



State of Wisconsin
2013 - 2014 LEGISLATURE



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2013 SENATE BILL 470

January 6, 2014 – Introduced by Senators COWLES, FARROW and SCHULTZ, cosponsored by Representatives KUGLITSCH, BIES, KULP, KAHL, OHNSTAD and PETRYK. Referred to Committee on Government Operations, Public Works, and Telecommunications.

1 **AN ACT to repeal** 196.01 (1d) (a), 196.01 (1d) (b), 196.01 (1r), 196.01 (4m), 196.01
2 (12), 196.203 (1m) and 196.21; **to amend** 13.92 (4) (c), 13.92 (4) (d), 13.92 (4) (e),
3 13.92 (4) (f), 20.395 (3) (jh), 35.93 (2) (b) 4., 35.93 (2) (c) 1., 35.93 (3), 35.93 (3)
4 (e) (intro.), 35.93 (3) (e) 1., 101.862 (4) (f), 196.19 (3), 196.19 (4), 196.192 (3) (b),
5 196.194, 196.49 (5g) (a) (intro.), 196.491 (3) (g), 196.50 (2) (i), 197.10 (4), 227.01
6 (13) (intro.), 227.11 (2) (intro.), 227.27 (2) and 941.40 (3) and (4) (b); and **to**
7 **create** 13.92 (4) (bm) and 227.265 of the statutes; **relating to:** Public Service
8 Commission certificates for certain activities; tampering with
9 telecommunications or electric wires; regulation of pay telephone service
10 providers and cable television telecommunications service providers; accident
11 reporting by telecommunications utilities; the definition of transmission

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1 facility; availability of public utility rate schedules; and rule-making
2 procedures.

Analysis by the Legislative Reference Bureau

This bill makes changes regarding all of the following: 1) Public Service Commission (PSC) certificates required for certain activities; 2) filing requirements for public utility rate schedules; 3) water public utility rate changes; 4) telecommunications regulation; 4) legislative repeal or modification of agency rules; and 5) tampering with telecommunications or electric wires.

PSC certificates. Current law prohibits a public utility from beginning construction or providing service in a municipality, unless the public utility obtained a certificate from the PSC authorizing the public utility to transact public utility business. Current law also prohibits a public utility from beginning certain projects involving new or existing plants, equipment, property, or facilities, unless the public utility has complied with applicable PSC rules and orders. In addition, current law allows the PSC to prohibit a public utility from proceeding with such a project until the PSC certifies that public convenience and necessity require the project. Current law also includes exemptions that are based on the gross cost of the project and the type of public utility that proposes the project. The bill provides that those exemptions do not apply to the first prohibition described in the foregoing, but do apply to the second and third prohibitions.

Current law also generally prohibits a person from commencing construction of certain large electric generating facilities or high-voltage transmission lines without obtaining a certificate of public convenience and necessity (CPCN) from the PSC. After a person files an application for a CPCN, the PSC must determine whether the application is complete. If the PSC fails to make such a determination within a specified deadline, the application is considered to be complete. Current law requires the PSC to take final action on the application within 180 days after the application is determined or considered to be complete. If the PSC fails to take final action within that deadline, the PSC is considered to have issued a CPCN to the applicant. However, current law also allows the PSC to petition the circuit court for Dane County for an extension of the deadline for no more than an additional 180 days. Upon a showing of good cause, the court may extend the deadline. If the PSC fails to take final action within the extended deadline, the PSC is considered to have issued the CPCN. The bill eliminates the requirement for the PSC to petition the court for a deadline extension. Instead, the bill allows the chairperson of the PSC to extend the deadline for no more than an additional 180 days for good cause. As under current law, if the PSC fails to take final action within the extended deadline, the PSC is considered to have issued the CPCN.

Public utility rate schedules. Under current law, certain public utilities must file schedules with the PSC showing their rates for service. Current law requires the PSC to determine the portion of a public utility's rate schedule that is necessary for public use and the public utility must print a copy of that portion in

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plain type. The bill requires the copy to be produced, rather than printed, in plain type. Current law also requires a public utility to keep the copy on file, in a form and place readily accessible to the public, at every station or office where customers make payments. The bill changes the foregoing requirement so that a public utility must keep the copy on file at the public utility and make the copy available to the public by making it available at locations where customer payments are accepted, on the public utility's Internet site, or in a form and place that is otherwise readily accessible to the public.

Telecommunications regulation. Current law exempts telecommunications utilities from a variety of requirements that apply to other public utilities. The bill creates an additional exemption. Under current law, the PSC has the authority to require public utilities to record or report certain accidents. The bill exempts telecommunications utilities from that authority. The bill also repeals an obsolete definition of "transmission facility" relating to telecommunications service.

Under current law, no person may provide service as an alternative telecommunications utility (ATU) unless the PSC certifies that the person is an ATU. Current law defines ATU to include the following: 1) cable television telecommunications service providers (CTTSPs); 2) telecommunications resellers; 3) pay telephone service providers; and 4) other telecommunications providers that the PSC finds offer service that is available from other telecommunications providers. Current law defines a CTTSP as a telecommunications provider that receives a specified percentage of its gross income from the operation of a cable television system. Current law also requires a CTTSP to file annual statements regarding gross income with the PSC. Current law defines "pay telephone service provider" as a person who owns or leases a pay telephone located on property owned or leased by that person and who otherwise does not offer any telecommunications service to the public.

The bill revises the definition of ATU so that it does not include CTTSPs or pay telephone service providers. The bill also repeals the annual filing requirement for CTTSPs, as well as the PSC's administrative rules regarding CTTSPs. In addition, the bill provides that a former CTTSP that the PSC certified as an ATU before the bill's effective date is considered certified as an ATU on the basis that the person offers telecommunications service available from other telecommunications providers. The bill also requires the PSC to issue a certification specifying that the former CTTSP is an ATU on that basis.

Legislative repeal or modification of agency rules. Current law sets forth a procedure for the promulgation of administrative rules (rules). Generally, that procedure consists of the following steps:

1. The agency planning to promulgate the rule prepares a statement of the scope of the proposed rule, which the governor and the agency head must approve before any state employee or official may perform any activity in connection with the drafting of the proposed rule.

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2. The agency drafts the proposed rule, together with an economic impact analysis, plain language analysis, and fiscal estimate for the proposed rule, and submits those materials to the Legislative Council Staff for review.

3. Subject to certain exceptions, a public hearing is held on the proposed rule.

4. The final draft of the proposed rule is submitted to the governor for approval.

5. The final draft of the proposed rule, together with an economic impact analysis, plain language analysis, and fiscal estimate for the proposed rule, are submitted to the legislature for review by one standing committee in each house and by the Joint Committee for Review of Administrative Rules.

6. The proposed rule is filed with the Legislative Reference Bureau (LRB) for publication in the Wisconsin Administrative Code (code) and the Wisconsin Administrative Register (register), and, subject to certain exceptions, the rule becomes effective on the first day of the first month beginning after publication.

Under the bill, if a bill that repeals or modifies a rule is enacted, the ordinary rule-making procedures under current law do not apply. Instead, the LRB must publish the repeal or modification, in the code and the register, and the repeal or modification, subject to certain exceptions, takes effect on the first day of the first month beginning after publication.

Tampering with telecommunications or electric wires. Under current law, a person who intentionally destroys, disturbs, interferes with, or injures the property of any telegraph, telecommunications, electric light, or electric power company is guilty of a Class B misdemeanor and a person who intentionally makes a physical electrical connection with any property of any telecommunications or electric power company is guilty of a Class A misdemeanor. The bill adds telegraph companies and electric light companies to the second offense for consistency.

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

1 **SECTION 1.** 13.92 (4) (bm) of the statutes is created to read:
2 13.92 (4) (bm) If 2 or more rules filed under s. 227.20 or modified under s.
3 227.265 affect the same unit of the Wisconsin administrative code without taking
4 cognizance of the effect thereon of the other rules and if the legislative reference
5 bureau finds that there is no mutual inconsistency in the changes made by each such
6 rule, the legislative reference bureau shall incorporate the changes made by each
7 rule into the text of the unit and document the incorporation in a note to the unit.
8 For each such incorporation, the legislative reference bureau shall include in a

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1 correction bill a provision formally validating the incorporation. Section 227.27 (2)
2 is not affected by printing decisions made by the legislative reference bureau under
3 this paragraph.

4 **SECTION 2.** 13.92 (4) (c) of the statutes is amended to read:

5 13.92 (4) (c) The legislative reference bureau may insert in the Wisconsin
6 administrative code a note explaining any change made under par. (b) or (bm).

7 **SECTION 3.** 13.92 (4) (d) of the statutes is amended to read:

8 13.92 (4) (d) Sections 227.114, 227.116, 227.135, and 227.14 to 227.24 do not
9 apply to any change made by the legislative reference bureau under par. (b) or (bm).

10 **SECTION 4.** 13.92 (4) (e) of the statutes is amended to read:

11 13.92 (4) (e) The legislative reference bureau shall prepare and keep on file a
12 record of each change made under par. (b) or (bm).

13 **SECTION 5.** 13.92 (4) (f) of the statutes is amended to read:

14 13.92 (4) (f) The legislative reference bureau shall notify the agency involved
15 of each change made under par. (b) or (bm).

16 **SECTION 6.** 20.395 (3) (jh) of the statutes is amended to read:

17 20.395 (3) (jh) *Utility facilities within highway rights-of-way, state funds.*
18 From the general fund, all moneys received from telecommunications providers, as
19 defined in s. 196.01 (8p), or cable television telecommunications service providers,
20 as defined in s. 196.01 (1r), 2011 stats., for activities related to locating,
21 accommodating, operating, or maintaining utility facilities within highway
22 rights-of-way, for such purposes.

23 **SECTION 7.** 35.93 (2) (b) 4. of the statutes, as affected by 2013 Wisconsin Act 20,
24 is amended to read:

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1 35.93 (2) (b) 4. Copies of all rules filed with the legislative reference bureau
2 under s. 227.20 (1) or modified under s. 227.265 since the compilation of the
3 preceding register, including emergency rules filed under s. 227.24 (3).

4 **SECTION 8.** 35.93 (2) (c) 1. of the statutes, as affected by 2013 Wisconsin Act 20,
5 is amended to read:

6 35.93 (2) (c) 1. Each chapter of the Wisconsin administrative code that has been
7 affected by rules filed with legislative reference bureau under s. 227.20 (1) or
8 modified under s. 227.265, in accordance with sub. (3) (e) 1.

9 **SECTION 9.** 35.93 (3) of the statutes is amended to read:

10 35.93 (3) The legislative reference bureau shall compile and deliver to the
11 department for printing copy for a register which shall contain all the rules filed
12 under s. 227.20 or modified under s. 227.265 since the compilation of rules for the
13 preceding issue of the register was made and those executive orders which are to be
14 in effect for more than 90 days or an informative summary thereof. The complete
15 register shall be compiled and published before the first day of each month and a
16 notice section of the register shall be compiled and published before the 15th day of
17 each month. Each issue of the register shall contain a title page with the name
18 “Wisconsin administrative register”, the number and date of the register, and a table
19 of contents. Each page of the register shall also contain the date and number of the
20 register of which it is a part in addition to the other necessary code titles and page
21 numbers. The legislative reference bureau may include in the register such
22 instructions or information as in the bureau’s judgment will help the user to correctly
23 make insertions and deletions in the code and to keep the code current.

24 **SECTION 10.** 35.93 (3) (e) (intro.) of the statutes, as affected by 2013 Wisconsin
25 Act 20, is amended to read:

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1 35.93 (3) (e) (intro.) The legislative reference bureau shall incorporate into the
2 appropriate chapters of the Wisconsin administrative code each permanent rule filed
3 with the legislative reference bureau under s. 227.20 (1) or modified under s. 227.265
4 and, for each chapter of the administrative code affected by a rule, do all of the
5 following:

6 **SECTION 11.** 35.93 (3) (e) 1. of the statutes, as affected by 2013 Wisconsin Act
7 20, is amended to read:

8 35.93 (3) (e) 1. Publish the chapter in the appropriate end-of-month register
9 in accordance with the filing deadline for publication established in the rules
10 procedures manual published under s. 227.15 (7) ~~or~~, in an end-of-month register
11 agreed to by the submitting agency and the legislative reference bureau, or, in the
12 case of a rule modified under s. 227.265, in the end-of-month register for the month
13 in which the bill modifying the rule is enacted.

14 **SECTION 12.** 101.862 (4) (f) of the statutes, as created by 2007 Wisconsin Act
15 63, is amended to read:

16 101.862 (4) (f) A person engaged in installing, repairing, or maintaining
17 electrical wiring of transmission facilities, as defined in s. 196.01 (12), 2011 stats.

18 **SECTION 13.** 196.01 (1d) (a) of the statutes is repealed.

19 **SECTION 14.** 196.01 (1d) (b) of the statutes is repealed.

20 **SECTION 15.** 196.01 (1r) of the statutes is repealed.

21 **SECTION 16.** 196.01 (4m) of the statutes is repealed.

22 **SECTION 17.** 196.01 (12) of the statutes is repealed.

23 **SECTION 18.** 196.19 (3) of the statutes is amended to read:

24 196.19 (3) A copy of as much of the schedules filed under sub. (1) as the
25 commission determines necessary for the use of the public shall be ~~printed~~ produced

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1 in plain type, and kept on file ~~in every~~ at the public utility station or office where
2 payments are made by consumers, and made available to the public at least 10 days
3 before the schedules take effect, unless the commission prescribes a shorter time
4 period. In making a copy available to the public, a public utility may make the copy
5 available at locations where customer payments are accepted, on the public utility's
6 Internet site, or in a form and place that is otherwise readily accessible to the public.

7 **SECTION 19.** 196.19 (4) of the statutes is amended to read:

8 196.19 (4) If a schedule of joint rates or charges is in force between public
9 utilities, the schedule shall be ~~printed and~~ filed with the commission under sub. (1).
10 The commission shall determine the portion of the schedule necessary for the use of
11 the public. The public utilities shall ~~file~~ make the portion of the schedule available
12 to the public as provided under sub. (3).

13 **SECTION 20.** 196.192 (3) (b) of the statutes is amended to read:

14 196.192 (3) (b) Nothing in s. 196.20, ~~196.21,~~ 196.22, 196.37, 196.60 or 196.604
15 prohibits the commission from approving a filing under sub. (2) or approving
16 market-based rates under par. (a).

17 **SECTION 21.** 196.194 of the statutes is amended to read:

18 **196.194 Gas utility individual contracts.** Nothing in ss. 196.03, 196.19,
19 196.20, ~~196.21,~~ 196.22, 196.37, 196.60, 196.604 and 196.625 prohibits the
20 commission from approving the filing of a tariff which permits a gas utility to enter
21 into an individual contract with an individual customer if the term of the contract
22 is no more than 5 years, or a longer period approved by the commission, and if the
23 commission determines that substitute gas services are available to customers or
24 potential customers of the gas utility and the absence of such a tariff will cause the
25 gas utility to be disadvantaged in competing for business. A tariff filed under this

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1 section shall include the condition that any such contract shall be compensatory. The
2 tariff shall include any other condition and procedure required by the commission in
3 the public interest. Within 20 days after a contract authorized under this section or
4 an amendment to such a contract has been executed, the gas utility shall submit the
5 contract to the commission. The commission shall give notice to any person, upon
6 request, that a contract authorized under this section has been received by the
7 commission. The notice shall identify the gas utility that has entered into the
8 contract. Within 6 months after receiving substantial evidence that a contract may
9 be noncompensatory, or upon its own motion, the commission shall investigate and
10 determine whether the contract is compensatory. If the commission determines that
11 the contract is noncompensatory, the commission may make appropriate
12 adjustments in the rates or tariffs of the gas utility that has entered into the contract,
13 in addition to other remedies under this chapter. The dollar amount of the
14 adjustment may not be less than the amount by which the contract was found to be
15 noncompensatory.

16 **SECTION 22.** 196.203 (1m) of the statutes is repealed.

17 **SECTION 23.** 196.21 of the statutes is repealed.

18 **SECTION 24.** 196.49 (5g) (a) (intro.) of the statutes is amended to read:

19 196.49 (5g) (a) (intro.) A public utility is exempt from the requirement to obtain
20 a certification or approval of the commission under ~~this section~~ sub. (2) or (3) before
21 beginning a proposed project if the estimated gross cost of the proposed project is not
22 more than one of the following cost thresholds:

23 **SECTION 25.** 196.491 (3) (g) of the statutes is amended to read:

24 196.491 (3) (g) The commission shall take final action on an application filed
25 under par. (a) 1. within 180 days after the application is determined or considered

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1 to be complete under par. (a) 2. If the commission fails to take final action within the
2 180-day period, the commission is considered to have issued a certificate of public
3 convenience and necessity with respect to the application, unless the ~~commission,~~
4 ~~within the 180-day period, petitions the circuit court for Dane County for an~~
5 ~~extension of time for taking final action on the application and the court grants an~~
6 ~~extension. Upon a showing of good cause, the court may extend the 180-day~~
7 ~~chairperson of the commission extends the time period for no more than an~~
8 additional 180 days for good cause. If the commission fails to take final action within
9 the extended period, the commission is considered to have issued a certificate of
10 public convenience and necessity with respect to the application.

11 **SECTION 26.** 196.50 (2) (i) of the statutes is amended to read:

12 196.50 (2) (i) A telecommunications utility certified under this subsection is
13 exempt from ss. 196.02 (2) and (6), 196.05, 196.06, 196.07, 196.08, 196.09, 196.10,
14 196.12, 196.13, 196.16, 196.18, 196.19, 196.20, ~~196.21~~, 196.219 (3) (c), (e), (g), and (L),
15 (4d), (4m), and (5), 196.24, 196.395 (1), 196.49, 196.52, 196.58, 196.60, 196.64,
16 196.72, 196.78, and 196.79 and, except with respect to wholesale
17 telecommunications service, is exempt from s. 196.219 (4).

18 **SECTION 27.** 197.10 (4) of the statutes is amended to read:

19 197.10 (4) Insofar as the use, operation, service, management, control, sale,
20 lease, purchase, extension, improvement, rates, value or earnings of the properties
21 of the public utility or provisions looking toward the ultimate acquisition of the same
22 are made subject to the terms of any contract provided for in sub. (1), and so long as
23 said contract remains in force, the following sections of the statutes shall be
24 inapplicable to the same: ss. 196.02 (1) and (2), 196.05, 196.09, 196.10, 196.11,
25 196.15, 196.16, 196.19 (6), 196.20, ~~196.21~~, 196.22, 196.26, 196.28, 196.30, 196.37,

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1 196.39, 196.40, 196.58, 196.70, 197.01 (2) to (4), 197.02, 197.03, 197.04, 197.05,
2 197.06, 197.08 and 197.09; provided that nothing in any contract made hereunder
3 shall operate to prevent an appeal to the public service commission by any person,
4 other than a party to said contract, upon any complaint alleging that any rate, fare,
5 charge or classification, or any joint rate, or any regulation, act or practice relating
6 to the production, transmission, delivery or furnishing of gas, heat, light or power,
7 or any service in connection therewith, is unjustly discriminatory, or that any such
8 service is inadequate or cannot be obtained. Upon said appeal the commission shall,
9 as provided by law, determine and by order fix a rate, fare, charge, classification, joint
10 rate or regulation, act or practice or service to be imposed, observed or followed in the
11 future in lieu of that found to be unjustly discriminatory or inadequate.

12 **SECTION 28.** 227.01 (13) (intro.) of the statutes is amended to read:

13 227.01 (13) (intro.) “Rule” means a regulation, standard, statement of policy,
14 or general order of general application which has the effect of law and which is issued
15 by an agency to implement, interpret, or make specific legislation enforced or
16 administered by the agency or to govern the organization or procedure of the agency.
17 “Rule” includes a modification of a rule under s. 227.265. “Rule” does not include, and
18 s. 227.10 does not apply to, any action or inaction of an agency, whether it would
19 otherwise meet the definition under this subsection, which:

20 **SECTION 29.** 227.11 (2) (intro.) of the statutes is amended to read:

21 227.11 (2) (intro.) Rule-making authority is expressly conferred on an agency
22 as follows:

23 **SECTION 30.** 227.265 of the statutes is created to read:

24 **227.265 Repeal or modification of rules.** If a bill to repeal or modify a rule
25 is enacted, the procedures under ss. 227.114 to 227.21 and 227.26 do not apply.

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1 Instead, the legislative reference bureau shall publish the repeal or modification in
2 the Wisconsin administrative code and register as required under s. 35.93, and the
3 repeal or modification shall take effect as provided in s. 227.22.

4 **SECTION 31.** 227.27 (2) of the statutes is amended to read:

5 227.27 (2) The code shall be prima facie evidence in all courts and proceedings
6 as provided by s. 889.01, but this does not preclude reference to or, in case of a
7 discrepancy, control over a rule filed with the legislative reference bureau ~~or the~~
8 ~~secretary of state~~ under s. 227.20 or modified under s. 227.265, and the certified copy
9 of a rule shall also and in the same degree be prima facie evidence in all courts and
10 proceedings.

11 **SECTION 32.** 941.40 (3) and (4) (b) of the statutes are amended to read:

12 941.40 (3) Any person who, for any purpose, intentionally makes or causes to
13 be made a physical electrical connection with any wire, cable, conductor, ground,
14 equipment, facility, or other property of any telegraph, telecommunications, electric
15 light, or electric power company, including a cooperative association organized under
16 ch. 185, is guilty of a Class A misdemeanor.

17 (4) (b) Subsections (2) and (3) do not apply to a person who acts with the
18 permission of the telegraph, telecommunications, electric light, or electric power
19 company, including a cooperative association organized under ch. 185, ~~that is~~
20 ~~affected or that owns the wire, pole, cable, conductor, ground, equipment, facility, or~~
21 ~~other affected property or with the permission of the person who owns the property~~
22 ~~on which the wire, pole, cable, conductor, ground, equipment, facility, or other~~
23 ~~affected property is located.~~

24 **SECTION 33.** PSC ch. 171 of the administrative code is repealed.

25 **SECTION 34. Nonstatutory provisions.**

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1 (1) CABLE TELEVISION TELECOMMUNICATIONS SERVICE PROVIDERS.

2 (a) In this subsection, “cable television telecommunications provider” means
3 a person whom the public service commission has, prior to the effective date of this
4 paragraph, certified as an alternative telecommunications utility defined in section
5 196.01 (1d) (a), 2011 stats.

6 (b) On the effective date of this paragraph, a cable television
7 telecommunications service provider is considered certified as an alternative
8 telecommunications utility defined in section 196.01 (1d) (f) of the statutes,
9 notwithstanding the absence of a finding required under section 196.01 (1d) (f). The
10 public service commission shall issue a certification as an alternative
11 telecommunications utility defined in section 196.01 (1d) (f) to each such cable
12 television telecommunications service provider.

13 **SECTION 35. Initial applicability.**

14 (1) AVAILABILITY OF PUBLIC UTILITY SCHEDULES. The treatment of sections 196.19
15 (3) and (4) and 196.21 of the statutes first applies to schedules that are filed on the
16 effective date of this subsection.

17 (2) PROJECT CERTIFICATES AND APPROVALS. The treatment of section 196.49 (5g)
18 (a) (intro.) of the statutes first applies to projects that begin on the effective date of
19 this subsection.

20 (3) CERTIFICATES OF PUBLIC CONVENIENCE AND NECESSITY; DEADLINE EXTENSION.
21 The treatment of section 196.491 (3) (g) of the statutes first applies to applications
22 received on the effective date of this subsection.

23 (4) TAMPERING WITH TELECOMMUNICATIONS OR ELECTRIC WIRES. The treatment of
24 section 941.40 (3) and (4) (b) of the statutes first applies to an act committed on the
25 effective date of this subsection.

