



# State of Wisconsin

LEGISLATIVE REFERENCE BUREAU

## **RESEARCH APPENDIX -** **PLEASE DO NOT REMOVE FROM DRAFTING FILE**

Date Transfer Requested: 10/17/2005 (Per: MDK)

↑ ↑ ↑ ↑

P4. 01 of 02

☞ The 2005 drafting file for LRB 05-3517/P3

has been copied/added to the 2005 drafting file for

**LRB 05-3862 which was  
merged into LRB 05-3616**

☞ The attached 2005 draft was incorporated into the new 2005 draft listed above. For research purposes, this cover sheet and the attached drafting file were copied, and added, as an appendix, to the new 2005 drafting file. If introduced this section will be scanned and added, as a separate appendix, to the electronic drafting file folder.

☞ This cover sheet was added to rear of the original 2005 drafting file. The drafting file was then returned, intact, to its folder and filed.

**2005 DRAFTING REQUEST**

**Bill**

Received: **08/19/2005**

Received By: **mkunkel**

Wanted: **As time permits**

Identical to LRB:

For: **Robert Cowles (608) 266-0484**

By/Representing: **Todd Stuart**

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

Drafter: **mkunkel**

May Contact:

Addl. Drafters:

Subject: **Public Util. - energy**

Extra Copies:

Submit via email: **YES**

Requester's email: **Sen.Cowles@legis.state.wi.us**

Carbon copy (CC:) to:

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**Pre Topic:**

No specific pre topic given

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**Topic:**

Governor's Task Force on Renewables

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**Instructions:**

See Attached

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**Drafting History:**

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Typed</u>	<u>Proofed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
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/P1	mkunkel 08/24/2005	wjackson 08/25/2005	pgreensl 08/26/2005	_____	lnorthro 08/26/2005		S&L
/P2	mkunkel 10/05/2005	wjackson 10/05/2005	chaugen 10/05/2005	_____	lemery 10/05/2005		S&L
/P3	mkunkel 10/13/2005	wjackson 10/14/2005	rschluet 10/14/2005	_____	lnorthro 10/14/2005		

Vers.    Drafted    Reviewed    Typed    Proofed    Submitted    Jacketed    Required

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mbarman  
10/14/2005

FE Sent For:

<END>

→ re-submitted  
via e-mail

→ Requested  
by Todd S.

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08/26/2005

FE Sent For:

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10-3

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JF 10-5  
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1/?	mkunkel	1/1 WJ 8/25	8/25 PS	8/26 PS/10			

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## **RENEWABLE RESOURCE COMPONENT DRAFT – INCREASED RPS**

### **STANDARD**

This draft implements several recommendations relating to renewable resources.

A. This draft increases the renewable portfolio standard to 10% in 2015.

B. This also allows the electric providers to seek an implementation delay in certain circumstances.

C. This also states that compliance with the new RPS standard will constitute fulfillment of the Energy Priorities Law as it pertains to renewable resources. Provider compliance is defined as either meeting the standard or demonstrating that the standard could not be met due to circumstances beyond the provider's control.

This draft also make the PSC the agency responsible for monitoring compliance.

#### **Note: This shows current law:**

196.378(2) Renewable resource energy.

(a) Each electric provider shall provide to its retail electric customers or members total renewable energy in at least the following percentages of its total retail electric sales, either directly or through renewable resource credits from another electric provider:

1. By December 31, 2001, 0.5%.
2. By December 31, 2003, 0.85%.
3. By December 31, 2005, 1.2%.
4. By December 31, 2007, 1.55%.
5. By December 31, 2009, 1.9%.
6. By December 31, 2011, 2.2%.

#### **Proposed revisions begin below:**

**SECTION X.** 196.378(1)(bm) is repealed.

*NOTE: This repeals the definition of "department" as the term will not be used in this section.*

**SECTION X.** 196.378(2)(a)(intro.) is renumbered 196.378(2)(a) and, as renumbered, is amended to read:

196.378(2)(a) Each electric provider shall provide to its retail electric customers or members total renewable energy ~~in at least the following percentages as a percentage of~~ its total retail electric sales, either directly or through renewable resource credits from another electric provider: , so that by December 31, 2015, the statewide average for electric providers is 10.0%. By 2010, each electric provider shall increase its renewable energy percentage by at least 2 percentage points over the percentage it reports in 2005 for 2004 under sub. (3)(c) and, by 2015, shall increase its renewable energy percentage by at least an additional 4 percentage points.

**SECTION X.** 196.378(2)(a)1. to 6. are repealed.

**SECTION X.** 196.378(2)(b)5., 6., and 7. are created to read:

196.378(2)(b)5. If the electric provider is part of an interconnected multi-state system that serves this state, par. (a) applies to renewable-generation located within the provider's interconnected system.

6. Paragraph (a) applies to renewable-generation located outside of this state if it is owned by, or under contract to, an electric provider.

7. Wholesale customers of electric providers are entitled to an allocation of renewable credits from their wholesale providers if the cost of renewable resources are included in wholesale rates.

**SECTION X.** 196.378(2)(c) is amended to read:

196.378(2)(c) No later than April 15 annually, an electric provider shall submit a report to the ~~department~~ commission that describes the electric provider's implementation plan and compliance with par. (a). Reports under this paragraph may include certifications from wholesale suppliers regarding the sources and amounts of energy supplied to an electric provider. The ~~department~~ commission may specify the documentation that is required to be included with reports submitted under this paragraph. Within 90 days of submission of the report, the Commission shall inform the provider whether the provider is in compliance with par. (a).

**SECTION X.** 196.378(3)(a) is amended to read:

196.378(3)(a) An electric provider that provides total renewable energy to its retail electric customers or members in excess of the percentages specified in sub. (2) (a) ~~1- to 6-~~ may, in the applicable year, sell to any other electric provider a renewable resource credit or a portion of a renewable resource credit at any negotiated price. Alternatively, an electric provider may use a renewable resource credit or portion of a renewable resource credit in a subsequent year to establish compliance with sub. (2) (a). The commission shall promulgate rules that establish requirements for the use of a renewable resource credit, including calculating the amount of a renewable resource credit.

**NOTE: This is the current law on exceptions to the RPS standard:**

196.378(2)(e) 1. This subsection does not apply to any of the following:  
a. An electric provider that provides more than 10% of its summer peak demand in this state from renewable facilities.

- b. An electric provider that provides more than 10% of its summer peak demand from renewable resources.
2. For purposes of calculating the percentages under subd. 1., an electric provider may include renewable facilities located in this or another state and renewable facilities located on its or another electric provider's system.
3. Notwithstanding subd. 1., this subsection applies to an electric provider unless the electric provider provides documentation to the commission that establishes, to the satisfaction of the commission, that the electric provider satisfies the requirements under subd. 1. a. or b.

**SECTION X.** 196.378(2)(e) is repealed recreated to read:

196.378(2)(e) An electric provider may request the commission grant an implementation delay for the year 2010 or 2015 requirement if, after notice and opportunity to be heard, - the electric provider demonstrates good faith efforts to meet its renewable energy percentage and the electric provider demonstrates any of the following:

1. Notwithstanding reasonable efforts to protect against undesirable impacts on the provider's system reliability, acquisition of the required percentage of renewable energy will have an undesirable impact on the reliability of the provider's system.
2. Notwithstanding reasonable efforts to protect against undesirable impacts on the provider's ratepayers, acquisition of the required percentage of renewable energy will have undesirable cost impacts on the provider's customers, due to discontinuation of federal renewable energy credits, or for other reasons.
3. Notwithstanding reasonable efforts to obtain required approvals, the provider or its supplier faces delays in receiving required siting or permitting approvals for renewable energy projects.

4. Notwithstanding reasonable efforts to secure transmission service, the provider faces transmission constraints that interfere with the economic and reliable deliverability of renewable electricity to the electric provider's system.

*NOTE: This allows the electric providers to seek an implementation delay in certain circumstances.*

**SECTION X.** 196.378(2)(em) is created to read:

196.378(2)(em). Implementation of this section by the Commission satisfies the requirements of s. 1.12(3), (4)(b) and (c) and (5). An electric provider's application under s. 196.49 or 196.491 is not subject to the provisions of s. 196.025(1) if the electric provider satisfies the requirements of par. (a) or obtains an implementation delay under par. (e).

*NOTE: This states that compliance with the new RPS standard will constitute fulfillment of the Energy Priorities Law as it pertains to renewable resources. Provider compliance is defined as either meeting the standard or demonstrating that the standard could not be met due to circumstances beyond the provider's control.*

(end)

O:\... \Renewable resources increased RPS standard.doc



State of Wisconsin  
2005 - 2006 LEGISLATURE

LRB-3517/P1

MDK:.....

WLJ

D-NOTE

By  
Monday  
8/28

PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION

1 **Gen** AN ACT ...; relating to: renewable energy requirements for utilities and retail  
2 electric cooperatives and granting rule-making authority.

**Analysis by the Legislative Reference Bureau**

This is a preliminary draft. An analysis will be prepared for a subsequent version.

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:**

3 SECTION 1. 79.005 (4) (d) of the statutes is amended to read:  
4 79.005 (4) (d) Replacing steam generating equipment at a combustion-based  
5 renewable facility, as defined in s. 196.378 (1) (g), that is located in this state, to  
6 increase efficiency or capacity, if the facility remains a combustion-based renewable  
7 facility, as defined in s. 196.378 (1) (g), that is located in this state, after replacing the equipment.

History: 1971 c. 125, 215; 1975 c. 39; 1981 c. 20 s. 1169; 1989 a. 336; 2003 a. 31.

\*\*\*\*NOTE: The definition of "renewable facility" is amended below so that, for purposes of s. 196.378, it means a facility in or outside this state. The above amendment

\* is necessary so that s. 79.005 (4) (d) is not affected by the new definition of "renewable facility".

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

2 196.378 (1) (a) "Biomass" means a resource that derives energy from wood or  
3 plant material or residue, biological waste, crops grown for use as a resource or  
4 landfill gases. "Biomass" does not include garbage, as defined in s. 289.01 (9), or  
5 nonvegetation-based industrial, commercial or household waste, except that  
6 "biomass" includes refuse-derived fuel used for a renewable facility that was in  
7 service in this state before January 1, 1998.

8 History: 1999 a. 9; 2001 a. 30.

8 SECTION 3. 196.378 (1) (bm) of the statutes is repealed.

9 SECTION 4. 196.378 (1) (e) of the statutes is repealed.

\*\*\*\*NOTE: The substance of s. 196.378 (1) (e), as revised, is incorporated in s. 196.378 (2) (b) 3., below.

10 SECTION 5. 196.378 (1) (fm) of the statutes is created to read:

11 196.378 (1) (fm) "Renewable energy percentage" means, with respect to an  
12 electric provider for a particular year, the percentage that results from dividing the  
13 sum of the following by the electric provider's total retail electric sales for that year:

- 14 1. The electric provider's total renewable energy for that year.
- 15 2. The renewable resource credits, if any, that the electric provider elects to use  
16 in that year.
- 17 3. The renewable resource credits, if any, allocated to the electric provider for  
18 that year under the rules promulgated under sub. (3) (a).

\*\*\*\*NOTE: The reference to allocated credits is intended to accomplish proposed s. 196.378 (2) (b) 7. of the PSC draft. See also the treatment of s. 196.378 (3) (a), below.

19 SECTION 6. 196.378 (1) (g) of the statutes is amended to read:

20 196.378 (1) (g) "Renewable facility" means an installed and operational electric  
21 generating facility, located in or outside this state, in which electricity is derived from

1 a renewable resource. "Renewable facility" includes a facility the installation or  
2 operation of which is required under federal law, but does not include a facility the  
3 installation or operation of which is required under the laws of another state even  
4 if the installation or operation of the facility is also required under federal law.

History: 1999 a. 9; 2001 a. 30.

\*\*\*\*NOTE: Amending the definition of "renewable facility" accomplishes the same thing as proposed s. 196.378 (2) (b) 6. in the PSC draft.

5 SECTION 7. 196.378 (1) (n) of the statutes is renumbered 196.378 (1) (n) (intro.)  
6 and amended to read:

7 196.378 (1) (n) (intro.) "System renewable energy" means the amount of  
8 electricity that an electric provider sells to its retail customers or members and that  
9 is supplied by renewable all of the following:

10 1. Renewable facilities owned or operated by the electric provider.

History: 1999 a. 9; 2001 a. 30.

11 SECTION 8. 196.378 (1) (n) 2. of the statutes is created to read:

12 196.378 (1) (n) 2. If the electric provider is part of an interconnected  
13 multi-state system that serves this state, renewable facilities that are within that  
14 system.

\*\*\*\*NOTE: The above is intended to accomplish the same thing as proposed s. 196.378 (2) (b) 5. of the PSC's draft. Note that if a facility does not satisfy the definition of "renewable facility" under s. 196.378 (1) (g), then the above does not apply to that facility.

\*\*\*\*NOTE: Is the reference to "within" a system okay? The Task Force report refers to generation "within the footprint" of a system, but I'm not sure what that means. See p. 35, item 2 of the report.

15 SECTION 9. 196.378 (2) (a) of the statutes is repealed and recreated to read:

16 196.378 (2) (a) 1. Except as provided in par. (e), by December 31, 2010, each  
17 electric provider shall increase its renewable energy percentage so that it is at least  
18 2 percentage points above the electric provider's renewable energy percentage for  
19 2005 reported under par. (c). Except as provided in par. (e), by December 31, 2015,

1 each electric provider shall increase its renewable energy percentage so that it is at  
 2 least 6 percentage points above the electric provider's renewable energy percentage  
 3 for 2005 reported under par. (c).<sup>✓</sup>

\*\*\*\*NOTE: The PSC draft refers to the percentage reported in 2004. I changed the year to 2005. If the bill will go into effect after April 15, 2006 (i.e., the reporting deadline for 2005), then the bill should be revised or amended.

\*\*\*\*NOTE: Are the December 31, 2010 and 2015 deadlines okay? \*

\*\*\*\*NOTE: For December 31, 2015, should it be 6 percentage points above 2005, or 4 percentage points above 2005 (i.e., what constitutes the "additional" 4 percentage points in the PSC draft)?

4 2. By December 31, 2015, the renewable energy percentage for each electric  
 5 provider shall be sufficient to ensure that the average renewable energy percentage  
 6 of all electric providers is at least 10%.<sup>SP</sup>

\*\*\*\*NOTE: The above doesn't impose a clear duty on an individual electric provider. An individual electric provider could have a percentage that is less than 10% as long as the average for all providers is at least 10%. In addition, if the average percentage isn't satisfied, what enforcement action is allowed against an individual electric provider? The draft isn't clear.

7 SECTION 10. 196.378 (2) (b) 3. of the statutes is amended to read:

8 196.378 (2) (b) 3. Any ~~excludable renewable energy that exceeds 0.6% of an~~  
 9 ~~electric provider's total retail electric sales~~ is supplied from a hydroelectric power  
 10 facility with a generation capacity of 60 megawatts or more shall be excluded from  
 11 the electric provider's total renewable energy.

History: 1999 a. 9; 2001 a. 30.

12 SECTION 11. 196.378 (2) (c)<sup>✓</sup> of the statutes is amended to read:

13 196.378 (2) (c) No later than April 15 annually, an electric provider shall submit  
 14 a report to the ~~department~~ commission that identifies the electric provider's  
 15 renewable energy percentage for the previous year and describes the electric  
 16 provider's compliance with par. (a) and the electric provider's implementation plans  
 17 for future compliance. Reports under this paragraph may include certifications from  
 18 wholesale suppliers regarding the sources and amounts of energy supplied to an

1 electric provider. The department ~~department~~<sup>Commission</sup> may specify the documentation that  
 2 is required to be included with reports submitted under this paragraph. No later  
 3 than 90 days after the commission's receipt of an electric provider's report, the  
 4 commission shall inform the electric provider whether the electric provider is in  
 5 compliance with par. (a).

History: 1999 a. 9; 2001 a. 30.

\*\*\*\*NOTE: Is the reference to implementation plans okay?

\*\*\*\*NOTE: Should the PSC be able to change its mind about an electric provider's compliance, based on, for example, discovering that the electric provider's report is not accurate or obtaining information from other sources?

\*\*\*\*NOTE: On a point related to the above ~~NOTE~~<sup>NOTE</sup>, should s. 196.39 be revised, which allows the PSC to reopen cases? Or does s. 196.39 not apply?

6 **SECTION 12.** 196.378 (2) (e) of the statutes is repealed and recreated to read:

7 196.378 (2) (e) An electric provider may request that the commission grant a  
 8 delay for complying with a deadline specified in par. (a) 1. if, after notice and  
 9 opportunity to be heard, the electric provider demonstrates good faith efforts to  
 10 comply with the deadline and the electric provider demonstrates any of the following:

\*\*\*\*NOTE: As drafted, an electric provider cannot request a delay from the average percentage requirement in s. 196.378 (2) (a) 2. As noted above, it isn't clear to me how the average requirement applies to an individual electric provider.

11 1. Notwithstanding reasonable efforts to protect against undesirable impacts  
 12 on the reliability of an electric provider's system, compliance with the deadline will  
 13 have an undesirable impact on the reliability of the electric provider's system.

14 2. Notwithstanding reasonable efforts to protect against undesirable impacts  
 15 on the electric provider's ratepayers, compliance with the deadline will have  
 16 undesirable cost impacts on the electric provider's ratepayers, including impacts  
 17 that are due to discontinuation of federal renewable energy tax credits.

1           3. Notwithstanding reasonable efforts to obtain required approvals, the electric  
2 provider or a supplier has experienced or will experience delays in receiving required  
3 siting or permitting approvals for renewable energy projects.

4           4. Notwithstanding reasonable efforts to secure transmission service, the  
5 electric provider faces transmission constraints that interfere with the economic and  
6 reliable delivery of renewable electricity to the electric provider's system.

7           **SECTION 13.** 196.378 (3) (a) of the statutes is amended to read:

8           196.378 (3) (a) An electric provider that provides total renewable energy to its  
9 retail electric customers or members in excess of the percentages specified in sub. (2)  
10 (a) ~~1. to 6.~~ may, in the applicable year, sell to any other electric provider a renewable  
11 resource credit or a portion of a renewable resource credit at any negotiated price.

12           ~~Alternatively, an~~ An electric provider that purchases a renewable resource credit or  
13           ~~portion~~ may use a renewable resource <sup>Strike extra space</sup> the credit or portion of a renewable resource  
14           credit in a subsequent year, as provided under par. (c), to establish compliance with  
15           sub. (2) (a). The commission shall promulgate rules that establish requirements for  
16           the use of a renewable resource credit, including calculating the amount of a  
17           renewable resource credit. The commission shall also promulgate rules that allow  
18           a wholesale customer of an electric provider that purchases a renewable resource  
19           credit or portion to use an allocated portion of the credit or portion to establish  
20           compliance with sub. (2) (a), but only if the cost of renewable resources <sup>is</sup> ~~are~~ included  
21           in wholesale rates paid by the wholesale customer. The rules shall specify the  
22           manner for making such an allocation.

History: 1999 a. 9; 2001 a. 30.

\*\*\*\*NOTE: The last sentences above are intended to accomplish the same thing as s. 196.378 (2) (b) 7. of the PSC's draft. However, I required the PSC to promulgate rules because I'm not sure how allocation is supposed to work. In addition, is the requirement regarding inclusion of renewable resource costs in wholesale rates sufficiently clear? For



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

LRB-3517/P1dn

MDK:.....

Wlj

Sen. Cowles:

This preliminary draft incorporates the renewable energy drafts prepared by the PSC. The remaining PSC drafts will be addressed in a separate draft.

★ Please see the notes that are included in this draft.

Mark D. Kunkel  
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## RENEWABLE RESOURCE COMPONENT DRAFT – COUNTING HYDRO

This allows all qualified renewables, including hydro under 60 MW to count toward a renewable standard. Renewables from hydro of 60 MW or greater are not counted.

### SECTION X. 196.378(1)(e) is amended to read:

196.378(1)(e) "Excludable renewable energy" means the portion of an electric provider's total renewable energy that is supplied from ~~renewable facilities that were placed in service before January 1, 1998, and that, before January 1, 1998, derived electricity from~~ a hydroelectric power, ~~even if the output of the renewable facilities is used to satisfy requirements under federal law~~ facility with generation capacity of 60 MW or greater.

### SECTION X. 196.378(1)(e) is amended to read:

196.378(2)(b)3. Any excludable renewable energy ~~that exceeds 0.6% of an electric provider's total retail electric sales~~ shall be excluded from the electric provider's total renewable energy.

*NOTE: This allows all qualified renewables, including hydro under 60 MW to count toward a renewable standard. Renewables from hydro of 60 MW or greater are not counted.*

(end)

O:\...Renewable resource component draft counting hydro.doc

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## RENEWABLE RESOURCE COMPONENT DRAFT - BIOMASS

This draft removes the reference to "in state" from the definition of biomass.

**SECTION X.** 196.378(1)(a) is amended to read:

196.378(1)(a) "Biomass" means a resource that derives energy from wood or plant material or residue, biological waste, crops grown for use as a resource or landfill gases. "Biomass" does not include garbage, as defined in s. 289.01 (9), or nonvegetation-based industrial, commercial or household waste, except that "biomass" includes refuse-derived fuel used for a renewable facility that was in service ~~in this state~~ before January 1, 1998.

*NOTE: This removes the reference to "in state" from the definition of biomass.*

(end)

O:\ . . \Renewable resource component draft biomass.doc

**RENEWABLE RESOURCE COMPONENT DRAFT - CREDITS**

This draft states that the current renewable resource credits expire after 2011.

**NOTE: This is the current law:**

**196.378(3)** Renewable resource credits. (a) An electric provider that provides total renewable energy to its retail electric customers or members in excess of the percentages specified in sub. (2) (a) 1. to 6. may, in the applicable year, sell to any other electric provider a renewable resource credit or a portion of a renewable resource credit at any negotiated price. Alternatively, an electric provider may use a renewable resource credit or portion of a renewable resource credit in a subsequent year to establish compliance with sub. (2) (a). The commission shall promulgate rules that establish requirements for the use of a renewable resource credit, including calculating the amount of a renewable resource credit.

(b) The commission may promulgate rules that establish requirements and procedures for a sale under par. (a).

**SECTION X.** 196.378(3)(c) is created to read:

196.378(3)(c) Credits under par. (a) expire on December 31, 2011.

*before effective date*  
*+ new credit 4 yr life span*  
NOTE: This states that the current renewable resource credits expire after 2011.

(end)

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

LRB-3517/P1dn  
MDK:wlj:pg

August 25, 2005

Sen. Cowles:

This preliminary draft incorporates the renewable energy drafts prepared by the PSC. The remaining PSC drafts will be addressed in a separate draft.

Please see the NOTES that are included in this draft.

Mark D. Kunkel  
Senior Legislative Attorney  
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## Kunkel, Mark

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**From:** Stolzenberg, John  
**Sent:** Tuesday, October 04, 2005 3:21 PM  
**To:** Kunkel, Mark  
**Cc:** Stuart, Todd; Lovell, David  
**Subject:** Changes in the preliminary drafts implementing the Governor's Task Force recommendations

**Attachments:** 04cowlestabletaskforce\_jes01.doc

Mark,

Per our discussion, here's the consolidated and updated list of changes requested by Sen. Cowles in the 3 preliminary drafts implementing the recommendations of the Governor's Task Force on Energy Efficiency and Renewables. As I indicated to you, there were no revisions in the portion of the list relating to LRB-3517/P1 compared to the earlier lists we had provided to you.



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Feel free to call David or me with any questions you may have on the items in this list.

John

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John Stolzenberg  
Legislative Council  
266-2988

***Changes in the Drafts Implementing the Recommendations of the  
Governor's Task Force on Energy Efficiency and Renewables***

***LRB-0339/P1, LRB-3517/P1 and LRB-3616/P1***

**LRB-0339/P1 – Public benefits programs**

**Changes in s. 16.957**

1. Page 3, line 8, page 3, line 15 (note), page 5, line 12 (note) and page 11, line 3 (note): Do not insert \$21,329,056 on page 3, line 8 and do not repeal the other 3 provisions, as all of the major electric utilities continue to operate early intervention programs for their low-income customers, which may have been authorized under s. 196.374, in addition to their contributions under s. 196.374.
2. Page 4, line 4: The titles of new s. 16.957 (1m) and existing s. 16.957 (2) both refer to “department duties”. We feel that it would be desirable to have all of the department’s duties consolidated in one subsection.
3. Page 4, lines 6 and 7: This exception clause should be expanded to also include an exception for public benefits programs administered by municipal utilities and retail electric cooperatives under s. 16.957 (5).
4. Page 5, lines 5 and 6: Delete the phrase “after holding a hearing”, as it is outdated text.
5. Page 6, line 1: Delete the phrase “after holding a hearing”.
6. Page 9, lines 21 to 23: This provision repeals current law which states that public benefits fees collected by an electric utility shall be considered trust funds of the DOA and not income of the electric utility. The effect of this repeal appears to be to make a utility’s collection of the new public benefits fees included in the utility’s revenues subject to the state income tax. Since the intent of this draft is to continue this exemption and to be revenue-neutral compared to current law, the draft should continue excluding a utility’s public benefits fee collections in excess of the utility’s contributions in 2004 under s. 196.374, 2003 Stats., from the income of the utility.
7. Page 10, lines 1 to 6: Expand SEC. 29 with language that is comparable to the recent changes in the treatment of Universal Service Fund charges on telecommunications utilities’ bills in SEC. 2097r in 2005 Wisconsin Act 25.
8. Page 10, line 7 and page 11, line 5 (notes): SECTIONS 30 and 37 are correct as drafted.
9. Page 11, line 2 (notes): The DOA should not be required to consult with the Council on Utility Public Benefits in determining the amount of low-income funding. The low-income determinations should not be transferred from the DOA to the PSC.
10. Page 12, lines 11 and 12 and page 13, line 2: These provisions direct the DOA to pay public benefits fees, that are collected by electric cooperatives and municipal utilities that opt into the state’s energy program and forwarded to DOA, to the PSC’s fiscal agent. These provisions, and the related appropriation in s. 20.505 (3) (s) on

page 14, lines 12 to 17, do not provide for DOA's cash management of these fees. Under this approach, DOA would need an account to deposit the fees in when they receive them from the cooperatives and municipal utilities and then the authority to draw on that account to forward the fees to the fiscal agent. Instead of this approach, the draft should be revised to treat the money management for fees collected by cooperatives and public utilities opting into one or both of the state programs the same as for these fees collected by investor-owned utilities. To do this, cooperatives and utilities, once they opt in, should be required to pay the applicable fees directly to the fiscal agent and not through DOA, and the fiscal agent should be authorized to collect these fees on page 4, lines 15 to 21.

**Air Quality Improvement Fund**

11. Page 14, lines 12 to 17: The draft continues the appropriation in s. 20.505 (3) (s) that authorizes the DOA to transfer funds from the Utility Public Benefits Fund to the Air Quality Improvement Fund. Instead, the draft should repeal the Air Quality Improvement Program in s. 16.958, the appropriations to this program, the duty of the DNR to notify the DNR and PSC under s. 285.48 (2), and s. 285.48 (3) (d) 3. and 4.

**Tax Treatment of Public Benefits Fees – Utility Gross Receipts**

12. Page 16, lines 1 and 2: Under current law, an electric utility's "gross revenues" for purposes of determining its gross receipts tax does not include the public benefits fees collected by the utility. This exclusion does not include contributions made by the utility to the public benefits program under s. 196.374 (3). This provision in the draft excludes from an electric utility's "gross revenues" the total amount collected by the electric utility for public benefits programs. To ensure that the draft is revenue-neutral, this exclusion should apply to a utility's revenues from public benefits fees in excess of the utility's contributions in 2004 under s. 196.374, 2003 Stats.

**Tax Treatment of Public Benefits Fees – Sales Tax**

13. Page 16, lines 11 to 13: Under current law, public benefits fees are not subject to the state sales tax. This provision expands this exemption to apply to the total amount collected by the electric utility for public benefits programs (i.e., the new public benefits fees collected under amended s. 16.957 (4) (a)). As in the preceding item, this has the effect of adding to this exemption the current amount of the utility's contributions under s. 196.374 (3), assuming the funding levels for these programs are comparable in the draft as under current law. To ensure that this provision is revenue-neutral, the draft should include an annual transfer by the DOA Secretary from the energy program account in the Utility Public Benefits Fund to the General Fund equal to the amount of lost revenue from the sales tax exemption on an amount equal to the amount that utilities contributed in 2004 under s. 196.374, 2003 Stats. This amount is approximately \$1.85 million, based on contributions of \$67.155 million, 5.5% average sales tax rate and residential electricity being subject to sales tax for 6 months of the year. The PSC should be directed to include this amount in the amount to be collected from utilities and the fiscal agent should be authorized to

collect that amount from the utilities and then deposit it in the Utility Public Benefits Fund.

**Changes in s. 196.374**

14. Page 17, line 17 and line 19 (note): The PSC should oversee the measurement and evaluation of energy efficiency and renewable resource programs and not oversee the measurement and evaluation of low-income assistance programs.
15. Page 17, line 21: The PSC should contract for the audit of only the energy efficiency and renewable resource programs and not the low-income assistance programs.
16. Page 18, line 2 (notes): The draft should be silent on whether the PSC should contract with the Legislative Audit Bureau (LAB) for the required performance audits, thus allowing the PSC to contract with the LAB at its discretion. The draft should be silent on the auditor's expenses, thus implying that the PSC will pay for such expenses through its assessments under s. 196.85. In addition, add the fiscal agent to the LAB's scope of authority in s. 13.94 (4) to ensure that, if requested by the PSC or the Joint Audit Committee, the LAB has the authority to audit the fiscal agent. With respect to the second note, it is okay to refer to "audits", as in the draft. With respect to the third note, hold on transferring positions in the next version of the draft.
17. Page 18, lines 4 and 10: The draft applies the new provisions in s. 196.374 to "electric utilities." Based upon the definition of "utility" in current s. 196.374 (1) (c), the provisions in the draft will only apply to "Class A" electric utilities and will exclude smaller investor-owned electric utilities, such as Dahlberg Light and Power and Consolidated Water Power. The smaller investor-owned electric utilities currently collect public benefit fees but do not make contributions under s. 196.374 (3). Since the intent is to apply the draft's provisions in amended s. 196.374 to all investor-owned electric utilities, an appropriate definition of "electric utilities" in this section should be provided in the draft.
18. Page 20, line 11 (note): Address the note by specifying that the requirements on lines 8 and 10 should be limited to those requirements as they relate to energy conservation and efficiency. See, also, item # 17 on LRB-3517/P1.

**Nitrogen Oxide Emissions Reductions – s. 285.48**

19. Page 20, lines 17 and 22: The cross-references on these lines to programs administered by utilities under proposed s. 196.374 (3m) (e) do not appear to correspond to the programs referenced under current law. Current law refers to renewable energy and low-income weatherization and energy conservation programs or measures funded by expenditures under s. 196.374 (3) but not to these programs and measures funded by public benefit fees paid by utility customers. There is no easy way to amend these provisions to account for the same level of program funding as under current law, given the new funding mechanism under the draft. We would suggest that line 17 be amended to also include renewable energy programs funded by collections by utilities under s. 196.374 (3m) (d) and that line 22 be amended to also include low-income weatherization and energy conservation measures funded by collections by utilities under s. 196.374 (3m) (c) and (d) and by

any low-income program operated by utilities under the continuation in the draft of the last sentence in s. 196.374 (3). [See item #1, above.]

**LRB-3517/P1 - Renewable energy requirements for utilities and retail electric cooperatives**

1. Page 2, line 4: Is the phrase "that is located in this state", on this line redundant, given the use of the same phrase on page 2, line 2?
2. Page 2, line 18: Is it clear that the "total retail electric sales" on this line is measured as an amount of electricity rather than a dollar amount of sales?
3. Page 2, line 20: Insert "created by the provider" after "credits".
4. Page 3, line 14: Change "all" to "any". Otherwise, s. 196.378 (1) (n), as amended, could be read to require that both subds. 1. and 2. must apply for the electricity produced by specified renewable facilities to be "system renewable energy".
5. Page 3, line 18 (2nd note): The reference to "within that system" is ok.
6. Page 4, lines 4 and 7 and 7 (1st note): Substitute "2004" for "2005". The baseline for measuring the increase in renewable energy percentages specified in this provision should be an electric provider's renewable energy percentage for 2004.
7. Page 4, line 7 (2nd and 3rd notes): The December 31, 2010 and 2015 deadlines are ok. For the December 31, 2015 standard, the specification of 6 percentage points above the base (the percentage in 2004) is correct.
8. Page 4, line 10 (note): For now, rely on the application of s. 196.378 (5) for the enforcement of this standard.
9. Page 5, line 9 (1st note): The reference to the electric provider's implementation plans should be revised to require the submission of these plans as part of the Strategic Energy Assessment proceeding or in a special docket designed to facilitate compliance with the Energy Priorities Law. See the Task Force report, page 35, item 6.
10. Page 5, line 9 (2nd and 3rd notes): The PSC can use its present authority to reconsider its determination of whether an electric provider complies with the standard. I have asked PSC staff if any of the PSC's general authority in ch. 196, including s. 196.39, should be revised as a result of electric providers including electric cooperatives.
11. Page 5, line 14 (note): On page 5, line 12, delete "1." so that a delay may be granted under par. (e) from the average percentage requirement in s. 196.378 (2) (a) 2. Also, in light of this change, an "except as provided" clause should probably be added at the beginning of s. 196.378 (2) (a) 2.
12. Page 5, line 19 and page 6, line 1: Substitute "result in excessive increases in rates of" for "have undesirable cost impacts on". Also, at the end of page 6, line 1, substitute "increases" for "impacts".

13. Page 6, lines 9 to 24: The amendments to s. 196.378 (3) (a) should include the conditions on credits created from generators placed in service before or after January 1, 2004, as stated in the second and third sentences in item 10 on page 38 in the Task Force's report.
14. Page 7, before line 1 (note): The requirement regarding inclusion of renewable resource costs in wholesale rates reflects the Task Force report; the PSC can further interpret this requirement in its rules.
15. Page 7, line 2: Would it be clearer to use "was created" in place of "arises"? Also, since the credits referenced on lines 2 and 3 were created under s. 196.378 (3), 2003 Stats., should the reference to prior law be included in this sentence to clarify that these old credits are not being created under the new version of sub. (3), as amended by this line.
16. Page 7, lines 3 to 5: The dates that a credit is created under these sentences should be revised to reflect the changes in sub. (3) (a) in item. 13., above.
17. Page 7, lines 8 to 12: The requirements specified on lines 9 and 11 should be limited to those requirements as they relate to renewable energy resources to distinguish them from requirements relating to energy conservation and efficiency.

#### **LRB-3616/P1 – Other topics**

##### **State Purchase of "Green Power"**

1. Proposed s. 16.75 (12) is based on 2003 SB 554, as modified by the Task Force. According to Lee Cullen, the Task Force intended this provision to apply to all state electric power purchases; it does not apply to the private sector.
2. Page 2, line 14: Should the definition of "long-term arrangement" include the word "arrangement"?
3. Page 2, line 15: The determination of "baseline" green power use in par. (b) should refer to all state agencies, not all users in the state (which would include the private sector).
4. Page 2, line 18: Par. (c) should be modified to apply to all state electric power purchases. The current drafting applies it to purchases related to the facilities of specified agencies. Similarly, the definition of "office building" is limited to the facilities of specified agencies. Can these be redrafted to refer to all facilities owned or leased by the state, or all state facilities, or some other all-encompassing term? (The term "office building" may become unnecessary.) Alternatively, should it refer to all energy used by each agency? This provision seems to confuse agencies and facilities a bit. Would it be clearer to get away from any mention of facilities or, on the other hand, to discuss energy use only in terms of facilities?
5. Page 3, line 5: You may want to modify par. (c) 1. and 2. to conform to whatever you draft in par. (c) (intro.).

6. Page 3, line 5 (note): The date is fine. Also change the 2010 date on the following line to 2011.
7. Page 4, line 2: Add a provision to establish that state agency purchases under s. 16.75 (12) are subject to s. 16.92 (2) and must be cost-effective and technically feasible.
8. Add provisions that pay up to \$1 million for the state purchase of the incremental cost of green power above the cost of "regular" electricity from the public benefits energy program funds. To do this, direct the DOA Secretary to certify annually by May 15 to the PSC the amount needed for this appropriation in the following fiscal year, direct the PSC to include this amount in fees collected by utilities, authorize the fiscal agent to pay money into the Utility Public Benefits Fund for these expenses, transfer the amount to the General Fund, make an appropriation from the Utility Public Benefits Fund to DOA for these expenses, and authorize the DOA to transfer amounts from this appropriation to other agencies that procure fuels and utility services.

**State Construction Contracts**

9. Page 4, line 17: Clarify that this refers only to contracts under this section, i.e., construction project contracts.

**Sales Tax Exemption**

10. Page 6, lines 1 and 7: We were baffled as to the meaning of "integrated balance of system components". Michael Vickerman explained that it refers to the various parts of a solar energy system apart from the solar collector itself, parts which are often purchased separately from the collectors. We suggested referring to "appurtenances" or to other standard statutory terms, and he seemed satisfied.
11. Page 6, lines 1 to 3: Delete these lines and substitute, "Equipment, including all fixtures, component parts, gizmos, attachments, additions, addenda, appendices, and appurtenances thereto (or words to that effect), *that produces electricity from a renewable resource, as defined in s. 196.378 (1) (h), if the rated...*".
12. Page 6, lines 1 to 9: There is a definition of "solar energy system" in s. 70.111 (18), which excludes components that would be present in a conventional system. Please ask in a drafter's note whether this exclusion should be applied to the equipment identified on those lines.
13. Page 6, line 5 (note): The number is fine.
14. Page 6, line 6: Delete "domestic".
15. Page 6, line 9, (note): The number is 70,000,000 BTU/day. Ask John for the details of his calculation, if you are interested.
16. Page 6, line 10: Todd explained that this refers to an energy management service wherein a person operates a customer's water heating equipment using money- and energy-conserving methods and shares the cost savings with the customer. We agreed the cryptic phrase "a solar domestic hot water service" should be replaced with some more descriptive language. Here is one crack at some language: A

professional service to provide hot water by operation of a solar water heating system located on the customer's premises.

17. Add provisions that pay for this exemption from the public benefits energy program funds. To do this, use a model based on a certification, such as in ss. 20.855 (4) (b) and 71.10 (3) (b). In particular, direct the DOR Secretary to certify by August 15 to the PSC and DOA the amount of the exemption in the previous fiscal year, direct the PSC to include this amount in the fees collected by utilities, authorize the fiscal agent to pay money into the Utility Public Benefits Fund for these expenses, and authorize the DOA Secretary to transfer the amount to the General Fund.

**Building Code**

18. Page 7, line 18: "Conservation" is missing after "Energy".

**Non-Stat.**

19. Page 9, line 3 (note): The 18-month deadline is fine.
20. Page 9, line 12 (note): The 2007 date is fine.

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Compiled at the request of Senator Robert Cowles  
By John Stolzenberg and David Lovell  
Legislative Council  
Revised October 4, 2005