, village, or town in a county, or the county itself, may receive
 22 grants under subd. 5.

23 4. If the commission determines that the estimate of a local government under
 24 subd. 1. is unreasonable, the commission shall provide the local government with the

INSERT
4-16

INSERT 4-17

INSERT 4-20

INSERT 4-22

in the case of a joint application, the counties in which the jointly applying local governments have passed are located

of the counties included in the local government

in which the local governments are located

of the counties that have submitted a joint application under subd. 1 have passed

INSERT 5-5

1 reasons for the determination and give the local government an opportunity to
2 provide a reasonable estimate.

3 5. From the appropriation under s. 20.155 (3) (q), the commission shall make
4 grants to reimburse an eligible local government for the costs estimated under subd.
5 1., except that the commission shall limit the grants to an amount that the
6 commission determines is reasonable and except that grants may not be used to
7 reimburse costs for any of the following:

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

11 b. Vehicles and equipment in vehicles.

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

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

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

INSERT 5-18

17

18 (d) *Grants; rule making.* ^{2.} The commission shall promulgate rules establishing
19 requirements and procedures for making grants under pars. (b) and (c). The rules
shall allow the commission to make ^{any} grants in installments.

① 2.
under subd. 2. ✓

20 (e) *Wireless surcharge.* 1. The commission shall promulgate rules requiring
21 each wireless provider to impose a monthly surcharge for each telephone number of
22 a customer that has a billable address in this state and pay the surcharge to the
23 commission for deposit in the wireless 911 fund. The rules may not require the
24 surcharge to be imposed after the first day of the 37th month beginning after the
25 effective date of this subdivision [revisor inserts date]. The amount of the

1 surcharge shall be sufficient for the commission to administer and make the grants
2 under pars. (b) and (c). INSERT 6-2 ✓

3 2. The commission may promulgate rules that increase or decrease the
4 surcharge, except that the commission may not increase the surcharge more than
5 once per year and any increase must be uniform statewide.

6 3. A wireless provider shall identify the surcharge on a customer's bill on a
7 separate line that consists of the words "Wisconsin Wireless 911 Surcharge."

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

10 5. The commission shall bring an action to collect a surcharge that is not paid
11 by a customer and the customer's wireless provider is not liable for the unpaid
12 surcharge.

13 (f) *Confidentiality of information.* The commission ~~may~~ ^{shall} withhold from public
14 inspection any information received under this subsection that would aid a
15 competitor of a wireless provider in competition with the wireless provider.

16 (g) *Other charges prohibited.* No local government or state agency, as defined
17 in s. 16.375 (1), except the commission, may require a wireless provider to collect or
18 pay a surcharge or fee related to wireless emergency telephone service.

19 (h) *Sunset.* This subsection does not apply after the first day of the 37th month
20 beginning after the effective date of this paragraph [revisor inserts date].

21 SECTION 7. 146.70 (7) of the statutes is amended to read:

22 146.70 (7) TELECOMMUNICATIONS UTILITY AND WIRELESS PROVIDERS NOT LIABLE. A
23 telecommunications utility shall not be liable to any person who uses an emergency
24 number system created under this section and a wireless provider, as defined in sub.

1 (3m) (a) 5., shall not be liable to any person who uses an emergency telephone
2 number system for which a grant is made under sub. (3m) (b) or (c).

3 **SECTION 8. Nonstatutory provisions.**

4 (1) WIRELESS 911 SURCHARGE RULES.

5 (a) *Emergency rules.* The public service commission may, using the procedure
6 under section 227.24 of the statutes, promulgate the rules under section 146.70 (3m)
7 (e) 1. of the statutes, as created by this act, for the period before permanent rules
8 become effective, but not to exceed the period authorized under section 227.24 (1) (c)
9 and (2) of the statutes. Notwithstanding section 227.24 (1) (a), (2) (b), and (3) of the
10 statutes, the commission is not required to provide evidence that promulgating a rule
11 under this paragraph as an emergency rule is necessary for the preservation of the
12 public peace, health, safety, or welfare and is not required to provide a finding of
13 emergency for a rule promulgated under this paragraph.

14 (b) *Proposed rules.* The public service commission shall submit in proposed
15 form the rules required under section 146.70 (3m) (e) 1. of the statutes, as created
16 by this act, to the legislative council staff under section 227.15 (1) of the statutes no
17 later than the first day of the 10th month beginning after the effective date of this
18 paragraph.

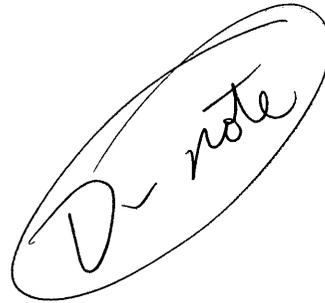
19 (2) WIRELESS 911 GRANT RULES.

20 (a) *Emergency rules.* The public service commission may, using the procedure
21 under section 227.24 of the statutes, promulgate the rules under section 146.70 (3m)
22 (d) of the statutes, as created by this act, for the period before permanent rules
23 become effective, but not to exceed the period authorized under section 227.24 (1) (c)
24 and (2) of the statutes. Notwithstanding section 227.24 (1) (a), (2) (b), and (3) of the
25 statutes, the commission is not required to provide evidence that promulgating a rule

1 under this paragraph as an emergency rule is necessary for the preservation of the
2 public peace, health, safety, or welfare and is not required to provide a finding of
3 emergency for a rule promulgated under this paragraph.

4 (b) *Proposed rules.* The public service commission shall submit in proposed
5 form the rules required under section 146.70 (3m) (d) of the statutes, as created by
6 this act, to the legislative council staff under section 227.15 (1) of the statutes no later
7 than the first day of the 13th month beginning after the effective date of this
8 paragraph.

9 (END)

A handwritten signature, possibly "V-note", is enclosed within a hand-drawn oval. The signature is written in a cursive style.

INSERT A:

This bill requires the Public Service Commission (PSC) to make grants to wireless telecommunications providers (wireless providers) and cities, villages, towns, and counties (local governments) for reimbursement of certain costs related to providing wireless 911 emergency telephone service (wireless 911 service). The grants are funded by a surcharge paid by wireless customers. ✓

A wireless provider is eligible for the grants if it is subject to orders of the Federal Communications Commission (FCC) regarding wireless 911 service. In addition, a wireless provider must apply for the grants no later than ^{Six} 6 months after the bill's effective date. An application must include an estimate of the costs that, during the ^{beginning on} ^{three} 3-year period ~~after~~ the bill's effective date, the wireless provider has or will incur to upgrade, purchase, lease, program, install, test, operate, or maintain all data, hardware, and software necessary to comply with the FCC orders. The application must also include supporting documentation for the estimate. ✓ ^{incurred}

For local governments, only a local government that is specified in a resolution passed by a county is eligible for the grants. A county has until ^{Six} 6 months after the bill's effective date to pass such a resolution. Like wireless providers, local governments must apply for the grants no later than ^{Six} 6 months after the bill's effective date. An application must include an estimate of the costs that, during the ^{beginning on} ^{three} 3-year period ~~after~~ the bill's effective date, the local government has directly and primarily incurred, or will directly and primarily incur, for leasing, purchasing, operating, or maintaining a wireless 911 answering facility. Such costs include costs for the following: 1) necessary network equipment, computer hardware and software, database equipment, and radio and telephone equipment, that are located within the facility; 2) training operators of the facility; and 3) network costs for delivery of calls to the facility. The application must also include supporting documentation for the estimate. ✓ ^{Six}

For both wireless providers and local governments, the PSC must determine whether an estimate in an application is reasonable. If the PSC determines that an estimate is not reasonable, the PSC must give the applicant an opportunity to provide a reasonable estimate. ✓

The bill requires the PSC to make grants to wireless providers and local governments to reimburse the costs in the estimates, except that the PSC must limit the grants to amounts that are reasonable. In addition, for local governments, the grants may not be used to reimburse costs for any of the following: 1) specified costs related to dispatching emergency services; 2) vehicles and equipment in vehicles; 3) communications equipment and software; 4) real estate and improvements to real estate, other than improvements necessary to maintain the security of wireless 911 answering facilities; and 5) salaries and benefits of operators of such facilities. ✓

The funding source for the grants is a monthly surcharge imposed by wireless providers for each customer telephone number that is billed to an address in this state. The PSC must promulgate rules that establish the amount of the surcharge, which must be sufficient for the PSC to administer and make grants under the bill.

three

The PSC may promulgate rules to increase or decrease the surcharge, but may increase the surcharge only once per year, and any increase must be uniform statewide. In addition, no surcharge may be imposed after 3 years after the bill's effective date. Wireless providers must pay the surcharge to the PSC for deposit into a wireless 911 fund that is created in the bill. A wireless provider is not liable for surcharges that are not paid by customers. Instead, the bill requires the PSC to bring an action against a customer for an unpaid surcharge.

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

1. The PSC must promulgate rules for making supplemental grants to local governments that submit joint applications for estimated costs of jointly operating wireless 911 answering facilities. The rules must establish the supplemental grants in amounts that provide incentives for making joint applications. A joint application must specify the manner in which the estimated costs are apportioned between the local governments, and the PSC must make grants according to the apportionment.

2. The PSC must withhold from public inspection any information the PSC receives that would aid the competitor of a wireless provider.

3. Local governments and other state agencies are prohibited from requiring wireless telecommunications providers to collect or pay a surcharge or fee related to wireless 911 service.

4. Wireless providers must identify the surcharge on customer bills as "Wisconsin Wireless 911 Surcharge".

5. Wireless providers are immune from liability to any person who uses a wireless 911 service for which a grant is made under the bill.

6. The bill's requirements regarding the surcharge and grant program do not apply after 3 years after the bill's effective date.

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INSERT 4-16:

A joint application shall specify the manner in which the estimated costs under subd. 1. are apportioned among the local governments that have made the joint application.

INSERT 4-17:

or a combination of cities, villages, towns, or counties that submit a joint application under subd. 1.,

INSERT 4-20:

or the combination of cities, villages, towns, or counties,

INSERT 4-22:

1 , except that, if the resolution specifies a combination of cities, villages, towns, or
2 counties that submit a joint application under subd. 1., the specified cities, villages;
3 towns, or counties may receive the grants ⊙ ← ✓

4 **INSERT 5-5:**

5 or, if applicable, the costs apportioned to the local government under subd. 2., ✓

6 **INSERT 5-18:**

7 The commission shall also promulgate rules for making supplemental grants to local
8 governments that submit joint applications under par. (c) 1. The rules shall establish
9 the supplemental grants in amounts that provide an incentive for local governments
10 to submit joint applications. ↗

11 **INSERT 6-2:** ✓

12 and the supplemental grants described in par. (d) 1.

no 9
The rules may not
impose any limits
on the use of a
supplemental
grant by
a local
government.

From the appropriation under
S. 20.155 (3) (2)
✓

DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-1362/1dn

MDK:.....

g's

Representative Montgomery:

Please note the following about this bill:

1. Please review the timing issues. Wireless providers and local governments have about ~~6~~ ^{six} months to apply for grants. In addition, counties have about ~~6~~ ^{six} months to pass resolutions specifying the local governments eligible for grants. The PSC has about ~~9~~ ^{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, ~~because the bill is silent regarding any restrictions on the use of supplemental grants, they may be used for any purpose.~~ ✓

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 ~~9~~ ^{three} year period after the bill's effective date. Therefore, costs incurred before or after the ~~effective date~~ ^{three-year period} 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. ✓

the PSC may not impose

no 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.

8. ^{each} Some cities are in more than one county. (For example, Milwaukee and Appleton are in ^{three} 3 counties; Eau Claire, Marshfield, and Menasha are in ^{two} 2 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 maintain 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 ^{ten} Assembly Bill 889: 1) the requirements that surcharge increases may not exceed 10 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. ✓

Mark D. Kunkel
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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.

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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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Kunkel, Mark

From: Stolzenberg, John
Sent: Monday, February 03, 2003 9:36 AM
To: Leibham, Joseph; Lindstedt, Daniel; Healy, Brett; Smyrski, Rose; Kunkel, Mark
Subject: Follow-up to January 30 meeting on wireless 911 draft

Here are responses to two questions directed to me at our meeting last Thursday on the wireless 911 draft:

Question 1: Are there other charges, fees or taxes imposed on telecommunications services, in addition to the state universal service fund surcharge, which could be a potential mechanism for raising revenues to fund the wireless 911 program in Wisconsin?

Answer: The attached memorandum to Interested Legislators, *Overview of Federal and State Approved Telephone Charges, Fees and Taxes*, by Dan Schmidt (February 18, 1999) identifies the charges, fees and taxes imposed on telecommunications services in Wisconsin. With the possible exception of the state universal service fund surcharge, which we discussed at the January 30 meeting, none of these charges, fees or taxes appears to be an appropriate mechanism to fund the state's wireless 911 program.



Telephone charges -
Int Leg 2-1...

Question 2: Can the PSC use the s. 13.10 procedure to obtain staff necessary to administer the wireless 911 program set forth in LRB-1362/1?

Answer: Yes, this procedure would be available to the PSC. Under s. 13.101 (2), Stats., the PSC may, following the procedures under s. 13.10, Stats., request the Joint Committee on Finance (JFC) to create one or more full-time equivalent positions in the agency. In reviewing such a request, the JFC may approve a different authorized level of full-time equivalent positions than is requested by the PSC. The appropriation created by LRB-1362/1 in s. 20.155 (3) (q) includes that money may be used from this appropriation to fund the administration of the wireless 911 grant program.

Please let me know if you have any questions on the information in this note.

John

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Memo

To: Drafting File: LRB-1362
From: Mark Kunkel
Date: 02/03/2003
Re: Meeting on January 30

Based on my meeting with Sen. Leibham, Dan Lindstedt (Sen. Leibham), Brett Healy (Rep. Jensen), Rose Smyrski, (Rep. Montgomery), and John Stolzenberg on January 30, I made the following changes to the "1" version of the bill:

1. The PSC should first promulgate emergency rules on how it will administer the grants, including criteria for approving grants. The reason is that local governments and wireless providers will need an idea of what the PSC will approve before they plan to purchase, etc., equipment, etc., necessary to provide wireless 911. This should apply to supplemental grants as well. 120 days after the bill's effective date?
2. Add efficiency/effectiveness regarding statewide emergency services as criteria for approving applications.
3. After the emergency rules above are promulgated, local governments and wireless providers must submit applications. Same deadline for the county resolutions. It will be up to the counties and local governments to coordinate the resolution deadline with the application deadline.
4. Wireless surcharge rules can wait until later because they aren't as necessary right away.
5. Only one wireless public safety answering point (PSAP) should be eligible for each county, except that, for multiple counties that submit joint applications, only 1 wireless PSAP for all of the counties that jointly apply is eligible. Supplemental payments will be made to encourage such joint applications.
6. Add record-keeping requirements to rules to ensure accountability that grants are spent on approved costs.
7. Add reference to entities formed by intergovernmental cooperative contracts in definition of "local government".
8. Monthly surcharge should be "uniform" (i.e., one amount applicable everywhere in the state).
9. Delete prohibition on prorating surcharge.
10. Allow, but don't require, PSC to bring action against customers to collect unpaid surcharges.