

1999 DRAFTING REQUEST**Assembly Amendment (AA-AB(LRBx3200/4))**Received: **06/15/99**Received By: **kunkemd**Wanted: **Today**

Identical to LRB:

For: **Tim Hoven (608) 267-2369**By/Representing: **Michael**This file may be shown to any legislator: **NO**Drafter: **kunkemd**

May Contact:

Alt. Drafters:

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

Extra Copies:

Pre Topic:

No specific pre topic given

Topic:

Real estate prohibitions on public utilities

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>
/1	kunkemd 06/15/99	gilfokm 06/15/99	jfrantze 06/15/99	_____	ismith 06/15/99	lrb_docadmin 06/15/99	

FE Sent For:

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/?	kunkemd		6/15	6/15			

FE Sent For:

<END>

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M. 2p

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TELEFAX TRANSMITTAL COVER PAGE

DATE: June 15, 1999

TIME: 3:58 PM

TO: Curt Pawlisch 251-2883

FROM: Mike Wittenwyler

NUMBER OF PAGES TRANSMITTED (INCLUDING THIS COVER SHEET): 5

MESSAGE:

I believe that I captured everything we discussed on the phone. I'll be going over it again very carefully and let you know if I overlooked anything.

If you have any problems with this transmission or do not receive all of the pages please call Julie Sylvester at (608) 257-3911 as soon as possible.

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4pm

1 TO BE ADDED TO CHAPTER 452, WIS. STATS.:

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452.30 Public Utilities and Nonutility Affiliates

(1) DEFINITIONS. In this section:

- (a) "Brownfields" means abandoned, idle or underused industrial or commercial facilities or sites, (the use) expansion or redevelopment of which is adversely affected by actual environmental contamination.
- (b) "Commercial construction" means the act of building any structure or that part of any structure that is not used as a home, residence or sleeping place by one person or by two or more persons maintaining a common household, to the exclusion of all others; provided, however, that "commercial construction" shall not include any repair, maintenance, installation, or construction of structures or facilities owned or used by or for a public utility or for a public utility customer when related to the furnishing to the customer of heat, light, water, or power. "Commercial construction" also does not include any construction related to the evaluation, control, or remediation of hazardous substances, solid wastes, liquid wastes, gaseous wastes, soils, air, or water; nor does "commercial construction" include construction specifically related or limited to compliance with federal, state, or local environmental laws, regulations, orders, or rules.
- (c) "Engage" means to actively participate in the daily operations or daily business decisions of an entity as defined in s. 180.0103(8). "Engage" does not mean passive ownership of less than 50 percent of an entity, or such actions or provisions by a minority owner necessary or appropriate to protect its ownership interest other than actively participating in the daily operations or daily business decisions of an entity.
- (d) "Holding company system" has the meaning given it under s. 196.795(1) (i).
- (e) "Improvements" means any valuable addition made to land including, but not limited to, excavations, gradings, foundations, structures, buildings, streets, parking lots, sidewalks, sewers, septic systems, or drainage facilities; provided, however, that "improvements" shall not include any repair, maintenance, installation, or construction of structures or facilities owned or used by or for a public utility or for a public utility customer when related to the furnishing to the customer of heat, light, water, or power.

1

4pm

- 1 (f) "Nonutility affiliate" means either a subsidiary of a public utility or a
- 2 company in a holding company system which is not a public utility.
- 3
- 4 (g) "Property management" means any activity associated with the care or
- 5 maintenance of land or improvements including, but not limited to,
- 6 business planning and budgeting, accounting, lease administration, tenant
- 7 relations and retention, security, maintenance of common areas, rent
- 8 collections, financial reporting, service contract administration, or
- 9 inspections.
- 10
- 11 (h) "Public utility" means every corporation, company, individual,
- 12 association, their lessees, and trustees or receivers appointed by any
- 13 court or state or federal agency that may own, operate, manage or
- 14 control all or any part of a plant or equipment, within the state, for the
- 15 production, transmission, delivery or furnishing of electricity directly to
- 16 or for the public; provided, however, that "public utility" shall not
- 17 include any municipal utility or any municipal electric company or any
- 18 cooperative association organized under ch. 185 for the purpose of
- 19 producing or furnishing heat, light, power or water to its members only.
- 20
- 21 (i) "Residential real estate development" means the act of dividing or
- 22 subdividing any parcel of land for residential construction or making
- 23 improvements to facilitate or allow residential construction.
- 24
- 25 (j) "Residential construction" means the act of building or contracting to
- 26 build any structure or that part of any structure used as a home,
- 27 residence or sleeping place by one person or by two or more persons
- 28 maintaining a common household, to the exclusion of all others.
- 29
- 30 (k) "Third party" means any person other than a public utility or nonutility
- 31 affiliate.
- 32

33 (2) **PROHIBITED ACTIVITIES.** Unless otherwise provided by law or as allowed
 34 under sub. (3), no public utility or no nonutility affiliate shall:

- 35
- 36 (a) Engage in the real estate practice as defined in s. 452.01(6);
- 37
- 38 (b) Engage in residential real estate development;
- 39
- 40 (c) Engage in property management for a third party; or
- 41
- 42 (d) Engage in residential construction or commercial construction.
- 43

Up m

- 1 (3) PERMISSIBLE ACTIVITIES OF PUBLIC UTILITIES AND NONUTILITY
- 2 AFFILIATES. Notwithstanding the prohibitions in sub. (2), this section shall
- 3 not be interpreted to prohibit a public utility or nonutility affiliate from:
- 4
- 5 (a) Repairing, maintaining, installing, or constructing structures or facilities
- 6 owned or used by or for a nonutility affiliate or a public utility or for a
- 7 public utility customer when related to the furnishing to the customer of
- 8 heat, light water, or power; or
- 9
- 10 (b) Engaging in construction specifically related to the evaluation, control, or
- 11 remediation of hazardous substances, solid wastes, liquid wastes, gaseous
- 12 wastes, soils, air, or water;
- 13
- 14 (c) Engaging in construction specifically related or limited to compliance with
- 15 federal, state, or local environmental laws, regulations, orders, or rules.
- 16
- 17 (d) Consulting or making other financial or business arrangements with one or
- 18 more third parties who will engage in commercial construction.
- 19
- 20 (e) Consulting or making other financial or business arrangements with one or
- 21 more third parties who will engage in residential construction or residential
- 22 real estate development; provided, however, that if a public utility or
- 23 nonutility affiliate contracts for the development of more than one residential
- 24 real estate development or residential construction projects, the public utility
- 25 or nonutility affiliate shall not enter into an exclusive arrangement with a
- 26 third party for all such residential real estate development or residential
- 27 construction.
- 28

29 (4) ADDITIONAL PERMISSIBLE ACTIVITIES FOR PUBLIC UTILITIES NOT
 30 REGULATED UNDER S. 196.795. Notwithstanding the prohibitions in sub.
 31 (2), this section shall not be interpreted to prohibit a public utility that is not
 32 regulated under s. 196.795 or its nonutility subsidiaries from:

- 33 (a) Acquiring or disposing of property directly, or interests in property, related
- 34 to or associated with the operation of a public utility through:
- 35
- 36
- 37 1. a contract with a third party engaged in the real estate practice as defined
- 38 in s. 452.01(6), or
- 39
- 40 2. an individual employed by a public utility who is engaged in the real
- 41 estate practice as defined in s. 452.01(6), or
- 42
- 43 3. an individual employed by a public utility as authorized by law.
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~~commercial~~
(b) Engaging in commercial and residential real estate development and construction on property owned or acquired by the public utility for a public utility purpose so long as total annual revenues from such activities do not exceed three percent of the total operating revenue of the public utility in any given year.

or nonutility subsidiary

(c) Providing unlimited financial support through loans and grants to third parties who may be engaged in activities prohibited under sub. (2) so long as the activities may be considered economic development activity and the public utility shall not profit directly for its financial support except for interest earned on loans. For purposes of this section, economic development shall mean development designed to promote job growth or retention, expand the property tax base or improve the overall economic vitality of a municipality or region.

investments,

and profits incidental to the economic development

(5) EXEMPTION. Notwithstanding the prohibitions in sub. (2), a nonutility affiliate that has been engaged in residential construction as of the effective date of this act shall be allowed to maintain passive ownership of greater than 50 percent in a residential construction project or a commercial construction project incidental to a residential construction project.

purpose of the investment, loan or grant.

(6) BROWNFIELDS ACTIVITIES. A public utility or nonutility affiliate may engage in residential real estate development at a brownfields facility or site without being subject to any of the restrictions in this section.

(7) PRIVATE CAUSE OF ACTION. Any public utility or nonutility affiliate which does, causes, or permits to be done any prohibited action in this section or fails to comply with any term, limitation or condition imposed in this section is liable to any person injured thereby in the amount of damages sustained in consequence of the prohibited action or failure to act and reasonable attorney fees.

KVO

~~(8) STRICTLY INTERPRETED. The provisions of this section shall be interpreted strictly to limit the permitted activities of a public utility and a nonutility affiliate.~~

TO BE ADDED TO 196.795(5), WIS. STATS.:

(t) A public utility affiliate and a nonutility affiliate shall also be subject to the restrictions set forth in s. 452.30, but only for their business or activities in this state.

196.795(9m) SHALL BE AMENDED TO INCLUDE SUB. (t).



State of Wisconsin
1999 - 2000 LEGISLATURE

LRBa0502/1
MDK:A:....

O-NOTE

Now

**ASSEMBLY AMENDMENT ,
TO 1999 ASSEMBLY BILL (LRB-3200/4)**

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^A(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 (h) "Public utility" means every corporation, company, individual or association
4 and their lessees, trustees or receivers appointed by any court or state or federal
5 agency, that may own, operate, manage or control all or any part of a plant or
6 equipment, within the state, for the production, transmission, delivery or furnishing
7 of electricity directly to or for the public, except that "public utility" does not include
8 any municipal utility or municipal electric company, as defined in s. 66.073 (3) (d),
9 or any cooperative association organized under ch. 185 for the purpose of producing
10 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 ~~third~~ 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 ~~third~~^{3rd} parties who will engage in commercial construction.

15 5. Consulting or making other financial or business arrangements with one or
16 more ~~third~~^{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 ~~third~~^{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}~~third~~
5 party 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}~~third~~
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, ^gthe 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] ^V 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.

[Handwritten signature]
[Handwritten circled "6-7"]

8

(END)

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

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

LRBa0502/1dn

MDK:.....



Representative Hoven:

Please note the following about this amendment:

1. I had difficulty understanding the intent of many of the provisions in the suggested language and I made changes that I thought were appropriate. Please review the amendment very carefully to make sure that it achieves your intent.

2. I had particular difficulty with proposed s. 196.796 (3) (b) 3. Please review that provision carefully.

3. It is not necessary to include the exceptions to the definition of "engage" that were included in the suggested language because the exceptions clearly do not fall under the definition of "engage".

4. This amendment does not include the suggested language regarding s. 196.795 (5) (t) or the suggested change to s. 196.795 (9m) because they are not necessary. Note that public utility affiliates and nonutility affiliates are subject to the prohibitions in proposed s. 196.796.

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