

**2003 DRAFTING REQUEST**

**Assembly Substitute Amendment (ASA-SB272)**

Received: **02/13/2004**

Received By: **mkunkel**

Wanted: **As time permits**

Identical to LRB:

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

By/Representing: **Mike**

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

Drafter: **mkunkel**

May Contact:

Addl. Drafters:

Subject: **Public Util. - telco  
Munis - miscellaneous**

Extra Copies: **MES**

Submit via email: **YES**

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

Carbon copy (CC:) to: **michael.mathy@legis.state.wi.us**

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**Pre Topic:**

No specific pre topic given

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**Topic:**

Municipal telecommunications utilities, Internet facilities, and cable television systems

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**Instructions:**

See Attached

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**Drafting History:**

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Typed</u>	<u>Proofed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
/?	mkunkel 02/13/2004	kfollett 02/13/2004		_____			
/1			jfrantze 02/13/2004	_____	Inorthro 02/13/2004	Inorthro 02/13/2004	

FE Sent For:

**<END>**

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1/?	mkunkel	1/13 <i>[Signature]</i>	2/13 <i>[Signature]</i>	2/13 <i>[Signature]</i>			

FE Sent For:

<END>



State of Wisconsin  
2003 - 2004 LEGISLATURE

LRB-4226/P1

MDK: [signature]

D-NOTE

S03511

Today  
by 2pm

PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION

ASA to  
SB 272

gen cat

municipal

1 AN ACT <sup>gen cat</sup> 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: ~~local government~~  
 4 telecommunications utilities and public hearings for ordinances and  
 5 resolutions authorizing ~~local government~~ cable television,  
 6 telecommunications, and broadband facilities. <sup>municipal</sup>

*Analysis by the Legislative Reference Bureau*

This is a preliminary draft with no analysis.

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

7 SECTION 1. 66.0419 (3m) of the statutes is created to read:  
 8 66.0419 (3m) MUNICIPAL CABLE TELEVISION SYSTEM COSTS. (a) Except for costs  
 9 for any of the following, a municipality that owns and operates a cable television  
 10 system, or an entity owned or operated, in whole or in part, by such a municipality,

1 may not require nonsubscribers of the cable television system to pay any of the costs  
2 of the cable television system:

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

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

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

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

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

15 ~~The provision of broadband service by the cable television system, if the~~  
16 ~~requirements of s. 66.0422 (a), (b), (c) and (d) are satisfied.~~

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

18 **66.0422 Cable television, telecommunications, and broadband**  
19 **facilities.** (1) In this section:

20 (a) "Cable service" has the meaning given in s. 66.0419 (2) (c).

21 (b) ~~Local government~~ <sup>Municipality</sup> means a city, village, or town.

22 (c) "Telecommunications service" has the meaning given in s. 196.01 (9m).

23 (2) Except as provided in ~~(a), (b), (c) and (d)~~ <sup>(a)</sup> ~~no local government~~ <sup>(b) and (c)</sup> ~~may enact an ordinance~~ <sup>municipality</sup>  
24 or adopt a resolution authorizing the ~~local government~~ <sup>municipality</sup> to construct, own, or operate

after the effective date of  
this paragraph ... Reviser  
inserts a

1 any facility for providing cable service, telecommunications service, or broadband  
2 service, directly or indirectly, to the public, unless all of the following are satisfied:

3 <sup>1.</sup> ~~(a)~~ The ~~local government~~ <sup>municipality</sup> holds a public hearing on the proposed ordinance or  
4 resolution.

5 <sup>2.</sup> ~~(b)~~ Notice of the public hearing is given by publication of a class 3 notice under  
6 ch. 985 in the area affected by the proposed ordinance or resolution.

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

16 <sup>(b)</sup> ~~Subsection (c)~~ <sup>Paragraph (a)</sup> does not apply to a ~~local government~~ <sup>municipality</sup> if all of the following  
17 conditions apply:

18 <sup>1.</sup> ~~(a)~~ On November 1, 2003, the public service commission has determined that  
19 the ~~local government~~ <sup>municipality</sup> is an alternative telecommunications utility under s. 196.203.

20 <sup>2.</sup> ~~(b)~~ A majority of the governing board of the ~~local government~~ <sup>municipality</sup> votes to submit  
21 the question of supporting the operation of the facility for providing cable service,  
22 telecommunications service, or Internet access service, directly or indirectly to the  
23 public, by the ~~local government~~ <sup>municipality</sup> to the electors in an advisory referendum and a  
24 majority of the voters in the ~~local government~~ <sup>municipality</sup> voting at the advisory referendum vote  
25 to support operation of such a facility by the ~~local government~~ <sup>municipality</sup>.

(c) Paragraph (a)

1 ~~Subsection (2)~~ does not apply to a facility for providing broadband service  
2 to an area within the boundaries of a ~~local government~~ <sup>municipality</sup> if any of the following are  
3 satisfied:

4 1. The ~~local government~~ <sup>municipality</sup> asks, in writing, each person that provides broadband  
5 service within the boundaries of the ~~local government~~ whether the person currently  
6 provides broadband service to the area or intends to provide broadband service  
7 within 9 months to the area and within 60 days after receiving the written request  
8 no person responds in writing to the ~~local government~~ that the person currently  
9 provides broadband service to the area or intends to provide broadband service to the  
10 area within 9 months.

11 2. The ~~local government~~ <sup>municipality</sup> determines that a person who responded to a written  
12 request under subd. 1. that the person currently provides broadband service to the  
13 area did not actually provide broadband service to the area and no other person  
14 makes the response to the ~~local government~~ described in subd. 1.

15 3. The ~~local government~~ <sup>municipality</sup> determines that a person who responded to a written  
16 request under subd. 1. that the person intended to provide broadband service to the  
17 area within 9 months did not actually provide broadband service to the area within  
18 9 months and no other person makes the response to the ~~local government~~ described  
19 in subd. 1.

20 (d) Notwithstanding ~~subd. (2)~~ <sup>par. (a) municipality</sup> a local government may enact an ordinance or  
21 adopt a resolution authorizing the ~~local government~~ to prepare a report specified in  
22 ~~subd. (2)~~ <sup>par. (a) 3.</sup>

23 (e) If a ~~local government~~ <sup>municipality</sup> enacts an ordinance or adopts a resolution that  
24 complies with the requirements of ~~subd. (2)~~ <sup>par. (a) municipality</sup> the local government must determine the  
25 cost incurred in preparing the report specified in ~~subd. (2)~~ <sup>par. (a) 3.</sup> As soon as practicable

1 after the ~~local government~~ <sup>municipality</sup> generates revenue from a facility specified in ~~sub~~ <sup>par. (a)</sup>  
 2 (intro.), the ~~local government~~ shall use the revenues to reimburse the treasury of the  
 3 ~~local government~~ for the cost determined under this ~~subsection~~ <sup>paragraph</sup>

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

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

10 SECTION ~~4~~ <sup>5</sup>: 196.204 (5) (a) of the statutes is renumbered 196.204 (5) (ar) 1. and  
 11 amended to read:

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

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

20 196.204 (5) (ag) In this subsection:

- 21 1. ~~Local government~~ <sup>municipal</sup> "telecommunications utility" means a municipality that  
 22 owns, operates, manages, or controls any plant or equipment, or that wholly owns,  
 23 operates, manages, or controls any entity that owns, operates, manages, or controls  
 24 any plant or equipment, used to furnish telecommunications services within the  
 25 state directly or indirectly to the public.

INSERT 5-3



*municipal*

1 2. "Non~~governmental~~ telecommunications utility" means a  
2 telecommunications utility that is not a ~~local government~~ *municipal* telecommunications  
3 utility.

4 SECTION ~~#~~ 196.204 (5) (ar) 2. of the statutes is created to read:

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

12 a. On November 1, 2003, the commission has determined that the ~~local~~  
13 ~~governmental~~ *municipal* telecommunications utility is an alternative telecommunications utility  
14 under s. 196.203.

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

21 SECTION 6. 196.204 (5) (b) of the statutes is amended to read:

22 196.204 (5) (b) Unless ordered by the commission, par. (a) <sup>✓</sup>(ar) does not apply  
23 to basic local exchange service or to business access line and usage service within a  
24 local calling area offered by a ~~non-governmental~~ telecommunications utility with  
25 150,000 or less access lines in use in this state. If par. (a) <sup>✓</sup>(ar) does not apply, the

*municipal*

*municipal*

1 ~~nongovernmental~~ telecommunications utility may not reduce its rates for basic local  
 2 exchange service below the monthly rate under s. 196.215 (7) or total service  
 3 long-run incremental cost, whichever is lower, and may not reduce its rates for  
 4 business access line and usage service within a local calling area below total service  
 5 long-run incremental cost.

**SECTION 7. Initial applicability.**

7 (1) The treatment of section 66.0419 (3<sup>m</sup>) of the statutes first applies to costs  
 8 incurred on the effective date of this subsection.

**SECTION 8. Effective date.**

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

(END)

*D-Note*

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**INSERT 5-3:**

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

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

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

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

3. No less than 30 days before the public hearing, the municipality prepares and makes available for public inspection a report estimating the total costs of, and revenues derived from, constructing, operating, upgrading, or improving the facility and including a cost-benefit analysis of such construction, operation, upgrade, or improvement for a period of at least 3 years. The costs that are subject to this subdivision include personnel costs and costs of acquiring, installing, maintaining,

1 repairing, or operating any plant or equipment that are required for the  
2 construction, operation, upgrade, or improvement, and include an appropriate  
3 allocated portion of costs of personnel, plant, or equipment that are used to provide  
4 jointly both telecommunications services and other services.

5

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

LRBs0351/1dn

MDK: *Kj*

*Date*

Rep. Montgomery:

Please note the following:

1. I drafted this as a substitute amendment so that your changes, together with the changes made by SA1 and SA2 are easier to review. I will draft your changes as a simple amendment after I confirm that I have satisfied your intent.
2. References in the bill to "local governments" are changed to refer to "municipalities".  
This is merely a technical change to conform to our current drafting style.

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

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

LRBs0351/1dn  
MDK:kjf:jf

February 13, 2004

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