

LRB-3373

1999 DRAFTING REQUEST

Bill

Received: **08/05/1999**

Received By: **kunkemd**

Wanted: **Soon**

Identical to LRB:

For: **Legislative Reference Bureau**

By/Representing:

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

Drafter: **kunkemd**

May Contact:

Alt. Drafters:

Subject: **Public Util. - misc.**

Extra Copies:

Became
A Part
of 99b 1931

Pre Topic:

No specific pre topic given

Topic:

Real estate activities of public utilities and affiliates

Instructions:

See Attached

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>
/?	kunkemd 08/05/1999	wjackson 08/05/1999		_____			State
/P1			martykr 08/06/1999	_____	lrb_docadmin 08/06/1999		

FE Sent For:

<END>

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1?	kunkemd	1/1 WLJ 8/5	d/m/s	JA 8/6 d/m			

FE Sent For:

<END>

1999

Date (time) needed

SOON

LRB - 3373, P1

BILL

STEF. ~~NOTE A~~

MOK: WLJ:

PM NOT RUN

Use the appropriate components and routines developed for bills.

AN ACT ... [generate catalog] to repeal ... ; to renumber ... ; to consolidate and renumber ... ; to renumber and amend ... ; to consolidate, renumber and amend ... ; to amend ... ; to repeal and recreate ... ; and to create ... of the statutes; relating to: INSERT A ↓

[NOTE: See section 4.02 (2) (br), Drafting Manual, for specific order of standard phrases.]

Analysis by the Legislative Reference Bureau

For the 3 titles used in an analysis, in the component bar:

For the main heading [old =M], execute: create → anal: → title: → head

For the subheading [old =S], execute: create → anal: → title: → sub

For the sub-subheading [old =P], execute: create → anal: → title: → sub-sub

INSERT B ↓

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

SECTION #.



1 limitation or condition on nonutility affiliate assets shall not apply to the ownership,
2 operation, management or control of any eligible asset, as defined under sub. (6m)
3 (a) 2., or an asset that is used for manufacturing, distributing or selling swimming
4 pools or spas.

5 SECTION ~~77~~⁷⁸ 196.796 of the statutes is created to read:

6 **196.796 Real estate activities.** (1) In this section:

7 (a) "Brownfields facility or site" means any abandoned, idle or underused
8 industrial or commercial facility or site, the use, expansion or redevelopment of
9 which is adversely affected by actual environmental contamination.

10 (b) 1. "Commercial construction" means the act of building any structure, or
11 that part of any structure, that is not used as a home, residence or sleeping place by
12 one or more persons maintaining a common household to the exclusion of all others.

13 2. "Commercial construction" does not include any of the following:

14 a. Any repair, maintenance, installation or construction of a structure owned
15 or used by or for a public utility, or for a customer of a public utility, if the repair,
16 maintenance, installation or construction is related to furnishing heat, light, water
17 or power to the customer.

18 b. Any construction related to the evaluation, control or remediation of
19 hazardous substances; solid, liquid or gaseous wastes; soils; air; or water.

20 c. Any construction performed in order to comply with federal, state or local
21 environmental laws, regulations, orders or rules.

22 (c) "Economic development" means development that is designed to promote
23 job growth or retention, expand the property tax base or improve the overall
24 economic vitality of a municipality, as defined in s. 30.01 (4), or region.

1 (d) “Engage” means to actively participate in the daily operations or daily
2 business decisions of an entity. “Engage” does not include taking an action necessary
3 to protect an ownership interest in an entity.

4 (dg) “Entity” has the meaning given in s. 180.0103 (8).

5 (dr) “Financial support” includes investments, loans and grants.

6 (e) “Holding company system” has the meaning given in s. 196.795 (1) (i).

7 (f) “Improvements” means any valuable addition made to land, including
8 excavations, gradings, foundations, structures, buildings, streets, parking lots,
9 sidewalks, sewers, septic systems and drainage facilities. “Improvements” does not
10 include any repair, maintenance, installation or construction of structures or
11 facilities owned or used by or for a public utility, or by or for a customer of a public
12 utility, if the repair, maintenance, installation or construction is related to furnishing
13 heat, light, water or power to the customer.

14 (g) “Nonutility affiliate” means a subsidiary of a public utility or a company in
15 a holding company system that is not a public utility.

16 (h) “Property management” means any activity associated with the care or
17 maintenance of land or improvements, including business planning and budgeting,
18 accounting, lease administration, tenant relations and retention, security,
19 maintenance of common areas, rent collections, financial reporting, service contract
20 administration and inspections.

21 (hm) “Public utility” means every corporation, company, individual or
22 association and their lessees, trustees or receivers appointed by any court or state
23 or federal agency, that may own, operate, manage or control all or any part of a plant
24 or equipment, within the state, for the production, transmission, delivery or
25 furnishing of electricity directly to or for the public, except that “public utility” does

INSERT 42-15J

INSERT 42-16J

1 not include any municipal utility or municipal electric company, as defined in s.
2 66.073 (3) (d), or any cooperative association organized under ch. 185 for the purpose
3 of producing or furnishing heat, light, power or water to its members only.

4 (i) “Real estate practice” has the meaning given in s. 452.01 (6).

5 (j) “Residential construction” means the act of building any structure, or that
6 part of any structure that is used as a home, residence or sleeping place by one or
7 more persons maintaining a common household to the exclusion of all others.

8 (k) “Residential real estate development” means the act of dividing or
9 subdividing any parcel of land for residential construction or making improvements
10 to facilitate or allow residential construction.

11 (L) “Third party” means any person other than a public utility or nonutility
12 affiliate.

13 (2) PROHIBITED ACTIVITIES. Except as provided in sub. (4), a public utility or
14 nonutility affiliate may not do any of the following in this state:

15 (a) Engage in real estate practice.

16 (b) Engage in residential real estate development.

17 (c) Engage in property management for a 3rd party.

18 (d) Engage in residential or commercial construction.

19 (e) Directly or indirectly own in any chain of successive ownership 50% or more
20 of the ownership interest of an entity that engages in property management for a 3rd
21 party, real estate practice, residential real estate development or residential or
22 commercial construction.

23 (3) PERMITTED ACTIVITIES. (a) Subsection (2) does not prohibit a public utility
24 or nonutility affiliate from doing any of the following:

1 1. Repairing, maintaining, installing or constructing a structure that is owned
2 or used by or for a public utility or nonutility affiliate, or for a customer of a public
3 utility if the repair, maintenance, installation or construction is related to furnishing
4 heat, light, water or power to the customer.

5 2. Engaging in construction that is specifically related to the evaluation,
6 control or remediation of hazardous substances; solid, liquid or gaseous wastes; soils;
7 air; or water.

8 3. Engaging in construction that is performed in order to comply with federal,
9 state or local environmental laws, regulations, orders or rules.

10 4. Consulting or making other financial or business arrangements with one or
11 more 3rd parties who will engage in commercial construction.

12 5. Consulting or making other financial or business arrangements with one or
13 more 3rd parties who will engage in residential construction or residential real
14 estate development, except that if a public utility or nonutility affiliate contracts for
15 the development of more than one residential construction project or residential real
16 estate development, the public utility or nonutility affiliate may not enter into an
17 exclusive arrangement with a 3rd party for all such residential construction or
18 residential real estate development.

19 6. Acquiring or disposing of property or interests in property if the acquisition
20 or disposition is related to the operation of a public utility and the acquisition or
21 disposition satisfies one of the following:

22 a. The acquisition or disposition is conducted under a contract with a 3rd party
23 that is engaged in real estate practice.

24 b. The acquisition or disposition is conducted by an individual engaged in real
25 estate practice or employed by a public utility.

1 [INSERT 44-25]

1 (b) Subsection (2) does not prohibit a public utility that is not subject to the
2 requirements of s. 196.795, or the nonutility subsidiary of such a public utility, from
3 doing any of the following:

4 1. Engaging in commercial or residential real estate development or
5 construction on property owned or acquired by the public utility or nonutility
6 subsidiary for a public utility purpose if the total annual revenues from the
7 development or construction do not exceed 3% of the total operating revenues of the
8 public utility in any year.

9 2. Providing financial support for the purpose of economic development to 3rd
10 parties that are engaged in an activity specified in sub. (2)(a) to (d). The public utility
11 or nonutility subsidiary may profit directly from that activity only through receipt
12 of profits that are incidental to the economic development project or interest earned
13 on a loan.

14 (4) EXCEPTIONS. (a) A nonutility affiliate that has engaged in residential
15 construction prior to, or is engaged in residential construction on, the effective date
16 of this paragraph [revisor inserts date], may directly or indirectly own in any
17 chain of successive ownership 50% or more of the ownership interest of an entity that
18 hires a 3rd party to engage in residential construction or commercial construction
19 that is incidental to residential construction, except that the nonutility affiliate may
20 not actively participate in the daily operations or daily business decisions of the
21 entity.

22 (b) A public utility or nonutility affiliate may engage in residential real estate
23 development at a brownfields facility or site.

24 (5) PRIVATE CAUSE OF ACTION. Any public utility or nonutility affiliate that does,
25 causes or permits to be done any action prohibited under this section or fails to

1 comply with any requirement specified in this section is liable to any person injured
2 thereby in the amount of damages sustained in consequence of the prohibited action
3 or failure to comply.

4 (6) CONSTRUCTION. This section shall be strictly construed to limit the
5 permitted activities of a public utility and a nonutility affiliate.

6 SECTION 80. 196.807 of the statutes is created to read:

7 **196.807 Energy affiliate and utility employes.** (1) DEFINITIONS. In this
8 section:

9 (a) "Affiliate or utility" means a nonutility affiliate, a holding company system
10 or an electric utility, as defined in s. 196.491 (1) (d).

11 (b) "Energy unit" means a unit in this state that is engaged in activities related
12 to the production, generation, transmission or distribution of electricity, gas or steam
13 or the recovery of energy from waste materials.

14 (c) "Holding company system" has the meaning given in s. 196.795 (1) (i).

15 (d) "Nonutility affiliate" has the meaning given in s. 196.795 (1) (j).

16 (e) "Public utility affiliate" has the meaning given in s. 196.795 (1) (L).

17 (f) "Sell an energy unit" means to sell, offer by lease, or otherwise transfer
18 ownership or control of the energy unit.

19 (g) "Unit" means a division, department or other operational business unit of
20 an affiliate or utility.

21 (2) OFFER OF EMPLOYMENT. (a) Except as provided in par. (b), a person may not
22 sell an energy unit unless the terms of the transfer require the person to which the
23 energy unit is transferred to offer employment to the nonsupervisory employes who
24 are employed with the energy unit immediately prior to the transfer and who are
25 necessary for the operation and maintenance of the energy unit.

(END)

1999-2000 DRAFTING INSERT
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-3373/P1ins
MDK.....

1

INSERT A:

2

prohibiting certain public utilities and nonutility affiliates from engaging in certain

3

real estate activities

4

INSERT B:

This is a preliminary draft. An analysis may be prepared for a subsequent version of this draft.

For further information see the *state* fiscal estimate, which will be printed as an appendix to this bill.

5

INSERT 42-15:

6

, except that "nonutility affiliate" does not include a passively held company

7

INSERT 42-16:

8

(gm) "Passively held company" means an entity that satisfies each of the

9

following:

10

1. Less than 50% of the ownership interest of the entity is directly or indirectly owned in any chain of successive ownership by a public utility or nonutility affiliate.

11

12

2. The entity engages in property management for a 3rd party, real estate practice, residential real estate development or residential or commercial construction.

13

14

15

INSERT 44-25:

16

7. Owning a passively held company.

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

LRB-3373/P1dn

MDK./.....

WLJ

This draft is based on proposed s. 196.796, as included in LRBs0102/1, except for the following differences:

1. A definition of "passively held company" has been added, and "passively held company" has been excluded from the definition of "nonutility affiliate".
2. The prohibition in proposed s. 196.796 (2) (e) in LRBs0102/1 has been replaced with a permitted activity in proposed s. 196.796 (3) (a) 7. of this draft.

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

LRB-3373/P1dn
MDK:wlj:km

August 6, 1999

This draft is based on proposed s. 196.796, as included in LRBs0102/1, except for the following differences:

1. A definition of "passively held company" has been added, and "passively held company" has been excluded from the definition of "nonutility affiliate".
2. The prohibition in proposed s. 196.796 (2) (e) in LRBs0102/1 has been replaced with a permitted activity in proposed s. 196.796 (3) (a) 7. of this draft.

Mark D. Kunkel
Legislative Attorney
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PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION

1 **AN ACT relating to:** prohibiting certain public utilities and nonutility affiliates
2 from engaging in certain real estate activities.

Analysis by the Legislative Reference Bureau

This is a preliminary draft. An analysis may be prepared for a subsequent version of this draft.

For further information see the *state* 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:

3 **SECTION 1.** 196.796 of the statutes is created to read:

4 **196.796 Real estate activities. (1)** In this section:

5 (a) "Brownfields facility or site" means any abandoned, idle or underused
6 industrial or commercial facility or site, the use, expansion or redevelopment of
7 which is adversely affected by actual environmental contamination.

1 (b) 1. “Commercial construction” means the act of building any structure, or
2 that part of any structure, that is not used as a home, residence or sleeping place by
3 one or more persons maintaining a common household to the exclusion of all others.

4 2. “Commercial construction” does not include any of the following:

5 a. Any repair, maintenance, installation or construction of a structure owned
6 or used by or for a public utility, or for a customer of a public utility, if the repair,
7 maintenance, installation or construction is related to furnishing heat, light, water
8 or power to the customer.

9 b. Any construction related to the evaluation, control or remediation of
10 hazardous substances; solid, liquid or gaseous wastes; soils; air; or water.

11 c. Any construction performed in order to comply with federal, state or local
12 environmental laws, regulations, orders or rules.

13 (c) “Economic development” means development that is designed to promote
14 job growth or retention, expand the property tax base or improve the overall
15 economic vitality of a municipality, as defined in s. 30.01 (4), or region.

16 (d) “Engage” means to actively participate in the daily operations or daily
17 business decisions of an entity. “Engage” does not include taking an action necessary
18 to protect an ownership interest in an entity.

19 (dg) “Entity” has the meaning given in s. 180.0103 (8).

20 (dr) “Financial support” includes investments, loans and grants.

21 (e) “Holding company system” has the meaning given in s. 196.795 (1) (i).

22 (f) “Improvements” means any valuable addition made to land, including
23 excavations, gradings, foundations, structures, buildings, streets, parking lots,
24 sidewalks, sewers, septic systems and drainage facilities. “Improvements” does not
25 include any repair, maintenance, installation or construction of structures or

1 facilities owned or used by or for a public utility, or by or for a customer of a public
2 utility, if the repair, maintenance, installation or construction is related to furnishing
3 heat, light, water or power to the customer.

4 (g) “Nonutility affiliate” means a subsidiary of a public utility or a company in
5 a holding company system that is not a public utility, except that “nonutility affiliate”
6 does not include a passively held company.

7 (gm) “Passively held company” means an entity that satisfies each of the
8 following:

9 1. Less than 50% of the ownership interest of the entity is directly or indirectly
10 owned in any chain of successive ownership by a public utility or nonutility affiliate.

11 2. The entity engages in property management for a 3rd party, real estate
12 practice, residential real estate development or residential or commercial
13 construction.

14 (h) “Property management” means any activity associated with the care or
15 maintenance of land or improvements, including business planning and budgeting,
16 accounting, lease administration, tenant relations and retention, security,
17 maintenance of common areas, rent collections, financial reporting, service contract
18 administration and inspections.

19 (hm) “Public utility” means every corporation, company, individual or
20 association and their lessees, trustees or receivers appointed by any court or state
21 or federal agency, that may own, operate, manage or control all or any part of a plant
22 or equipment, within the state, for the production, transmission, delivery or
23 furnishing of electricity directly to or for the public, except that “public utility” does
24 not include any municipal utility or municipal electric company, as defined in s.

1 66.073 (3) (d), or any cooperative association organized under ch. 185 for the purpose
2 of producing or furnishing heat, light, power or water to its members only.

3 (i) “Real estate practice” has the meaning given in s. 452.01 (6).

4 (j) “Residential construction” means the act of building any structure, or that
5 part of any structure that is used as a home, residence or sleeping place by one or
6 more persons maintaining a common household to the exclusion of all others.

7 (k) “Residential real estate development” means the act of dividing or
8 subdividing any parcel of land for residential construction or making improvements
9 to facilitate or allow residential construction.

10 (L) “Third party” means any person other than a public utility or nonutility
11 affiliate.

12 **(2) PROHIBITED ACTIVITIES.** Except as provided in sub. (4), a public utility or
13 nonutility affiliate may not do any of the following in this state:

14 (a) Engage in real estate practice.

15 (b) Engage in residential real estate development.

16 (c) Engage in property management for a 3rd party.

17 (d) Engage in residential or commercial construction.

18 **(3) PERMITTED ACTIVITIES.** (a) Subsection (2) does not prohibit a public utility
19 or nonutility affiliate from doing any of the following:

20 1. Repairing, maintaining, installing or constructing a structure that is owned
21 or used by or for a public utility or nonutility affiliate, or for a customer of a public
22 utility if the repair, maintenance, installation or construction is related to furnishing
23 heat, light, water or power to the customer.

1 2. Engaging in construction that is specifically related to the evaluation,
2 control or remediation of hazardous substances; solid, liquid or gaseous wastes; soils;
3 air; or water.

4 3. Engaging in construction that is performed in order to comply with federal,
5 state or local environmental laws, regulations, orders or rules.

6 4. Consulting or making other financial or business arrangements with one or
7 more 3rd parties who will engage in commercial construction.

8 5. Consulting or making other financial or business arrangements with one or
9 more 3rd parties who will engage in residential construction or residential real
10 estate development, except that if a public utility or nonutility affiliate contracts for
11 the development of more than one residential construction project or residential real
12 estate development, the public utility or nonutility affiliate may not enter into an
13 exclusive arrangement with a 3rd party for all such residential construction or
14 residential real estate development.

15 6. Acquiring or disposing of property or interests in property if the acquisition
16 or disposition is related to the operation of a public utility and the acquisition or
17 disposition satisfies one of the following:

18 a. The acquisition or disposition is conducted under a contract with a 3rd party
19 that is engaged in real estate practice.

20 b. The acquisition or disposition is conducted by an individual engaged in real
21 estate practice or employed by a public utility.

22 7. Owning a passively held company.

23 (b) Subsection (2) does not prohibit a public utility that is not subject to the
24 requirements of s. 196.795, or the nonutility subsidiary of such a public utility, from
25 doing any of the following:

1 1. Engaging in commercial or residential real estate development or
2 construction on property owned or acquired by the public utility or nonutility
3 subsidiary for a public utility purpose if the total annual revenues from the
4 development or construction do not exceed 3% of the total operating revenues of the
5 public utility in any year.

6 2. Providing financial support for the purpose of economic development to 3rd
7 parties that are engaged in an activity specified in sub. (2) (a) to (d). The public utility
8 or nonutility subsidiary may profit directly from that activity only through receipt
9 of profits that are incidental to the economic development project or interest earned
10 on a loan.

11 **(4) EXCEPTIONS.** (a) A nonutility affiliate that has engaged in residential
12 construction prior to, or is engaged in residential construction on, the effective date
13 of this paragraph [revisor inserts date], may directly or indirectly own in any
14 chain of successive ownership 50% or more of the ownership interest of an entity that
15 hires a 3rd party to engage in residential construction or commercial construction
16 that is incidental to residential construction, except that the nonutility affiliate may
17 not actively participate in the daily operations or daily business decisions of the
18 entity.

19 (b) A public utility or nonutility affiliate may engage in residential real estate
20 development at a brownfields facility or site.

21 **(5) PRIVATE CAUSE OF ACTION.** Any public utility or nonutility affiliate that does,
22 causes or permits to be done any action prohibited under this section or fails to
23 comply with any requirement specified in this section is liable to any person injured
24 thereby in the amount of damages sustained in consequence of the prohibited action
25 or failure to comply.

