

**ASSEMBLY AMENDMENT 3,
TO 1999 ASSEMBLY BILL 389**

June 15, 1999 – Offered by COMMITTEE ON UTILITIES.

1 At the locations indicated, amend the bill as follows:

2 **1.** Page 62, line 12: after that line insert:

3 “**SECTION 89m.** 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.

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

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

12 a. Any repair, maintenance, installation or construction of a structure owned
13 or used by or for a public utility, or for a customer of a public utility, if the repair,

1 maintenance, installation or construction is related to furnishing heat, light, water
2 or power to the customer.

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

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

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

10 (d) “Engage” means to actively participate in the daily operations or daily
11 business decisions of an entity, as defined in s. 180.0103 (8).

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

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

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

22 (h) “Property management” means any activity associated with the care or
23 maintenance of land or improvements, including business planning and budgeting,
24 accounting, lease administration, tenant relations and retention, security,

1 maintenance of common areas, rent collections, financial reporting, service contract
2 administration and inspections.

3 (hm) “Public utility” means every corporation, company, individual or
4 association and their lessees, trustees or receivers appointed by any court or state
5 or federal agency, that may own, operate, manage or control all or any part of a plant
6 or equipment, within the state, for the production, transmission, delivery or
7 furnishing of electricity directly to or for the public, except that “public utility” does
8 not include any municipal utility or municipal electric company, as defined in s.
9 66.073 (3) (d), or any cooperative association organized under ch. 185 for the purpose
10 of producing or furnishing heat, light, power or water to its members only.

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

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

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

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

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

23 (a) Engage in real estate practice.

24 (b) Engage in residential real estate development.

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

1 (d) Engage in residential or commercial construction.

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

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

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

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

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

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

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

1 1. Directly acquiring or disposing of property or interests in property if the
2 acquisition or disposition is related to the operation of a public utility and the
3 acquisition or disposition satisfies one of the following:

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

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

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

13 3. Providing financial support through investments, loans or grants to 3rd
14 parties that may be engaged in an activity specified in sub. (2), except that if one of
15 the purposes of the activity is economic development the public utility may profit
16 directly from that activity only from interest earned on an investment or loan or
17 through the receipt of profits that are incidental to the economic development
18 purpose of the activity.

19 **(4) EXCEPTIONS.** (a) A nonutility affiliate that is engaged in residential
20 construction on the effective date of this paragraph [revisor inserts date], may
21 maintain passive ownership of 50% or more of any of the following:

22 1. A residential construction project.

23 2. A commercial construction project that is incidental to a residential
24 construction project.

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

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

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

10 (END)