

**ASSEMBLY SUBSTITUTE AMENDMENT 1,
TO 2003 SENATE BILL 272**

February 16, 2004 – Offered by Representative MONTGOMERY.

1 **AN ACT** *to renumber and amend* 196.204 (5) (a); *to amend* 196.203 (1) and
2 196.204 (5) (b); and *to create* 66.0419 (3m), 66.0422, 196.204 (5) (ag) and
3 196.204 (5) (ar) 2. of the statutes; **relating to:** municipal telecommunications
4 utilities and public hearings for ordinances and resolutions authorizing
5 municipal cable television, telecommunications, and broadband facilities.

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

6 **SECTION 1.** 66.0419 (3m) of the statutes is created to read:

7 66.0419 (3m) MUNICIPAL CABLE TELEVISION SYSTEM COSTS. (a) Except for costs
8 for any of the following, a municipality that owns and operates a cable television
9 system, or an entity owned or operated, in whole or in part, by such a municipality,
10 may not require nonsubscribers of the cable television system to pay any of the costs
11 of the cable television system:

12 1. Public, educational, and governmental access channels.

1 2. Debt service on bonds issued under s. 66.0619 to finance the construction,
2 renovation, or expansion of a cable television system.

3 3. The provision of broadband service by the cable television system, if the
4 requirements of s. 66.0422 are satisfied.

5 (b) Paragraph (a) does not apply to a municipality if all of the following
6 conditions apply:

7 1. On November 1, 2003, the public service commission has determined that
8 the municipality is an alternative telecommunications utility under s. 196.203.

9 2. A majority of the governing board of the municipality votes to submit the
10 question of supporting the operation of a cable television system by the municipality
11 to the electors in an advisory referendum and a majority of the voters in the
12 municipality voting at the advisory referendum vote to support the operation of a
13 cable television system by the municipality.

14 **SECTION 2.** 66.0422 of the statutes is created to read:

15 **66.0422 Cable television, telecommunications, and broadband**
16 **facilities. (1)** In this section:

17 (a) “Cable service” has the meaning given in s. 66.0419 (2) (c).

18 (b) “Municipality” means a city, village, or town.

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

20 **(2)** (a) Except as provided in pars. (b) and (c), no municipality may, after the
21 effective date of this paragraph [revisor inserts date], enact an ordinance or adopt
22 a resolution authorizing the municipality to construct, own, or operate any facility
23 for providing cable service, telecommunications service, or broadband service,
24 directly or indirectly, to the public, unless all of the following are satisfied:

1 1. The municipality holds a public hearing on the proposed ordinance or
2 resolution.

3 2. Notice of the public hearing is given by publication of a class 3 notice under
4 ch. 985 in the area affected by the proposed ordinance or resolution.

5 3. No less than 30 days before the public hearing, the municipality prepares
6 and makes available for public inspection a report estimating the total costs of, and
7 revenues derived from, constructing, owning, or operating the facility and including
8 a cost–benefit analysis of the facility for a period of at least 3 years. The costs that
9 are subject to this subdivision include personnel costs and costs of acquiring,
10 installing, maintaining, repairing, or operating any plant or equipment, and include
11 an appropriate allocated portion of costs of personnel, plant, or equipment that are
12 used to provide jointly both telecommunications services and other services.

13 (b) Paragraph (a) does not apply to a municipality if all of the following
14 conditions apply:

15 1. On November 1, 2003, the public service commission has determined that
16 the municipality is an alternative telecommunications utility under s. 196.203.

17 2. A majority of the governing board of the municipality votes to submit the
18 question of supporting the operation of the facility for providing cable service,
19 telecommunications service, or Internet access service, directly or indirectly to the
20 public, by the municipality to the electors in an advisory referendum and a majority
21 of the voters in the municipality voting at the advisory referendum vote to support
22 operation of such a facility by the municipality.

23 (c) Paragraph (a) does not apply to a facility for providing broadband service
24 to an area within the boundaries of a municipality if any of the following are satisfied:

1 1. The municipality asks, in writing, each person that provides broadband
2 service within the boundaries of the municipality whether the person currently
3 provides broadband service to the area or intends to provide broadband service
4 within 9 months to the area and within 60 days after receiving the written request
5 no person responds in writing to the municipality that the person currently provides
6 broadband service to the area or intends to provide broadband service to the area
7 within 9 months.

8 2. The municipality determines that a person who responded to a written
9 request under subd. 1. that the person currently provides broadband service to the
10 area did not actually provide broadband service to the area and no other person
11 makes the response to the municipality described in subd. 1.

12 3. The municipality determines that a person who responded to a written
13 request under subd. 1. that the person intended to provide broadband service to the
14 area within 9 months did not actually provide broadband service to the area within
15 9 months and no other person makes the response to the municipality described in
16 subd. 1.

17 (d) Notwithstanding par. (a), a municipality may enact an ordinance or adopt
18 a resolution authorizing the municipality to prepare a report specified in par. (a) 3.

19 (e) If a municipality enacts an ordinance or adopts a resolution that complies
20 with the requirements of par. (a), the municipality must determine the cost incurred
21 in preparing the report specified in par. (a) 3. As soon as practicable after the
22 municipality generates revenue from a facility specified in par. (a) (intro.), the
23 municipality shall use the revenues to reimburse the treasury of the municipality for
24 the cost determined under this paragraph.

1 **(3)** (a) This subsection applies to a municipality that, before the effective date
2 of this paragraph [revisor inserts date], enacted an ordinance or passed a
3 resolution authorizing the municipality to construct, own, or operate a facility for
4 providing cable service, telecommunications service, or broadband service, directly
5 or indirectly, to the public.

6 (b) A municipality may not, after the effective date of this paragraph [revisor
7 inserts date], incur debt for constructing, operating, upgrading, or improving a
8 facility described in par. (a), or finance such construction, operation, upgrade, or
9 improvement with revenues derived from the operation of any other facility, unless
10 the municipality enacts an ordinance or passes a resolution authorizing the
11 incurring of such debt or such financing and the municipality does all of the
12 following:

13 1. The municipality holds a public hearing on the proposed ordinance or
14 resolution.

15 2. Notice of the public hearing is given by publication of a class 3 notice under
16 ch. 985 in the area affected by the proposed ordinance or resolution.

17 3. No less than 30 days before the public hearing, the municipality prepares
18 and makes available for public inspection a report estimating the total costs of, and
19 revenues derived from, constructing, operating, upgrading, or improving the facility
20 and including a cost–benefit analysis of such construction, operation, upgrade, or
21 improvement for a period of at least 3 years. The costs that are subject to this
22 subdivision include personnel costs and costs of acquiring, installing, maintaining,
23 repairing, or operating any plant or equipment that are required for the
24 construction, operation, upgrade, or improvement, and include an appropriate

1 allocated portion of costs of personnel, plant, or equipment that are used to provide
2 jointly both telecommunications services and other services.

3 **SECTION 3.** 196.203 (1) of the statutes is amended to read:

4 196.203 (1) ~~Except as provided in this section, alternative~~ Alternative
5 telecommunications utilities are exempt from all provisions of ch. 201 and this
6 chapter, except as provided in this section and except that an alternative
7 telecommunications utility that is a municipal telecommunications utility, as
8 defined in s. 196.204 (5) (ag) 1., is subject to s. 196.204 (5).

9 **SECTION 4.** 196.204 (5) (a) of the statutes is renumbered 196.204 (5) (ar) 1. and
10 amended to read:

11 196.204 (5) (ar) 1. In addition to the other requirements of this section, each
12 telecommunications service, relevant group of services and basic network function
13 offered or used by a telecommunications utility shall be priced to exceed its total
14 service long-run incremental cost. The commission may waive the applicability of
15 this paragraph subdivision to a nonmunicipal telecommunications utility's basic
16 local exchange service if the commission determines that a waiver is consistent with
17 the factors under s. 196.03 (6).

18 **SECTION 5.** 196.204 (5) (ag) of the statutes is created to read:

19 196.204 (5) (ag) In this subsection:

20 1. "Municipal telecommunications utility" means a municipality that owns,
21 operates, manages, or controls any plant or equipment, or that wholly owns,
22 operates, manages, or controls any entity that owns, operates, manages, or controls
23 any plant or equipment, used to furnish telecommunications services within the
24 state directly or indirectly to the public.

1 2. “Nonmunicipal telecommunications utility” means a telecommunications
2 utility that is not a municipal telecommunications utility.

3 **SECTION 6.** 196.204 (5) (ar) 2. of the statutes is created to read:

4 196.204 (5) (ar) 2. For purposes of subd. 1., the total service long-run
5 incremental cost of a municipal telecommunications utility shall take into account,
6 by imputation or allocation, equivalent charges for all taxes, pole rentals,
7 rights-of-way, licenses, and similar costs that are incurred by nonmunicipal
8 telecommunications utilities. This subdivision does not apply to a
9 telecommunications service, relevant group of services, or basic network function if
10 all of the following conditions apply:

11 a. On November 1, 2003, the commission has determined that the municipal
12 telecommunications utility is an alternative telecommunications utility under s.
13 196.203.

14 b. A majority of the governing board of the municipal telecommunications
15 utility votes to submit the question of supporting the operation of the municipal
16 telecommunications utility to the electors in an advisory referendum and a majority
17 of the voters in the municipal telecommunications utility voting at the advisory
18 referendum vote to support operation of the municipal telecommunications utility.

19 **SECTION 7.** 196.204 (5) (b) of the statutes is amended to read:

20 196.204 (5) (b) Unless ordered by the commission, par. ~~(a)~~ (ar) does not apply
21 to basic local exchange service or to business access line and usage service within a
22 local calling area offered by a nonmunicipal telecommunications utility with 150,000
23 or less access lines in use in this state. If par. ~~(a)~~ (ar) does not apply, the nonmunicipal
24 telecommunications utility may not reduce its rates for basic local exchange service
25 below the monthly rate under s. 196.215 (7) or total service long-run incremental

1 cost, whichever is lower, and may not reduce its rates for business access line and
2 usage service within a local calling area below total service long-run incremental
3 cost.

4 **SECTION 8. Initial applicability.**

5 (1) The treatment of section 66.0419 (3m) of the statutes first applies to costs
6 incurred on the effective date of this subsection.

7 **SECTION 9. Effective date.**

8 (1) This act takes effect on the first day of the 3rd month beginning after
9 publication.

10 (END)