



2003 ASSEMBLY BILL 61

February 13, 2003 – Introduced by Representatives MONTGOMERY, JENSEN, M. LEHMAN, PETTIS, VAN ROY, WEBER, TURNER, J. FITZGERALD, VRAKAS and NISCHKE, cosponsored by Senators LEIBHAM, S. FITZGERALD and BRESKE. Referred to Committee on Energy and Utilities.

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 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) and operating facilities for routing wireless 911 telephone calls (wireless public safety answering points). 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 nine months after the bill's effective date. An application must include an estimate of the costs that, during the three-year period beginning nine months after the bill's effective date, the wireless provider has incurred or will incur to upgrade, purchase, lease, program, install, test, operate, or maintain all data, hardware, and software

ASSEMBLY BILL 61

necessary to comply with the FCC orders. The application must also include supporting documentation for the estimate.

For local governments, only the local governments that operate a wireless public safety answering point that is specified in a resolution passed by a county are eligible for the grants. Only one wireless public safety answering point in each county is eligible for the grants. A county has until nine 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 nine months after the bill's effective date. An application must include an estimate of the costs that, during the three-year period beginning nine months 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 the wireless public safety answering point. 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 wireless public safety answering point; 2) training operators of the wireless public safety answering point; and 3) network costs for delivery of calls to the wireless public safety answering point. The application must also include supporting documentation for the estimate.

For both wireless providers and local governments, the PSC must approve an application if the PSC determines that the estimated costs are reasonable and have been, or will be, incurred for the purpose of promoting an effective and efficient statewide system for responding to wireless 911 telephone calls. In addition, the bill prohibits grants to local governments from being used for specified costs, including certain costs for dispatching emergency services and salaries and benefits for operators of wireless public safety answering points. If the PSC does not approve an application, the PSC must provide the applicant with its reasons and provide an opportunity to resubmit the application.

The bill requires the PSC to promulgate rules for making grants, including criteria for approving estimated costs and record-keeping requirements for ensuring that the grants are used for approved costs. The bill also requires the PSC to promulgate rules for making supplemental grants to counties for the joint operation of a wireless public safety answering point by different counties or local governments in different counties. To be eligible for supplemental grants, the resolution described above for each county must specify the same wireless public safety answering point, which is the only wireless public safety answering point for which local governments in the counties may receive the grants described above.

The funding source for the grants is a uniform monthly surcharge imposed by wireless providers for each customer telephone number that is billed to an address in this state. The surcharge may be imposed only during the three-year period beginning nine months after the bill's effective date. 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. 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. Wireless providers must pay the surcharge to the PSC for deposit into a wireless 911 fund that is created in the bill.

ASSEMBLY BILL 61

A wireless provider is not liable for surcharges that are not paid by customers. Instead, the bill allows 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 withhold from public inspection any information the PSC receives that would aid the competitor of a wireless provider.

2. 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.

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

4. Wireless providers are immune from liability to any person who makes an emergency telephone call initially routed to a wireless public safety answering point for which a grant is made under the bill.

5. The surcharge under the bill is exempt from the sales and use taxes.

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

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:

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

2 20.155 (3) WIRELESS 911 GRANTS. (q) *General program operations and grants.*

3 From the wireless 911 fund, all moneys received under s. 146.70 (3m) (f) 1. to

4 administer and make grants under s. 146.70 (3m) (d) and supplemental grants under

5 s. 146.70 (3m) (e).

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

7 25.17 (1) (yo) Wireless 911 fund (s. 25.98);

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

ASSEMBLY BILL 61

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

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

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

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

9 77.51 (15) (b) 7. The surcharge established in rules of the public service
10 commission under s. 146.70 (3m) (f) for customers of wireless providers, as defined
11 in s. 146.70 (3m) (a) 5.

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

13 146.70 (3m) WIRELESS PROVIDERS. (a) *Definitions.* In this subsection:

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

15 2. “Federal wireless orders” means the orders of the federal communications
16 commission regarding 911 emergency services for wireless telephone users in FCC
17 docket no. 94-102.

18 3. “Local government” means a city, village, town, or county, or an entity formed
19 by a contract under s. 66.0301 (2) by a city, village, town, or county.

20 4. “Reimbursement period” means the period of time between the first day of
21 the 10th month beginning after the effective date of this subdivision [revisor
22 inserts date], and the first day of the 46th month after the effective date of this
23 subdivision [revisor inserts date].

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

ASSEMBLY BILL 61

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

6 (b) *Grant applications; wireless providers.* A wireless provider may not receive
7 a grant under par. (d) unless, no later than the first day of the 10th month after the
8 effective date of this paragraph [revisor inserts date], the wireless provider
9 applies to the commission with an estimate, and supporting documentation, of the
10 costs that it has incurred, or will incur, during the reimbursement period to upgrade,
11 purchase, lease, program, install, test, operate, or maintain all data, hardware, and
12 software necessary to comply with the federal wireless orders.

13 (c) *Grant applications; local governments.* 1. A local government that operates
14 a wireless public safety answering point, or local governments that jointly operate
15 a wireless public safety answering point, may not receive a grant under par. (d)
16 unless the requirements under subds. 3. and 4. are satisfied and, no later than the
17 first day of the 10th month after the effective date of this subdivision [revisor
18 inserts date], every county which itself is one of the local governments or in which
19 any of the local governments is located applies to the commission with an estimate,
20 and supporting documentation, of the costs that the local government or local
21 governments have directly and primarily incurred, or will directly and primarily
22 incur, during the reimbursement period for leasing, purchasing, operating, or
23 maintaining the wireless public safety answering point, including costs for all of the
24 following:

ASSEMBLY BILL 61**SECTION 6**

1 a. Necessary network equipment, computer hardware and software, database
2 equipment, and radio and telephone equipment, that are located within the wireless
3 public safety answering point.

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

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

7 2. If an application under subd. 1. is for the joint operation of a wireless public
8 safety answering point by local governments, the application shall specify the
9 manner in which the estimated costs are apportioned among the local governments.

10 3. A local government that operates a wireless public safety answering point,
11 or local governments that jointly operate a wireless public safety answering point,
12 are not eligible for grants under par. (d) unless, no later than the first day of the 10th
13 month beginning after the effective date of this subdivision ... [revisor inserts date],
14 every county which itself is one of the local governments or in which any of the local
15 governments is located has passed a resolution specifying that the wireless public
16 safety answering point is eligible for the grants. Except as provided in subd. 4., only
17 one wireless public safety answering point in each county is eligible for local
18 governments to receive grants under par. (d).

19 4. If a county or local government in a county jointly operates a wireless public
20 safety answering point with another county or local government in another county,
21 the resolution passed by each county under subd. 3. shall specify the same wireless
22 public safety answering point, and the counties shall submit a joint application
23 under subd. 1. that complies with the requirement under subd. 2. In each county that
24 submits a joint application, only the wireless public safety answering point specified
25 in the resolutions is eligible for local governments to receive grants under par. (d).

ASSEMBLY BILL 61

1 (d) *Grants; commission approval and rules.* 1. The commission shall approve
2 an application under par. (b) or (c) if the commission determines that the costs
3 estimated in the application are reasonable and have been, or will be, incurred for
4 the purpose of promoting an effective and efficient statewide system for responding
5 to wireless emergency 911 telephone calls. If the commission does not approve an
6 application, the commission shall provide the applicant or applicants with the
7 commission's reasons and give the applicant or applicants an opportunity to
8 resubmit the application.

9 2. From the appropriation under s. 20.155 (3) (q), the commission shall make
10 grants to reimburse wireless providers and local governments for costs approved
11 under subd. 1. For applications for the joint operation of a wireless public safety
12 answering point, the commission shall apportion the grants in the manner specified
13 under par. (c) 2.

14 3. No grant to a local government under subd. 2. may be used to reimburse costs
15 for any of the following:

16 a. Emergency service dispatch, including personnel, training, equipment,
17 software, records management, radio communications, and mobile data network
18 systems.

19 b. Vehicles and equipment in vehicles.

20 c. Communications equipment and software used to communicate with
21 vehicles.

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

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

ASSEMBLY BILL 61

1 4. The commission shall promulgate rules establishing requirements and
2 procedures for making grants under this paragraph, including criteria for approving
3 estimated costs under subd. 1. The rules shall include record-keeping requirements
4 to ensure that the grants are used to reimburse estimated costs approved by the
5 commission. The rules shall allow the commission to make the grants in
6 installments.

7 (e) *Supplemental grants.* The commission shall promulgate rules for making
8 supplemental grants from the appropriation under s. 20.155 (3) (q) to counties that
9 submit joint applications required under par. (c) 4. The rules shall establish the
10 supplemental grants in amounts that provide an incentive for counties to submit
11 joint applications. The rules may not impose any limits on the use of a supplemental
12 grant and shall allow the commission to make the grants in installments.

13 (f) *Wireless surcharge.* 1. The commission shall promulgate rules requiring
14 each wireless provider to impose a uniform monthly surcharge for each telephone
15 number of a customer that has a billable address in this state and pay the surcharge
16 to the commission for deposit in the wireless 911 fund. The rules may not require the
17 surcharge to be imposed before the first day of the 10th month beginning after the
18 effective date of this subdivision [revisor inserts date], or after the first day of the
19 46th month beginning after the effective date of this subdivision [revisor inserts
20 date]. The amount of the surcharge shall be sufficient for the commission to
21 administer and make the grants under par. (d) and the supplemental grants under
22 par. (e).

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

ASSEMBLY BILL 61

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

3 4. The commission may bring an action to collect a surcharge that is not paid
4 by a customer and the customer's wireless provider is not liable for the unpaid
5 surcharge.

6 (g) *Confidentiality of information.* The commission shall withhold from public
7 inspection any information received under this subsection that would aid a
8 competitor of a wireless provider in competition with the wireless provider.

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

12 (i) *Sunset.* This subsection does not apply after the first day of the 46th month
13 beginning after the effective date of this paragraph [revisor inserts date].

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

15 146.70 (7) TELECOMMUNICATIONS UTILITY AND WIRELESS PROVIDERS NOT LIABLE. A
16 telecommunications utility shall not be liable to any person who uses an emergency
17 number system created under this section and a wireless provider, as defined in sub.
18 (3m) (a) 5., shall not be liable to any person who makes an emergency telephone call
19 initially routed to a wireless public safety answering point, as defined in sub. (3m)
20 (a) 6., for which a grant is made under sub. (3m) (d).

21 **SECTION 8. Nonstatutory provisions.**

22 (1) WIRELESS 911 SURCHARGE RULES.

23 (a) *Emergency rules.* The public service commission may, using the procedure
24 under section 227.24 of the statutes, promulgate the rules under section 146.70 (3m)
25 (f) 1. of the statutes, as created by this act, for the period before permanent rules

ASSEMBLY BILL 61

1 become effective, but not to exceed the period authorized under section 227.24 (1) (c)
2 and (2) of the statutes. Notwithstanding section 227.24 (1) (a), (2) (b), and (3) of the
3 statutes, the commission is not required to provide evidence that promulgating a rule
4 under this paragraph as an emergency rule is necessary for the preservation of the
5 public peace, health, safety, or welfare and is not required to provide a finding of
6 emergency for a rule promulgated under this paragraph.

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

12 (2) WIRELESS 911 GRANT RULES.

13 (a) *Emergency rules.* The public service commission shall, using the procedure
14 under section 227.24 of the statutes, promulgate the rules under section 146.70 (3m)
15 (d) 4. and (e) of the statutes, as created by this act, for the period before permanent
16 rules become effective, but not to exceed the period authorized under section 227.24
17 (1) (c) and (2) of the statutes. Notwithstanding section 227.24 (1) (a), (2) (b), and (3)
18 of the statutes, the commission is not required to provide evidence that promulgating
19 a rule under this paragraph as an emergency rule is necessary for the preservation
20 of the public peace, health, safety, or welfare and is not required to provide a finding
21 of emergency for a rule promulgated under this paragraph. The public service
22 commission shall promulgate the rules required under this paragraph no later than
23 the first day of the 7th month beginning after the effective date of this paragraph.

24 (b) *Proposed rules.* The public service commission shall submit in proposed
25 form the rules required under section 146.70 (3m) (d) 4. and (e) of the statutes, as

