

**Barman, Mike**

**From:** Kunkel, Mark  
**Sent:** Monday, October 04, 1999 5:42 PM  
**To:** Barman, Mike  
**Subject:** Copies

Mike, can you or another PA please make copies of the files for each of the following and add them to the file for LRBb1931? Thanks...

- 1. LRBb1659
  - ~~2. LRBb1323~~
  - 3. LRBb1709
  - 4. LRB-3373
  - 5. LRBs0102
- Handwritten annotations: "move into" with arrows pointing to items 3 and 4; "copy & move into" with an arrow pointing to item 5.

b 1709  
~

Mark Kunkel  
Legislative Attorney  
State of Wisconsin  
Legislative Reference Bureau

mark.kunkel@legis.state.wi.us  
(608) 266-0131

- ① copy 99 s 0102  
    ↳ move "copy" into 99-3373  
        ↳ move 99-3373 into 99 b 1709  
            ↳ move 99 b 1709 into 99 b 1931

- ② move 99 b 1659 into b 1931

**1999 DRAFTING REQUEST**

**Assembly Amendment (AA-ASA1-AB133)**

Received: **08/23/1999**

Received By: **kunkemd**

Wanted: **As time permits**

Identical to LRB:

For: **Tim Hoven (608) 267-2369**

By/Representing: **Curt Pawlisch**

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

Drafter: **kunkemd**

May Contact: **Curt Pawlisch, Mike Theo**

Alt. Drafters:

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

Extra Copies:

**Pre Topic:**

No specific pre topic given

**Topic:**

Real estate prohibitions on certain public utilities and nonutility affiliates

**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>
/?	kunkemd 08/23/1999	wjackson 08/23/1999		_____			
/1	kunkemd 08/31/1999	wjackson 08/31/1999	jfrantze 08/23/1999	_____	lrb_docadmin 08/23/1999	lrb_docadmin 08/23/1999	
/2			haugeca 08/31/1999	_____	lrb_docadmin 08/31/1999	lrb_docadmin 09/01/1999	

FE Sent For:

<END>

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/?	kunkemd 08/23/1999	wjackson 08/23/1999		_____			
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FE Sent For:

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8-21

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/?	kunkemd	1 WLJ 8/23	Jo 8/23	<table border="1"> <tr> <td>7/6</td> <td>NH</td> </tr> <tr> <td>8</td> <td>23</td> </tr> </table>	7/6	NH	8	23			
7/6	NH										
8	23										

FE Sent For:

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1999

Date (time) needed

Today 4:00pm

LRB b 1709, 1

BUDGET AMENDMENT

MDK:wly:

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See form AMENDMENTS — COMPONENTS & ITEMS.

ASSEMBLY A & AMENDMENT TO ~~SENATE~~ AMENDMENT 1 TO ~~SENATE~~ SUBSTITUTE AMENDMENT 1 TO 1999 ASSEMBLY BILL 133

At the locations indicated, amend the substitute amendment as follows: (fill ONLY if "engrossed ...." or "as shown by ....")

#. Page 1186, line 2: after that line insert:

[Large rectangular area with a large X through it, containing five lines of text: "#. Page . . . . , line . . . . :"]

**PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION**

1 **AN ACT relating to:** prohibiting certain public utilities and nonutility affiliates  
2 from engaging in certain real estate activities.

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***Analysis by the Legislative Reference Bureau***

This is a preliminary draft. An analysis may be prepared for a subsequent version of this draft.

For further information see the *state* 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. 196.796 of the statutes is created to read:  
2336 3<sup>rd</sup> B

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.

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

4 2. "Commercial construction" does not include any of the following:

5 a. Any repair, maintenance, installation or construction of a structure owned  
6 or used by or for a public utility, or for a customer of a public utility, if the repair,  
7 maintenance, installation or construction is related to furnishing heat, light, water  
8 or power to the customer.

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

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

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

16 (d) "Engage" means to actively participate in the daily operations or daily  
17 business decisions of an entity. "Engage" does not include taking an action necessary  
18 to protect an ownership interest in an entity.

19 (dg) "Entity" has the meaning given in s. 180.0103 (8).

20 (dr) "Financial support" includes investments, loans and grants.

21 (e) "Holding company system" has the meaning given in s. 196.795 (1) (i).

22 (f) "Improvements" means any valuable addition made to land, including  
23 excavations, gradings, foundations, structures, buildings, streets, parking lots,  
24 sidewalks, sewers, septic systems and drainage facilities. "Improvements" does not  
25 include any repair, maintenance, installation or construction of structures or

1 facilities owned or used by or for a public utility, or by or for a customer of a public  
2 utility, if the repair, maintenance, installation or construction is related to furnishing  
3 heat, light, water or power to the customer.

4 (g) "Nonutility affiliate" means a subsidiary of a public utility or a company in  
5 a holding company system that is not a public utility, except that "nonutility affiliate"  
6 does not include a passively held company.

7 (gm) "Passively held company" means an entity that satisfies each of the  
8 following:

9 1. Less than 50% of the ownership interest of the entity is directly or indirectly  
10 owned in any chain of successive ownership by a public utility or nonutility affiliate.

11 2. The entity engages in property management for a 3rd party, real estate  
12 practice, residential real estate development or residential or commercial  
13 construction.

14 (h) "Property management" means any activity associated with the care or  
15 maintenance of land or improvements, including business planning and budgeting,  
16 accounting, lease administration, tenant relations and retention, security,  
17 maintenance of common areas, rent collections, financial reporting, service contract  
18 administration and inspections.

19 (hm) "Public utility" means every corporation, company, individual or  
20 association and their lessees, trustees or receivers appointed by any court or state  
21 or federal agency, that may own, operate, manage or control all or any part of a plant  
22 or equipment, within the state, for the production, transmission, delivery or  
23 furnishing of electricity directly to or for the public, except that "public utility" does  
24 not include any municipal utility or municipal electric company, as defined in s.

1 66.073 (3) (d), or any cooperative association organized under ch. 185 for the purpose  
2 of producing or furnishing heat, light, power or water to its members only.

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

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

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

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

12 (2) PROHIBITED ACTIVITIES. Except as provided in sub. (4), a public utility or  
13 nonutility affiliate may not do any of the following in this state:

14 (a) Engage in real estate practice.

15 (b) Engage in residential real estate development.

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

17 (d) Engage in residential or commercial construction.

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

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

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

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

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

8           5. Consulting or making other financial or business arrangements with one or  
9 more 3rd parties who will engage in residential construction or residential real  
10 estate development, except that if a public utility or nonutility affiliate contracts for  
11 the development of more than one residential construction project or residential real  
12 estate development, the public utility or nonutility affiliate may not enter into an  
13 exclusive arrangement with a 3rd party for all such residential construction or  
14 residential real estate development.

15           6. Acquiring or disposing of property or interests in property if the acquisition  
16 or disposition is related to the operation of a public utility and the acquisition or  
17 disposition satisfies one of the following:

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

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

22           7. Owning a passively held company.

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

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

6           2. Providing financial support for the purpose of economic development to 3rd  
7 parties that are engaged in an activity specified in sub. (2)(a) to (d). The public utility  
8 or nonutility subsidiary may profit directly from that activity only through receipt  
9 of profits that are incidental to the economic development project or interest earned  
10 on a loan.

11           (4) EXCEPTIONS. (a) A nonutility affiliate that has engaged in residential  
12 construction prior to, or is engaged in residential construction on, the effective date  
13 of this paragraph .... [revisor inserts date], may directly or indirectly own in any  
14 chain of successive ownership 50% or more of the ownership interest of an entity that  
15 hires a 3rd party to engage in residential construction or commercial construction  
16 that is incidental to residential construction, except that the nonutility affiliate may  
17 not actively participate in the daily operations or daily business decisions of the  
18 entity.

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

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

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

3

~~(END)~~

END of  
AMENDMENT

*Email to Paul's d*

**ASSEMBLY AMENDMENT ,  
TO ASSEMBLY SUBSTITUTE AMENDMENT 1,  
TO 1999 ASSEMBLY BILL 133**

1 At the locations indicated, amend the substitute amendment as follows:

2 **1.** Page 1186, line 2: after that line insert:

3 **"SECTION 2336g.** 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:

1           a. Any repair, maintenance, installation or construction of a structure owned  
2 or used by or for a public utility, or for a customer of a public utility, if the repair,  
3 maintenance, installation or construction is related to furnishing heat, light, water  
4 or power to the customer.

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

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

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

12           (d) “Engage” means to actively participate in the daily operations or daily  
13 business decisions of an entity. “Engage” does not include taking an action necessary  
14 to protect an ownership interest in an entity.

15           (dg) “Entity” has the meaning given in s. 180.0103 (8).

16           (dr) “Financial support” includes investments, loans and grants.

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

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

1 (g) “Nonutility affiliate” means a subsidiary of a public utility or a company in  
2 a holding company system that is not a public utility, ~~except that~~ “nonutility affiliate”  
3 does not include a passively held company.

4 (gm) “Passively held company” means an entity that satisfies each of the  
5 following:

6 1. Less than 50% of the ownership interest of the entity is directly or indirectly  
7 owned in any chain of successive ownership by a public utility or nonutility affiliate.

8 2. The entity engages in property management for a 3rd party, real estate  
9 practice, residential real estate development or residential or commercial  
10 construction.

11 (h) “Property management” means any activity associated with the care or  
12 maintenance of land or improvements, including business planning and budgeting,  
13 accounting, lease administration, tenant relations and retention, security,  
14 maintenance of common areas, rent collections, financial reporting, service contract  
15 administration and inspections.

16 (hm) “Public utility” means every corporation, company, individual or  
17 association and their lessees, trustees or receivers appointed by any court or state  
18 or federal agency, that may own, operate, manage or control all or any part of a plant  
19 or equipment, within the state, for the production, transmission, delivery or  
20 furnishing of electricity directly to or for the public, except that “public utility” does  
21 not include any municipal utility or municipal electric company, as defined in s.  
22 66.073 (3) (d), or any cooperative association organized under ch. 185 for the purpose  
23 of producing or furnishing heat, light, power or water to its members only.

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

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

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

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

9           (2) PROHIBITED ACTIVITIES. Except as provided in sub. (4), a public utility or  
10 nonutility affiliate may not do any of the following in this state:

- 11           (a) Engage in real estate practice.  
12           (b) Engage in residential real estate development.  
13           (c) Engage in property management for a 3rd party.  
14           (d) Engage in residential or commercial construction.

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

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

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

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

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

3           5. Consulting or making other financial or business arrangements with one or  
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9 residential real estate development.

10           6. Acquiring or disposing of property or interests in property if the acquisition  
11 or disposition is related to the operation of a public utility and the acquisition or  
12 disposition satisfies one of the following:

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

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

17           7. Owning a passively held company.

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

21           1. Engaging in commercial or residential real estate development or  
22 construction on property owned or acquired by the public utility or nonutility  
23 subsidiary for a public utility purpose if the total annual revenues from the  
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1           2. Providing financial support for the purpose of economic development to 3rd  
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4 of profits that are incidental to the economic development project or interest earned  
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6           **(4) EXCEPTIONS.** (a) A nonutility affiliate that has engaged in residential  
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8 of this paragraph ... [revisor inserts date], may directly or indirectly own in any  
9 chain of successive ownership 50% or more of the ownership interest of an entity that  
10 hires a 3rd party to engage in residential construction or commercial construction  
11 that is incidental to residential construction, except that the nonutility affiliate may  
12 not actively participate in the daily operations or daily business decisions of the  
13 entity.

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15 development at a brownfields facility or site.

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

21

(END)

*NOTE*

*2*

*RM NOT  
DUN*

*Today  
8/31  
69  
4:00PM*

**ASSEMBLY AMENDMENT ,  
TO ASSEMBLY SUBSTITUTE AMENDMENT 1,  
TO 1999 ASSEMBLY BILL 133**

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- 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:

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- 11 (a) Engage in real estate practice.
- 12 (b) Engage in residential real estate development.
- 13 (c) Engage in property management for a 3rd party.
- 14 (d) Engage in residential or commercial construction.

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

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

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

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

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

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

10          6. Acquiring or disposing of property or interests in property if the acquisition  
11 or disposition is related to the operation of a public utility and the acquisition or  
12 disposition satisfies one of the following:

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

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

17          7. Owning a passively held company.

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

21           1. Engaging in commercial or residential real estate development or  
22 construction on property owned or acquired by the public utility or nonutility  
23 subsidiary for a public utility purpose if the total annual revenues from the  
24 development or construction do not exceed 3% of the total operating revenues of the  
25 public utility in any year.



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

LRBb1709/2dn  
MDK.....

Representative Hoven:

This version is identical to LRBb1709/1, except for a change to the grammar of <sup>the</sup> proposed definition of "nonutility affiliate".

Mark D. Kunkel  
Legislative Attorney  
Phone: (608) 266-0131  
E-mail: Mark.Kunkel@legis.state.wi.us

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

LRBb1709/2dn  
MDK:wlj:ch

August 31, 1999

**Representative Hoven:**

This version is identical to LRBb1709/1, except for a change to the grammar of the proposed definition of "nonutility affiliate".

Mark D. Kunkel  
Legislative Attorney  
Phone: (608) 266-0131  
E-mail: [Mark.Kunkel@legis.state.wi.us](mailto:Mark.Kunkel@legis.state.wi.us)

**ASSEMBLY AMENDMENT ,  
TO ASSEMBLY SUBSTITUTE AMENDMENT 1,  
TO 1999 ASSEMBLY BILL 133**

1 At the locations indicated, amend the substitute amendment as follows:

2 **1.** Page 1186, line 2: after that line insert:

3 “**SECTION 2336g.** 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:

1           a. Any repair, maintenance, installation or construction of a structure owned  
2 or used by or for a public utility, or for a customer of a public utility, if the repair,  
3 maintenance, installation or construction is related to furnishing heat, light, water  
4 or power to the customer.

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

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

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

12           (d) “Engage” means to actively participate in the daily operations or daily  
13 business decisions of an entity. “Engage” does not include taking an action necessary  
14 to protect an ownership interest in an entity.

15           (dg) “Entity” has the meaning given in s. 180.0103 (8).

16           (dr) “Financial support” includes investments, loans and grants.

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

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

1 (g) "Nonutility affiliate" means a subsidiary of a public utility or a company in  
2 a holding company system that is not a public utility. "Nonutility affiliate" does not  
3 include a passively held company.

4 (gm) "Passively held company" means an entity that satisfies each of the  
5 following:

6 1. Less than 50% of the ownership interest of the entity is directly or indirectly  
7 owned in any chain of successive ownership by a public utility or nonutility affiliate.

8 2. The entity engages in property management for a 3rd party, real estate  
9 practice, residential real estate development or residential or commercial  
10 construction.

11 (h) "Property management" means any activity associated with the care or  
12 maintenance of land or improvements, including business planning and budgeting,  
13 accounting, lease administration, tenant relations and retention, security,  
14 maintenance of common areas, rent collections, financial reporting, service contract  
15 administration and inspections.

16 (hm) "Public utility" means every corporation, company, individual or  
17 association and their lessees, trustees or receivers appointed by any court or state  
18 or federal agency, that may own, operate, manage or control all or any part of a plant  
19 or equipment, within the state, for the production, transmission, delivery or  
20 furnishing of electricity directly to or for the public, except that "public utility" does  
21 not include any municipal utility or municipal electric company, as defined in s.  
22 66.073 (3) (d), or any cooperative association organized under ch. 185 for the purpose  
23 of producing or furnishing heat, light, power or water to its members only.

24 (i) "Real estate practice" has the meaning given in s. 452.01 (6).

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

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

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

9 (2) PROHIBITED ACTIVITIES. Except as provided in sub. (4), a public utility or  
10 nonutility affiliate may not do any of the following in this state:

- 11 (a) Engage in real estate practice.
- 12 (b) Engage in residential real estate development.
- 13 (c) Engage in property management for a 3rd party.
- 14 (d) Engage in residential or commercial construction.

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

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

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

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

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

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

10          6. Acquiring or disposing of property or interests in property if the acquisition  
11 or disposition is related to the operation of a public utility and the acquisition or  
12 disposition satisfies one of the following:

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

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

17          7. Owning a passively held company.

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

21           1. Engaging in commercial or residential real estate development or  
22 construction on property owned or acquired by the public utility or nonutility  
23 subsidiary for a public utility purpose if the total annual revenues from the  
24 development or construction do not exceed 3% of the total operating revenues of the  
25 public utility in any year.

1           2. Providing financial support for the purpose of economic development to 3rd  
2 parties that are engaged in an activity specified in sub. (2)(a) to (d). The public utility  
3 or nonutility subsidiary may profit directly from that activity only through receipt  
4 of profits that are incidental to the economic development project or interest earned  
5 on a loan.

6           (4) EXCEPTIONS. (a) A nonutility affiliate that has engaged in residential  
7 construction prior to, or is engaged in residential construction on, the effective date  
8 of this paragraph .... [revisor inserts date], may directly or indirectly own in any  
9 chain of successive ownership 50% or more of the ownership interest of an entity that  
10 hires a 3rd party to engage in residential construction or commercial construction  
11 that is incidental to residential construction, except that the nonutility affiliate may  
12 not actively participate in the daily operations or daily business decisions of the  
13 entity.

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

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

21

(END)