



2013 ASSEMBLY BILL 34

February 18, 2013 – Introduced by Representatives JACQUE, TITTL, BIES, BROOKS, LEMAHIEU, MURPHY, J. OTT, SCHRAA, STONE and MARKLEIN, cosponsored by Senators LASEE, GROTHMAN and GUDEX. Referred to Committee on Energy and Utilities.

1 **AN ACT** *to renumber and amend* 196.378 (1) (i); *to amend* 196.378 (title),
2 196.378 (1) (ag), 196.378 (1) (b), 196.378 (1) (fm) (intro.), 196.378 (1) (fm) 1.,
3 196.378 (1) (fm) 2., 196.378 (1) (o) (intro.), 196.378 (1) (o) 1., 196.378 (1) (o) 2.,
4 196.378 (2) (title), 196.378 (2) (a) 1., 196.378 (2) (a) 2. a., 196.378 (2) (a) 2. b.,
5 196.378 (2) (a) 2. c., 196.378 (2) (a) 2. d., 196.378 (2) (a) 2. e., 196.378 (2) (b) 5.,
6 196.378 (2) (bm), 196.378 (2) (c), 196.378 (2) (d) (intro.), 196.378 (2) (d) 2.,
7 196.378 (2) (e) 2., 196.378 (2) (e) 3., 196.378 (2) (e) 4., 196.378 (3) (title), 196.378
8 (3) (a) 1., 196.378 (3) (a) 1m., 196.378 (3) (a) 2., 196.378 (3) (c), 196.378 (4m)
9 (title), 196.378 (4m) (a), 196.378 (4m) (b), 196.378 (4r) and 196.378 (5) (intro.);
10 and *to create* 196.378 (1) (ab), 196.378 (1) (ac) and 196.378 (1) (ad) of the
11 statutes; **relating to:** the use of nuclear energy to comply with renewable

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1 portfolio standards and the time period for using credits to comply with such
2 standards.

Analysis by the Legislative Reference Bureau

Under current law, an electric utility or retail electric cooperative (utility or cooperative) is subject to certain requirements for ensuring that, in a given year, a specified percentage of the electricity that the utility or cooperative sells to retail customers is derived from renewable resources. Such requirements are commonly referred to as “renewable portfolio standards.” A utility or cooperative creates renewable resource credits based on the amount of electricity derived from renewable resources that the utility or cooperative sells to its customers or members in a year. Current law allows a utility or cooperative to use the credits to comply with a renewable portfolio standard for a particular year, bank the credits for use in a subsequent year, or sell the credits to another utility or cooperative. Current law defines “renewable resource” to include solar and wind power, geothermal technology, biomass, and other specified resources. A utility or cooperative may not create a credit based on electricity derived from a “conventional resource,” which current law defines to include coal, oil, nuclear power, and, with certain exceptions, natural gas.

This bill allows a utility or cooperative to use electricity derived from nuclear power to comply with a renewable portfolio standard. The bill achieves that result by allowing a utility or cooperative to create credits based on the amount of electricity derived from nuclear power that the utility or cooperative sells to its customers or members in a year, in addition to the amount of electricity derived from renewable resources. However, only electricity generated at a nuclear facility in this state may be used to comply with a renewable portfolio standard. In addition, the electricity may not be used if it is subject to a power purchase agreement that was entered into before the bill’s effective date.

The bill also eliminates a restriction on the use of credits to comply with renewable portfolio standards. Under current law, a credit may not be used after the fourth year in which the credit is created, unless the Public Service Commission promulgates rules specifying a different time period. This bill eliminates that restriction.

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

3 **SECTION 1.** 196.378 (title) of the statutes is amended to read:

4 **196.378 (title) Renewable resources and advanced energy.**

5 **SECTION 2.** 196.378 (1) (ab) of the statutes is created to read:

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1 196.378 (1) (ab) “Advanced energy” means electricity generated by an
2 advanced facility, but does not include electricity that is subject to a power purchase
3 agreement entered into before the effective date of this paragraph [LRB inserts
4 date].

5 **SECTION 3.** 196.378 (1) (ac) of the statutes is created to read:

6 196.378 (1) (ac) “Advanced energy supplier” means a person from whom an
7 electric provider purchases advanced energy at wholesale.

8 **SECTION 4.** 196.378 (1) (ad) of the statutes is created to read:

9 196.378 (1) (ad) “Advanced facility” means an installed and operational facility
10 located in this state that generates electricity from nuclear power.

11 **SECTION 5.** 196.378 (1) (ag) of the statutes is amended to read:

12 196.378 (1) (ag) “Baseline renewable percentage” means the average of an
13 energy provider’s renewable energy percentage, as defined in s. 196.378 (1) (fm),
14 2011 stats., for 2001, 2002, and 2003.

15 **SECTION 6.** 196.378 (1) (b) of the statutes is amended to read:

16 196.378 (1) (b) “Conventional resource” means a resource that derives energy
17 from coal, oil, ~~nuclear power~~ or natural gas, except for natural gas used in a fuel cell.

18 **SECTION 7.** 196.378 (1) (fm) (intro.) of the statutes is amended to read:

19 196.378 (1) (fm) (intro.) “Renewable and advanced energy percentage” means,
20 with respect to an electric provider for a particular year, the percentage that results
21 from dividing the sum of the megawatt hours represented by the following by the
22 total amount of electricity that the electric provider sold to retail customers or
23 members in that year:

24 **SECTION 8.** 196.378 (1) (fm) 1. of the statutes is amended to read:

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1 196.378 (1) (fm) 1. The renewable resource credits created from the electric
2 provider's total renewable and advanced energy in that year.

3 **SECTION 9.** 196.378 (1) (fm) 2. of the statutes is amended to read:

4 196.378 (1) (fm) 2. Any renewable resource credits in addition to the renewable
5 resource credits specified in subd. 1. that the electric provider elects to use in that
6 year.

7 **SECTION 10.** 196.378 (1) (i) of the statutes is renumbered 196.378 (1) (jm) and
8 amended to read:

9 196.378 (1) (jm) "~~Renewable resource~~ "Resource credit" means a credit
10 calculated in accordance with rules promulgated under sub. (3) (a) 1., 1m., and 2.

11 **SECTION 11.** 196.378 (1) (o) (intro.) of the statutes is amended to read:

12 196.378 (1) (o) (intro.) "Total renewable and advanced energy" means the total
13 amount of renewable and advanced energy that the electric provider sold to its
14 customers or members in a year. "Total renewable and advanced energy" does not
15 include any energy that is used to comply with the renewable or advanced energy
16 requirements of another state. "Total renewable and advanced energy" includes all
17 of the following:

18 **SECTION 12.** 196.378 (1) (o) 1. of the statutes is amended to read:

19 196.378 (1) (o) 1. Renewable or advanced energy supplied by a renewable or
20 advanced facility owned or operated by an affiliated interest or wholesale supplier
21 of an electric provider and allocated to the electric provider under an agreement
22 between the electric provider and the affiliated interest or wholesale supplier.

23 **SECTION 13.** 196.378 (1) (o) 2. of the statutes is amended to read:

24 196.378 (1) (o) 2. Renewable or advanced energy purchased by an affiliated
25 interest or wholesale supplier of an electric provider from a renewable or advanced

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1 facility that is not owned or operated by the affiliated interest or wholesale supplier,
2 which renewable or advanced energy is allocated to the electric provider under an
3 agreement between the electric provider and the affiliated interest or wholesale
4 supplier.

5 **SECTION 14.** 196.378 (2) (title) of the statutes is amended to read:

6 196.378 (2) (title) ~~RENEWABLE RESOURCE~~ AND ADVANCED ENERGY.

7 **SECTION 15.** 196.378 (2) (a) 1. of the statutes is amended to read:

8 196.378 (2) (a) 1. No later than June 1, 2016, the commission shall prepare a
9 report stating whether, by December 31, 2015, the state has met a goal of 10 percent
10 of all electric energy consumed in the state being renewable and advanced energy.
11 If the goal has not been achieved, the report shall indicate why the goal was not
12 achieved and how it may be achieved, and the commission shall prepare similar
13 reports biennially thereafter until the goal is achieved. The commission shall submit
14 reports under this subdivision to the governor and chief clerk of each house of the
15 legislature for distribution to the legislature under s. 13.172 (2).

16 **SECTION 16.** 196.378 (2) (a) 2. a. of the statutes is amended to read:

17 196.378 (2) (a) 2. a. For the years 2006, 2007, 2008, and 2009, each electric
18 provider may not decrease its renewable and advanced energy percentage below the
19 electric provider's baseline renewable percentage.

20 **SECTION 17.** 196.378 (2) (a) 2. b. of the statutes is amended to read:

21 196.378 (2) (a) 2. b. For the year 2010, each electric provider shall increase its
22 renewable and advanced energy percentage so that it is at least 2 percentage points
23 above the electric provider's baseline renewable percentage.

24 **SECTION 18.** 196.378 (2) (a) 2. c. of the statutes is amended to read:

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1 196.378 (2) (a) 2. c. For the years 2011, 2012, 2013, and 2014, each electric
2 provider may not decrease its renewable and advanced energy percentage below the
3 electric provider’s renewable and advanced energy percentage required under subd.
4 2. b.

5 **SECTION 19.** 196.378 (2) (a) 2. d. of the statutes is amended to read:

6 196.378 (2) (a) 2. d. For the year 2015, each electric provider shall increase its
7 renewable and advanced energy percentage so that it is at least 6 percentage points
8 above the electric provider’s baseline renewable percentage.

9 **SECTION 20.** 196.378 (2) (a) 2. e. of the statutes is amended to read:

10 196.378 (2) (a) 2. e. For each year after 2015, each electric provider may not
11 decrease its renewable and advanced energy percentage below the electric provider’s
12 renewable and advanced energy percentage required under subd. 2. d.

13 **SECTION 21.** 196.378 (2) (b) 5. of the statutes is amended to read:

14 196.378 (2) (b) 5. An electric provider that purchases renewable or advanced
15 energy from a renewable or advanced energy supplier may use an allocated share of
16 the renewable or advanced energy sold by the renewable or advanced energy supplier
17 to comply with a requirement under par. (a) 2. or to create a credit under sub. (3) (a),
18 provided that the cost of the renewable or advanced energy is included in the price
19 the electric provider paid the renewable or advanced energy supplier.

20 **SECTION 22.** 196.378 (2) (bm) of the statutes is amended to read:

21 196.378 (2) (bm) Each electric provider shall annually retire renewable
22 resource credits sufficient to satisfy the electric provider’s renewable and advanced
23 energy percentage required under par. (a) 2.

24 **SECTION 23.** 196.378 (2) (c) of the statutes is amended to read:

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1 196.378 (2) (c) No later than April 15 annually, or another annual date specified
2 by the commission by rule, an electric provider shall submit a report to the
3 commission that identifies the electric provider's renewable and advanced energy
4 percentage for the previous year and describes the electric provider's compliance
5 with par. (a) 2. and the electric provider's implementation plans for future
6 compliance. Reports under this paragraph may include certifications from
7 renewable and advanced energy suppliers regarding the sources and amounts of
8 renewable and advanced energy supplied to the electric provider. The commission
9 may specify the documentation that is required to be included with reports
10 submitted under this paragraph. The commission may require that electric
11 providers submit the reports in a proceeding, initiated by the commission under this
12 section relating to the implementation of s. 1.12, or in a proceeding for preparing a
13 strategic energy assessment under s. 196.491 (2). No later than 90 days after the
14 commission's receipt of an electric provider's report, the commission shall inform the
15 electric provider whether the electric provider is in compliance with par. (a) 2.

16 **SECTION 24.** 196.378 (2) (d) (intro.) of the statutes is amended to read:

17 196.378 (2) (d) (intro.) The commission shall allow an electric utility to recover
18 from ratepayers the cost of providing total renewable and advanced energy to its
19 retail customers in amounts that equal or exceed the percentages specified in par. (a).
20 Subject to any approval of the commission that is necessary, an electric utility may
21 recover costs under this paragraph by any of the following methods:

22 **SECTION 25.** 196.378 (2) (d) 2. of the statutes is amended to read:

23 196.378 (2) (d) 2. Establishing alternative price structures, including price
24 structures under which customers pay a premium for renewable or advanced energy.

25 **SECTION 26.** 196.378 (2) (e) 2. of the statutes is amended to read:

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1 196.378 (2) (e) 2. Notwithstanding reasonable efforts to protect against
2 unreasonable increases in rates of the applicant's ratepayers or members,
3 compliance with the deadline will result in unreasonable increases in rates of the
4 applicant's ratepayers or members, including increases that are due to the
5 discontinuation of federal renewable or advanced energy tax credits or other federal
6 policies intended to reduce the acquisition costs of renewable or advanced energy.

7 **SECTION 27.** 196.378 (2) (e) 3. of the statutes is amended to read:

8 196.378 (2) (e) 3. Notwithstanding reasonable efforts to obtain required
9 approvals, the applicant cannot comply with the deadline because the applicant or
10 a supplier has experienced or will experience delays in receiving required siting or
11 permitting approvals for renewable or advanced energy projects.

12 **SECTION 28.** 196.378 (2) (e) 4. of the statutes is amended to read:

13 196.378 (2) (e) 4. Notwithstanding reasonable efforts to secure transmission
14 service, the applicant cannot comply with the deadline because the applicant faces
15 transmission constraints that interfere with the economic and reliable delivery of
16 renewable or advanced energy to the applicant's system.

17 **SECTION 29.** 196.378 (3) (title) of the statutes is amended to read:

18 196.378 (3) (title) ~~RENEWABLE RESOURCE~~ RESOURCE CREDITS.

19 **SECTION 30.** 196.378 (3) (a) 1. of the statutes is amended to read:

20 196.378 (3) (a) 1. Each megawatt hour of an electric provider's total renewable
21 and advanced energy creates one ~~renewable~~ resource credit for the electric provider.
22 Subject to subd. 2., an electric provider that exceeds its renewable and advanced
23 energy percentage required under sub. (2) (a) 2. may, in the applicable year, bank any
24 excess ~~renewable~~ resource credits or any portion of any excess ~~renewable~~ resource
25 credit for use in a subsequent year or sell any excess ~~renewable~~ resource credits or

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1 any portion of any excess renewable resource credit to any other electric provider at
2 any negotiated price. An electric provider that creates or purchases a renewable
3 resource credit or portion may use the credit or portion, as provided under par. (c),
4 to establish compliance with sub. (2) (a) 2. The commission shall promulgate rules
5 that establish requirements for the creation and use of a renewable resource credit
6 created on or after January 1, 2004, including calculating the amount of a renewable
7 resource credit, and for the tracking of renewable resource credits by a regional
8 renewable resource credit tracking system. The rules shall specify the manner for
9 aggregating or allocating credits under this subdivision or sub. (2) (b) 4. or 5.

10 **SECTION 31.** 196.378 (3) (a) 1m. of the statutes is amended to read:

11 196.378 (3) (a) 1m. The commission shall promulgate rules that allow an
12 electric provider or customer or member of an electric provider to create a renewable
13 resource credit based on use in a year by the electric provider, customer, or member
14 of solar energy, including solar water heating and direct solar applications such as
15 solar light pipe technology; wind energy; hydroelectric energy; geothermal energy;
16 biomass; biogas; synthetic gas created by the plasma gasification of waste; densified
17 fuel pellets described in sub. (1) (h) 1. i.; or fuel described in sub. (1) (h) 1. j.; but only
18 if the use displaces the electric provider's, customer's, or member's use of electricity
19 that is derived from conventional resources, and only if the displacement is verifiable
20 and measurable, as determined by the commission. The rules shall allow an electric
21 provider, customer, or member to create a renewable resource credit based on 100
22 percent of the amount of the displacement. The rules may not allow an electric
23 provider to create renewable resource credits under this subdivision based on
24 renewable or advanced energy upon which renewable resource credits are created
25 under subd. 1. The rules may also not allow an electric provider to create renewable

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1 resource credits under this subdivision based on hydroelectric energy that is not
2 eligible for creating renewable resource credits under subd. 1.

3 **SECTION 32.** 196.378 (3) (a) 2. of the statutes is amended to read:

4 196.378 (3) (a) 2. The commission shall promulgate rules for calculating the
5 amount of a renewable resource credit that is bankable from a renewable or
6 advanced facility placed into service before January 1, 2004. The amount of a
7 bankable renewable resource credit created on or after January 1, 2004, from such
8 a renewable or advanced facility, except a renewable or advanced facility owned by
9 a retail customer of an electric provider, is limited to the incremental increase in
10 output from the renewable or advanced facility that is due to capacity improvements
11 made on or after January 1, 2004.

12 **SECTION 33.** 196.378 (3) (c) of the statutes is amended to read:

13 196.378 (3) (c) A renewable resource credit created under s. 196.378 (3) (a),
14 2003 stats., may not be used after December 31, 2011. ~~A renewable resource credit~~
15 ~~created under par. (a) 1., 1m., or 2. may not be used after the 4th year after the year~~
16 ~~in which the credit is created, except the commission may promulgate rules~~
17 ~~specifying a different period of time if the commission determines that such period~~
18 ~~is necessary for consistency with any regional renewable resource credit trading~~
19 ~~program that applies in this state.~~

20 **SECTION 34.** 196.378 (4m) (title) of the statutes is amended to read:

21 196.378 (4m) (title) ADDITIONAL RENEWABLE RESOURCES REQUIREMENTS.

22 **SECTION 35.** 196.378 (4m) (a) of the statutes is amended to read:

23 196.378 (4m) (a) The commission may not impose on an electric provider any
24 requirement that increases the electric provider's renewable and advanced energy
25 percentage beyond that required under sub. (2) (a) 2. If an electric provider is in

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1 compliance with the requirements of sub. (2) (a) 2., the commission may not require
2 the electric provider to undertake, administer, or fund any other renewable or
3 advanced energy program. This paragraph does not limit the authority of the
4 commission to enforce an electric provider's obligations under s. 196.374.

5 **SECTION 36.** 196.378 (4m) (b) of the statutes is amended to read:

6 196.378 (4m) (b) An electric utility may, with commission approval, administer
7 or fund a program that increases the electric utility's renewable and advanced
8 energy percentage beyond that required under sub. (2) (a) 2. The commission may
9 not order an electric utility to administer or fund a program under this paragraph.

10 **SECTION 37.** 196.378 (4r) of the statutes is amended to read:

11 196.378 (4r) REPORTS. No later than July 1 of each even-numbered year, the
12 commission shall submit a report to the governor and chief clerk of each house of the
13 legislature for distribution to the legislature under s. 13.172 (2) that evaluates the
14 impact of the requirements of this section on the rates and revenue requirements of
15 electric providers and compares that impact with the impact that would have
16 occurred if renewable and advanced energy practices of electric providers were
17 subject to market forces in the absence of the requirements of this section.

18 **SECTION 38.** 196.378 (5) (intro.) of the statutes is amended to read:

19 196.378 (5) PENALTY. (intro.) Any person who violates sub. (2) or any renewable
20 or advanced energy supplier who provides an electric provider with a false or
21 misleading certification regarding the sources or amounts of renewable or advanced
22 energy supplied at wholesale to the electric provider shall forfeit not less than \$5,000
23 nor more than \$500,000. Forfeitures under this subsection shall be enforced by
24 action on behalf of the state by the attorney general. A court imposing a forfeiture

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SECTION 38

1 under this subsection shall consider all of the following in determining the amount
2 of the forfeiture:

3 (END)