



State of Wisconsin
2009 - 2010 LEGISLATURE

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2009 ASSEMBLY BILL 857

March 16, 2010 – Introduced by Representative SOLETSKI, cosponsored by Senator PLALE. Referred to Committee on Energy and Utilities.

1 AN ACT **to renumber and amend** 66.0825 (3) (h) and 196.491 (4) (c) 1.; **to amend**
2 30.025 (3m), 66.0303 (3) (a), 66.0825 (3) (e), 66.0825 (3) (f), 66.0825 (4) (a),
3 66.0825 (18), 196.491 (4) (c) 2., 196.491 (4) (c) 3., 706.09 (3) (a) and 893.33 (5);
4 and **to create** 196.491 (4) (c) 1g. and 196.491 (4) (c) 1r. a. and b. of the statutes;
5 **relating to:** exemption for interstate natural gas companies from certain
6 requirements regarding real estate transactions and court actions, creation
7 and powers of municipal electric companies, and exemption from certificate of
8 public convenience and necessity for certain electric transmission line projects.

Analysis by the Legislative Reference Bureau

Current law provides that a person who acquires an interest in property for valuable consideration without notice that there is a prior adverse interest takes the interest free and clear of the prior interest, if that prior interest is based on any of a number of situations specified in current law. Current law also provides exceptions for certain prior interests in real estate, such as real estate owned by a public service corporation, railroad corporation, electric cooperative, or the United States, the state, or a political subdivision. This bill creates an additional exception for real estate owned by a “natural gas company,” as defined under a federal law that provides that “natural gas company” means a person engaged in the following: 1) the

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transportation of natural gas in interstate commerce; or 2) the sale in interstate commerce of natural gas for resale.

Current law also bars a person from commencing an action related to an interest in real property unless an instrument expressly referring to the existence of that interest has been recorded in the register of deeds of the county where the real estate is located within 30 years before the date of commencing the action. In addition, current law bars all claims to an interest in real property unless, within the last 30 years, an instrument has been recorded expressly referring to the interest in the real property. Current law also provides an exception to these provisions if the record title of the property remains with a railroad corporation, a public service corporation, a electric cooperative, the state, or a political subdivision of the state. This bill creates an additional exception if the record title of the property remains with a natural gas company, which is defined as described above.

Current law also allows any combination of municipalities of this state that operate electric generation, transmission, or distribution facilities to establish a municipal electric company for the joint production, transmission, or distribution of electric power for the benefit of the municipalities. Current law defines "municipality" for this purpose as a city, village, or town. This bill defines "municipality" also to include an electric utility, or combined utility, that is owned or operated by a city, village, or town. In addition, the bill allows any combination of municipalities of this state and another state to establish a municipal electric company. Current law also allows a municipal electric company to undertake certain projects and enter into certain contracts and other agreements with other persons and public agencies. Current law defines "person" to include business entities organized under the laws of any state or the United States. This bill defines "person" to also include business entities organized under the laws of any foreign nation or subdivision of any foreign nation. Current law defines "public agency" to include municipal and other governmental entities created under the laws of any state or the United States, as well as any state or the United States. The bill defines "public agency" to also include municipal and other governmental entities created under the laws of any foreign nation or subdivision of any foreign nation, as well as any foreign nation or subdivision of any foreign nation. The bill also exempts a municipal electric company from a requirement under current law to obtain the attorney general's approval prior to contracting with municipalities of other states or with federally recognized American Indian tribes or bands located in other states.

Finally, current law prohibits, with certain exceptions, a person from constructing a high-voltage transmission line unless the Public Service Commission (PSC) has granted the person a certificate of public convenience and necessity (CPCN) for the line. Current law defines "high-voltage transmission line" as an electric transmission line exceeding one mile in length that is designed for operation at a nominal voltage of 100 kilovolts or more. One of the exceptions to the CPCN requirement is for construction of a high-voltage transmission line that is designed for operation at a nominal voltage of less than 345 kilovolts. The exception applies only if all related construction activity takes place entirely within the area of an existing electric transmission line right-of-way. This bill eliminates the foregoing

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requirement, and provides instead that the exception applies only if the centerline of the high-voltage transmission line is located within 60 feet on either side of the centerline of an existing electric transmission line that operates at a nominal voltage of 69 kilovolts or more. In addition, for the exception to apply, the person constructing the high-voltage transmission line must demonstrate to the PSC that the project will not have undue adverse environmental impacts. Also, the person must demonstrate that the high-voltage transmission line requires the acquisition in total of one-half mile or less of rights-of-way from landowners from whom rights-of-way were not required to be acquired for the existing electric transmission line.

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

1 **SECTION 1.** 30.025 (3m) of the statutes is amended to read:

2 30.025 (3m) ENVIRONMENTAL ASSESSMENTS FOR CERTAIN PROJECTS. The
3 department is not required to prepare an environmental impact statement under s.
4 1.11 (2) (c) for the construction of a project that is specified in s. 196.491 (4) (c) 1. 1r.
5 and for which one or more permits are required, but shall prepare an environmental
6 assessment regarding the construction if the department's rules require an
7 environmental assessment.

8 **SECTION 2.** 66.0303 (3) (a) of the statutes is amended to read:

9 66.0303 (3) (a) Except as provided in par. (b) and s. 66.0825 (18), an agreement
10 made under this section shall, prior to and as a condition precedent to taking effect,
11 be submitted to the attorney general who shall determine whether the agreement is
12 in proper form and compatible with the laws of this state. The attorney general shall
13 approve any agreement submitted under this paragraph unless the attorney general
14 finds that it does not meet the conditions set forth in this section and details in
15 writing addressed to the concerned municipal governing bodies the specific respects
16 in which the proposed agreement fails to meet the requirements of law. Failure to
17 disapprove an agreement submitted under this paragraph within 90 days of its

1 submission constitutes approval. The attorney general, upon submission of an
2 agreement, shall transmit a copy of the agreement to the governor who shall consult
3 with any state department or agency affected by the agreement. The governor shall
4 forward to the attorney general any comments the governor may have concerning the
5 agreement.

6 **SECTION 3.** 66.0825 (3) (e) of the statutes is amended to read:

7 66.0825 (3) (e) "Municipality" means a city, village, or town, or an electric
8 utility, or combined utility, owned or operated by a city, village, or town.

9 **SECTION 4.** 66.0825 (3) (f) of the statutes is amended to read:

10 66.0825 (3) (f) "Person" means a natural person, a public agency, a cooperative,
11 an unincorporated cooperative association, or a private corporation, limited liability
12 company, association, firm, partnership, or business trust of any nature, organized
13 and existing under the laws of any state or of, the United States, or any foreign nation
14 or any subdivision of any foreign nation.

15 **SECTION 5.** 66.0825 (3) (h) of the statutes is renumbered 66.0825 (3) (h) (intro.)
16 and amended to read:

17 66.0825 (3) (h) (intro.) "Public agency" means any of the following:

18 1. Any municipality or other, municipal corporation, political subdivision,
19 governmental unit, or public corporation, created under the laws of this state or of,
20 another state or of, the United States, and any or any foreign nation or subdivision
21 of any foreign nation.

22 2. Any state or, the United States, and or any foreign nation or subdivision of
23 any foreign nation.

24 3. Any person, board, or other body, that is declared by the laws of any state or,
25 the United States, or any foreign nation or any subdivision of any foreign nation to

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1 be a department, agency, or instrumentality of the state or, the United States, or the
2 foreign nation or subdivision.

3 **SECTION 6.** 66.0825 (4) (a) of the statutes is amended to read:

4 66.0825 (4) (a) Any combination of municipalities of the this state or of this
5 state and other states which operates facilities for the generation, transmission or
6 distribution of electric power and energy may, by contract with each other, establish
7 a separate governmental entity to be known as a municipal electric company to be
8 used by the contracting municipalities to effect joint development of electric energy
9 resources or production, distribution and transmission of electric power and energy
10 in whole or in part for the benefit of the contracting municipalities. The
11 municipalities party to the contract may amend the contract as provided in the
12 contract.

13 **SECTION 7.** 66.0825 (18) of the statutes is amended to read:

14 66.0825 (18) OTHER STATUTES. The powers granted under this section do not
15 limit the powers of municipalities to enter into intergovernmental cooperation or
16 contracts or to establish separate legal entities under ss. 66.0301 to 66.0311 or any
17 other applicable law, or otherwise to carry out their powers under applicable
18 statutory provisions, nor do the powers granted under this section limit the powers
19 reserved to municipalities by state law. Section 66.0303 (3) does not apply to a
20 company's contracts or agreements.

21 **SECTION 8.** 196.491 (4) (c) 1. of the statutes is renumbered 196.491 (4) (c) 1r.
22 (intro.) and amended to read:

23 196.491 (4) (c) 1r. (intro.) A certificate under sub. (3) is not required for a person
24 to construct a high-voltage transmission line designed for operation at a nominal
25 voltage of less than 345 kilovolts if ~~all related construction activity takes place~~

1 entirely within the area of an existing electric transmission line right-of-way. the
2 centerline of the new high-voltage transmission line is located within 60 feet on
3 either side of the centerline of an existing electric transmission line operating at a
4 nominal voltage of 69 kilovolts or more and the applicant demonstrates all of the
5 following:

6 **SECTION 9.** 196.491 (4) (c) 1g. of the statutes is created to read:

7 196.491 (4) (c) 1g. In this paragraph, “centerline” means a line drawn through
8 the centerline of an electric transmission line along its length.

9 **SECTION 10.** 196.491 (4) (c) 1r. a. and b. of the statutes are created to read:

10 196.491 (4) (c) 1r. a. That the project will not have undue adverse
11 environmental impacts.

12 b. That the new high-voltage transmission line requires the acquisition in total
13 of one-half mile or less of rights-of-way from landowners from which rights-of-way
14 were not required to be acquired for the existing electric transmission line.

15 **SECTION 11.** 196.491 (4) (c) 2. of the statutes is amended to read:

16 196.491 (4) (c) 2. The commission is not required to prepare an environmental
17 impact statement under under s. 1.11 (2) (c) for construction that is specified in subd.
18 1. 1r., but shall prepare an environmental assessment regarding the construction if
19 an environmental assessment is required under the commission’s rules.

20 **SECTION 12.** 196.491 (4) (c) 3. of the statutes is amended to read:

21 196.491 (4) (c) 3. If construction or utilization of a high-voltage transmission
22 line described in subd. 1. 1r. is precluded or inhibited by a local ordinance, the
23 construction and utilization of the line may nevertheless proceed.

24 **SECTION 13.** 706.09 (3) (a) of the statutes is amended to read:

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1 706.09 (3) (a) *Public service corporations, railroads, electric cooperatives,*
2 *trustees, natural gas companies, governmental units.* While owned, occupied or used
3 by any public service corporation, any railroad corporation as defined in s. 195.02 (1),
4 any water carrier as defined in s. 195.02 (5), any electric cooperative organized and
5 operating on a nonprofit basis under ch. 185, any natural gas company, as defined
6 in 15 USC 717a (6), or any trustee or receiver of any such corporation ~~or~~, electric
7 cooperative, or natural gas company, or any mortgagee or trust deed trustee or
8 receiver thereof; nor any such interest while held by the United States, the state or
9 any political subdivision or municipal corporation thereof; or

10 **SECTION 14.** 893.33 (5) of the statutes is amended to read:

11 893.33 (5) This section bars all claims to an interest in real property, whether
12 rights based on marriage, remainders, reversions and reverter clauses in covenants
13 restricting the use of real estate, mortgage liens, old tax deeds, death and income or
14 franchise tax liens, rights as heirs or under will, or any claim of any nature, however
15 denominated, and whether such claims are asserted by a person *sui juris* or under
16 disability, whether such person is within or without the state, and whether such
17 person is natural or corporate, or private or governmental, unless within the 30-year
18 period provided by sub. (2) there has been recorded in the office of the register of
19 deeds some instrument expressly referring to the existence of the claim, or a notice
20 pursuant to this section. This section does not apply to any action commenced or any
21 defense or counterclaim asserted, by any person who is in possession of the real
22 estate involved as owner at the time the action is commenced. This section does not
23 apply to any real estate or interest in real estate while the record title to the real
24 estate or interest in real estate remains in a railroad corporation, a public service
25 corporation as defined in s. 201.01, an electric cooperative organized and operating

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on a nonprofit basis under ch. 185, a natural gas company, as defined in 15 USC 717a
(6), or any trustee or receiver of a railroad corporation, a public service corporation
or, an electric cooperative, or a natural gas company, or to claims or actions founded
upon mortgages or trust deeds executed by that cooperative or, corporation, company,
or trustees or receivers of that cooperative or, corporation, or company. This section
also does not apply to real estate or an interest in real estate while the record title
to the real estate or interest in real estate remains in the state or a political
subdivision or municipal corporation of this state.

SECTION 15. Initial applicability.

10 (1) CLAIMS BARRED. The treatment of section 893.33 (5) of the statutes first
11 applies to an action commenced or defense or counterclaim asserted on the effective
12 date of this subsection.

13 (END)