

## 2011 DRAFTING REQUEST

### Bill

Received: 10/31/2011

Received By: mkunkel

Wanted: As time permits

Companion to LRB:

For: Brett Hulsey (608) 266-7521

By/Representing:

May Contact:

Drafter: mkunkel

Subject: Public Util. - energy

Addl. Drafters:

Extra Copies:

Submit via email: YES

Requester's email: Rep.Hulsey@legis.wi.gov

Carbon copy (CC:) to:

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### Pre Topic:

No specific pre topic given

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### Topic:

Exclusion of hydroelectric power from other countries in determining compliance with renewable portfolio standards

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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>
/?				_____			Local
/1	mkunkel 11/01/2011	mduchek 12/07/2011	rschluet 12/09/2011	_____	mbarman 12/09/2011	lparisi 03/08/2012	

FE Sent For:

at intro  
3-19-12

<END>

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/?	mkunkel						
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FE Sent For:

<END>

**Kunkel, Mark**

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**From:** Zimmerman, Terri  
**Sent:** Thursday, October 27, 2011 10:51 AM  
**To:** Kunkel, Mark  
**Subject:** RE: Rep. Hulsey's bill draft request on an energy bill

yes

*draft as  
2 bills,  
not one*

---

**From:** Kunkel, Mark  
**Sent:** Thursday, October 27, 2011 10:50 AM  
**To:** Zimmerman, Terri  
**Subject:** RE: Rep. Hulsey's bill draft request on an energy bill

Terri:

Just to clarify, when you mention restoring Focus on Energy cuts in the budget, you are referring to restoring the PSC's ability to require, with JCF approval, that energy utilities to spend more than 1.2% of their annual operating revenues on Focus on Energy -- is that correct? The LFB's description of what the budget did to that authority is reproduced below.

-- Mark

## **8. UTILITY CONTRIBUTIONS FOR ENERGY EFFICIENCY AND RENEWABLE RESOURCE PROGRAMS**

**Joint Finance/Legislature:** Repeal the current law provisions that authorize the PSC to require energy utilities to spend more than 1.2% of their annual operating revenues on energy efficiency and renewable resource programs, if approved by the Joint Committee on Finance. Effective January 1, 2012, prohibit the PSC from requiring any energy utility to spend more than 1.2% of its annual operating revenues on energy efficiency and renewable resource programs. This provision both removes the mechanism that allows higher contribution levels to be approved in the future by the Joint Committee on Finance through the review process authorized under s. 13.10 of the statutes and reverses the higher contribution levels approved by the Committee in December, 2010. At that time, the Committee voted to require contribution levels of \$120 million in 2011, \$160 million in 2012, \$204 million in 2013, and \$256 million in 2014 and thereafter. At that time, PSC staff estimated that the 1.2% requirement would generate contribution levels of approximately \$100 million in 2011 and 2012. Therefore, this provision would reduce 2012 contributions from \$160 million to approximately \$100 million. Future changes in contributions will be dependent on changes in utility rates and energy consumption. Under the 2010 s. 13.10 approval, contributions as a percent of utility revenues were estimated to increase from 1.2% in 2010 to 1.5% in 2011, 1.9% in 2012, 2.5% in 2013, and 3.2% in 2014.

[Act 32 Sections: 2710c thru 2710g, and 9439(1q)]

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**From:** Zimmerman, Terri  
**Sent:** Thursday, October 27, 2011 10:40 AM  
**To:** Kunkel, Mark  
**Subject:** Rep. Hulsey's bill draft request on an energy bill

Mark,

Rep. Hulsey would like a bill that would restore the Focus on Energy cuts in Walker's budget bill and also include language to ban out-of-country eligibility of hydroelectric resources under Wisconsin's renewable portfolio standards (such as under AB114-Manitoba Hydro).

Thank you Mark.

Terri .  
Rep. Hulse's office  
266-7521



State of Wisconsin  
2011 - 2012 LEGISLATURE



LRB-3366/1  
MDK:/:....

O-NOTE Fri  
per cmh  
**2011 BILL**

med

in 11-1-11

Green

1 AN ACT Green, relating to: treatment of hydroelectric power under the renewable  
2 portfolio standard.

**Analysis by the Legislative Reference Bureau**

Under current law, an electric utility or retail electric cooperative (electric provider) is subject to certain requirements for ensuring that, in a given year, a specified percentage of the electricity that the electric provider sells to retail customers or members is derived from renewable resources. These requirements are commonly referred to as the renewable portfolio standard (RPS). "Renewable resource" is defined to include hydroelectric power. For purposes of determining compliance with an RPS for a particular year, current law imposes requirements on the counting of electricity generated from hydroelectric facilities that depend, in part, on the capacity of the facility.

If an electric provider purchases electricity from a hydroelectric facility with a capacity of less than 60 megawatts and provides the electricity to retail customers, current law allows the electric provider to count all of the electricity in determining compliance with an RPS. However, if an electric provider provides electricity to retail customers from a hydroelectric facility with such a capacity that is owned or operated by the electric provider, the electric provider may count all of the electricity only if the facility was initially placed in service on or after January 1, 2004. If the facility was initially placed in service prior to that date, an electric provider may count the average output from the facility for the years 2001, 2002, and 2003, subject to certain adjustments specified under current law.

Current law also allows an electric provider to count electricity from a hydroelectric facility with a capacity of 60 megawatts or more, regardless of whether

Beginning on December 31, 2015,

**BILL**

the electric provider owns or operates such a facility. However, electricity from such a facility may counted only if the facility was initially placed in service on or after December 31, 2010. ~~In addition, an electric provider may not begin to count electricity from such a facility until December 31, 2015.~~ Also, if the facility is located in Manitoba, Canada, the electricity may be counted only if: 1) the Province of Manitoba informs the Public Service Commission in writing that final licenses have replaced interim licenses for two specified hydroelectric projects located in the province; and 2) those final licenses are in effect under Canadian law.

This bill prohibits an electric provider from counting, for purposes of determining compliance with an RPS, electricity from a hydroelectric facility that is not located within the United States. The bill does not otherwise change the requirements under current law described above, except to eliminate the requirements pertaining to a facility located in Manitoba, Canada.

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

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

1 SECTION 1. 196.378 (1) (dm) of the statutes, as created by 2011 Wisconsin Act  
2 34, is amended to read:

3 196.378 (1) (dm) "Large hydroelectric facility" means an electric generating  
4 facility located within the United States with a capacity of 60 megawatts or more that  
5 derives electricity from hydroelectric power.

NOTE: NOTE: Par. (dm) is created eff. 12-31-15 by 2011 Wis. Act 34. NOTE:  
History: 1999 a. 9; 2001 a. 30; 2005 a. 141; 2009 a. 40, 406; 2011 s. 34.

6 SECTION 2. 196.378 (1) (h) 1m. of the statutes is amended to read:

7 196.378 (1) (h) 1m. A resource located within the United States with a capacity  
8 of less than 60 megawatts that derives electricity from hydroelectric power.

NOTE: NOTE: Subd. 1m. is amended eff. 12-31-15 by 2011 Wis. Act 34 to read: NOTE:  
1m. A resource that derives electricity from hydroelectric power.  
History: 1999 a. 9; 2001 a. 30; 2005 a. 141; 2009 a. 40, 406; 2011 a. 34.

9  
10 SECTION 3. 196.378 (1) (h) 1m. of the statutes, as affected by 2011 Wisconsin  
11 Act 2011 Wisconsin Act 34, is amended to read:

12 196.378 (1) (h) 1m. A resource located within the United States that derives  
13 electricity from hydroelectric power.

NOTE: NOTE: Subd. 1m. is amended eff. 12-31-15 by 2011 Wis. Act 34 to read: NOTE:

**BILL**

1 ~~1m. A resource that derives electricity from hydroelectric power.~~

History: 1999 a. 9; 2001 a. 30; 2005 a. 141; 2009 a. 40, 406; 2011 a. 34.

2 **SECTION 4.** 196.378 (1) (m) of the statutes, as created by 2011 Wisconsin Act 34,

3 is amended to read:

4 196.378 (1) (m) "Small hydroelectric facility" means an electric generating  
5 facility located within the United States with a capacity of less than 60 megawatts  
6 that derives electricity from hydroelectric power.

NOTE: NOTE: Par. (m) is created eff. 12-31-15 by 2011 Wis. Act 34. NOTE:

History: 1999 a. 9; 2001 a. 30; 2005 a. 141; 2009 a. 40, 406; 2011 a. 34.

7 **SECTION 5.** 196.378 (2) (b) 1m. a. of the statutes is amended to read:

8 196.378 (2) (b) 1m. a. The average of the amounts of hydroelectric power  
9 generated by facilities located within the United States owned or operated by the  
10 electric provider for 2001, 2002, and 2003, adjusted to reflect the permanent removal  
11 from service of any of those facilities and adjusted to reflect any capacity increases  
12 from improvements made to those facilities on or after January 1, 2004.

History: 1999 a. 9; 2001 a. 30; 2005 a. 141; 2009 a. 40, 406; 2011 a. 34.

13 **SECTION 6.** 196.378 (2) (b) 1m. a. of the statutes, as affected by 2011 Wisconsin Acts

14 Act 2011 Wisconsin Act 34 and 2011 Wisconsin Act.... (this act), is repealed and  
15 recreated to read:

16 196.378 (2) (b) 1m. a. The average of the amounts of hydroelectric power  
17 generated by small hydroelectric facilities owned or operated by the electric provider  
18 for 2001, 2002, and 2003, adjusted to reflect the permanent removal from service of  
19 any of those facilities and adjusted to reflect any capacity increases from  
20 improvements made to those facilities on or after January 1, 2004.

21 **SECTION 7.** 196.378 (2) (b) 1m. b. of the statutes is amended to read:

22 196.378 (2) (b) 1m. b. The amount of hydroelectric power generated in the  
23 reporting year by facilities located within the United States owned or operated by the  
24 electric provider that are initially placed in service on or after January 1, 2004.

BILL

1 NOTE: NOTE: NOTE: Subd. 1m. is amended eff. 12-31-15 by 2011 Wis. Act 34 to read:NOTE:

2 1m. The amount of electricity derived from small hydroelectric facilities that an electric provider may count toward satisfying the requirements of par. (a) 2 shall  
3 be all electricity provided by such facilities that the electric provider purchased in the reporting year plus all of the following:

4 a. The average of the amounts of hydroelectric power generated by small hydroelectric facilities owned or operated by the electric provider for 2001, 2002, and  
5 2003, adjusted to reflect the permanent removal from service of any of those facilities and adjusted to reflect any capacity increases from improvements made to those  
6 facilities on or after January 1, 2004.

7 b. The amount of hydroelectric power generated in the reporting year by small hydroelectric facilities owned or operated by the electric provider that are initially  
8 placed in service on or after January 1, 2004.

9 History: 1999 a. 9; 2001 a. 30; 2005 a. 141; 2009 a. 40, 406; 2011 a. 34.

SECTION 8. 196.378 (2) (b) 1m. b. of the statutes, as affected by 2011 Wisconsin

10 Acts Act 2011 Wisconsin Act 34 and 2011 Wisconsin Act .... (this act), is repealed and  
11 recreated to read:

12 196.378 (2) (b) 1m. b. The amount of hydroelectric power generated in the  
13 reporting year by small hydroelectric facilities owned or operated by the electric  
14 provider that are initially placed in service on or after January 1, 2004.

15 SECTION 9. 196.378 (2) (b) 1o. (intro.) of the statutes, as created by 2011

16 Wisconsin Act 34, is renumbered <sup>196.378</sup> 199.378 (2) (b) 1o. and amended to read:

17 <sup>196.378</sup> 199.378 (2) (b) 1o. (intro.) An electric provider may count electricity derived  
18 from a large hydroelectric facility toward satisfying the requirements of par. (a) 2.  
19 only if the facility was initially placed in service on or after December 31, 2010, and,  
20 if the facility is located in Manitoba, Canada, all of the following are satisfied:

21 History: 1999 a. 9; 2001 a. 30; 2005 a. 141; 2009 a. 40, 406; 2011 a. 34.

SECTION 10. 196.378 (2) (b) 1o. a. and 1o. b. of the statutes, as created by 2011

22 Wisconsin Act 2011 Wisconsin Act 34, are repealed.

23 SECTION 11. Effective dates. This act takes effect on the day after publication,

24 except as follows:

25 (1) The treatment of sections 196.378 (1) (d), (h) 1m. (by SECTION 3) and (m) and

26 (2) (b) 1o. (intro.), 1o. a., and 1o. b. of the statutes and the repeal and recreation of

27 section 196.378 (2) (b) 1m. a. and 1m. b. of the statutes take effect on December 31,

28 2015.

29 (END)

STET

No changes to this one

check a to ref

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

LRB-3366/1dn

MDK:/:....

Date

med

Rep. Hulsey:

Please be aware that this bill could be subject to a challenge that it violates the commerce clause of the U.S. constitution, which authorizes Congress to regulate commerce with foreign nations. Under the "dormant foreign affairs doctrine," courts have considered the extent to which the commerce clause's grant of power to Congress precludes a state from regulating commerce with foreign nations. However, as one commentator has noted, recent U.S. Supreme Court decisions have "created some confusion over the status of, and test to be used under, the dormant foreign affairs doctrine." M. Schaefer, *Constraints on State-Level Foreign Policy: (Re) Justifying, Refining and Distinguishing the Dormant Foreign Affairs Doctrine*, 41 Seton Hall L. Review 201, 318 (2011). The same commentator has also noted that restrictions on states under the foreign affairs doctrine have been increasingly criticized and questioned. 41 Seton Hall L. Review at 316. If you want me to research this issue further, please let me know.

Mark D. Kunkel  
Senior Legislative Attorney  
Phone: (608) 266-0131  
E-mail: mark.kunkel@legis.wisconsin.gov

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

LRB-3366/1dn  
MDK:med:rs

December 9, 2011

Rep. Hulsey:

Please be aware that this bill could be subject to a challenge that it violates the commerce clause of the U.S. Constitution, which authorizes Congress to regulate commerce with foreign nations. Under the "dormant foreign affairs doctrine," courts have considered the extent to which the commerce clause's grant of power to Congress precludes a state from regulating commerce with foreign nations. However, as one commentator has noted, recent U.S. Supreme Court decisions have "created some confusion over the status of, and test to be used under, the dormant foreign affairs doctrine." M. Schaefer, *Constraints on State-Level Foreign Policy: (Re) Justifying, Refining and Distinguishing the Dormant Foreign Affairs Doctrine*, 41 Seton Hall L. Review 201, 318 (2011). The same commentator has also noted that restrictions on states under the foreign affairs doctrine have been increasingly criticized and questioned. 41 Seton Hall L. Review at 316. If you want me to research this issue further, please let me know.

Mark D. Kunkel  
Senior Legislative Attorney  
Phone: (608) 266-0131  
E-mail: mark.kunkel@legis.wisconsin.gov

**Parisi, Lori**

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**From:** Zimmerman, Terri  
**Sent:** Thursday, March 08, 2012 11:17 AM  
**To:** LRB.Legal  
**Subject:** Draft Review: LRB 11-3366/1 Topic: Exclusion of hydroelectric power from other countries in determining compliance with renewable portfolio standards

Please Jacket LRB 11-3366/1 for the ASSEMBLY.