

**2003 DRAFTING REQUEST**

**Senate Substitute Amendment (SSA-SB180)**

Received: **05/28/2003**

Received By: **jkreye**

Wanted: **Soon**

Identical to LRB:

For: **Robert Cowles (608) 266-0484**

By/Representing: **jennifer**

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

Drafter: **jkreye**

May Contact:

Addl. Drafters:

Subject: **Shared Revenue**

Extra Copies:

Submit via email: **YES**

Requester's email: **Sen.Cowles@legis.state.wi.us**

Carbon copy (CC:) to: **joseph.kreye@legis.state.wi.us**

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**Pre Topic:**

No specific pre topic given

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**Topic:**

Utility aid payments

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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>
/?	jkreye 05/28/2003			_____			
/1	jkreye 06/02/2003	kgilfoy 05/28/2003	pgreensl 05/28/2003	_____	sbasford 05/29/2003	sbasford 05/29/2003	
		kgilfoy 06/02/2003		_____			

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Typed</u>	<u>Proofed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
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/2			chaugen 06/02/2003	_____	sbasford 06/02/2003	sbasford 06/02/2003	
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FE Sent For:

<END>

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/1		kgilfoy 05/28/2003	pgreensl 05/28/2003	_____	sbasford 05/29/2003	sbasford 05/29/2003	

*12 - 5/2/03  
kmq*

*ch  
6-2*

*ch  
RS 6-2*

**FE Sent For:**

**<END>**

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See Attached

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1?	jkreye	1-5/28 king	5/28 ps	5/28 ps/aph			
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FE Sent For:

<END>

Jennifer - Sen Cowler = 6-0484 - prepping a substitution

① changes in Pick's e-mail - most changes

▷ adopt construction stuff — doesn't want payments from both new & old

② base load — \$4,000 - to \$600

③ include a "base load" definition — being worked on

④ adding language to mitigation payment  
— "good" mitigation

⑤ Renewable incentive add language to include burning garbage

⑥ Municipal utilities — David Howell is reviewing

⑦ Def. of "repowering"; — may not need if dist'd old med.  
— but may need for purposes of incentive

## Kreye, Joseph

---

**From:** Halbur, Jennifer  
**Sent:** Thursday, May 22, 2003 12:05 PM  
**To:** 'bskewes@wisconsinutilities.com'; 'molly.mulroy@we-energies.com'; 'george.petak@zjs.com'; 'joel.haubrich@we-energies.com'; 'billb@broydrick.com'; 'pawlsch@cwpb.com'; Ebert, Dan PSC; Barth, Linda PSC; Lovell, David; Olin, Rick; 'bdr@dairynet.com'; 'fceil@ibewlocal2150.com'; Erickson, Pat; Lindstedt, Daniel; Meyer, Amber; Molitor, Ann; Natzke, Ryan; Vander Sanden, Patrick; Zitske, Wendi  
**Cc:** Healy, Brett; Kreye, Joseph  
**Subject:** FW: Generation Siting LRB 2735/3

Please note on page 11 line 7 of the draft, \$1,000 should be \$600. This will need to be changed in an amendment to the draft.

Thanks!

-----Original Message-----

**From:** Halbur, Jennifer  
**Sent:** Thursday, May 22, 2003 11:58 AM  
**To:** 'bskewes@wisconsinutilities.com'; 'molly.mulroy@we-energies.com'; 'george.petak@zjs.com'; 'joel.haubrich@we-energies.com'; 'billb@broydrick.com'; 'pawlsch@cwpb.com'; Ebert, Dan PSC; Barth, Linda PSC; Lovell, David; Olin, Rick; 'bdr@dairynet.com'; 'fceil@ibewlocal2150.com'; Erickson, Pat; Lindstedt, Daniel; Meyer, Amber; Molitor, Ann; Natzke, Ryan; Vander Sanden, Patrick; Zitske, Wendi  
**Cc:** Healy, Brett  
**Subject:** FW: Generation Siting LRB 2735/3



Untitled

-----Original Message-----

**From:** Halbur, Jennifer  
**Sent:** Thursday, May 22, 2003 11:50 AM  
**To:** 'bskewes@wisconsinutilities.com'; 'molly.mulroy@we-energies.com'; 'george.petak@zjs.com'; 'joel.haubrich@we-energies.com'; 'billb@broydrick.com'; 'pawlsch@cwpb.com'; Ebert, Dan PSC; Barth, Linda PSC; Lovell, David; Olin, Rick; 'bdr@dairynet.com'; 'fceil@ibewlocal2150.com'; Erickson, Pat; Lindstedt, Daniel; Meyer, Amber; Molitor, Ann; Natzke, Ryan; Vander Sanden, Patrick; Zitske, Wendi  
**Cc:** Healy, Brett  
**Subject:** Generation Siting LRB 2735/3

Hi,

Please find attached the latest version of the generation siting draft. The Senate Energy and Utilities Committee will hold a hearing on this LRB on May 27th at 9:00am.

Please feel free to contact me with any questions or concerns.

Thank you,

Jennifer

Halbur, Jennifer

From: Haubrich.Joel [Joel.Haubrich@we-  
Sent: Friday, May 23, 2003 8:29 AM  
To: 'Halbur, Jennifer'  
Cc: Mulroy.Molly  
Subject: RE: Generation Siting LRB 2735/3

a) b) and new  
(c)  
+ definition

SECTION 3. 79.005 (4) of the statutes is created to read:  
79.005 (4) "Repowering" means any of the following: (a) Replacing the boiler on an existing fossil fuel steam unit with a combustion turbine and heat recovery steam generator and reusing the steam turbine and heat rejection system. (b) Adding a heat recovery steam generator to a simple cycle combustion turbine. (c) Demolishing or abandoning an existing power generation unit and adding a new combustion turbine, heat recovery steam generator, and steam turbine.

NEW SIMPLIFIED IDEA

*Applied*

(c) Demolishing or abandoning an existing power generation unit and replacing it with new generation unit at that site.

YES

Joel M. Haubrich  
We Energies - Government Affairs  
231 W. Michigan St.  
P.O. Box 2046  
Milwaukee, WI 53290-0001  
414-221-4102 (MKE office)  
608-283-3004 (MDSN office)  
414-221-3853 (fax)  
joel.haubrich@we-energies.com

*Need to define  
power generation  
electric  
plants*

-----Original Message-----

From: Halbur, Jennifer [mailto:Jennifer.Halbur@legis.state.wi.us]  
Sent: Thursday, May 22, 2003 12:05 PM  
To: bskewes@wisconsinutilities.com; molly.mulroy@we-energies.com;  
george.petak@zjs.com; joel.haubrich@we-energies.com;  
billb@broydrick.com; pawlisch@cwpb.com; Ebert, Dan PSC; Barth, Linda PSC; Lovell, David; Olin, Rick; bdr@dairynet.com;  
fceel@ibewlocal2150.com; Erickson, Pat; Lindstedt, Daniel; Meyer, Amber; Molitor, Ann; Natzke, Ryan; Vander Sanden, Patrick; Zitske, Wendi  
Cc: Healy, Brett; Kreye, Joseph  
Subject: FW: Generation Siting LRB 2735/3

Please note on page 11 line 7 of the draft, \$1,000 should be \$600. This will need to be changed in an amendment to the draft.

05/23/2003

## Lovell, David

---

**From:** Halbur, Jennifer  
**Sent:** Tuesday, May 27, 2003 1:04 PM  
**To:** Lovell, David; Healy, Brett  
**Subject:** Bill Broydrick language

Hi,

I am sending suggested language from Bill Broydrick that he feels will clarify our intent relating to mitigation payments. He also gave me changes relating to the exemption from the mitigation payment prohibition. That language is as follows:

Paragraph (b) does not apply to any public utility for which the **utility** has **filed** an application for a certificate under s. 196.491 (3) by the effective date of this paragraph.. *by June 1st, 2003*

Bill's concern is that the Oak Creek application has been determined to be complete, however, someone is challenging this. I think his suggested language makes it too easy for others to get an application in at the last minute. Let me know what you think.

Thanks,  
Jennifer

**Halbur, Jennifer**

**From:** Lovell, David  
**Sent:** Tuesday, May 27, 2003 6:36 PM  
**To:** Halbur, Jennifer  
**Cc:** Stolzenberg, John  
**Subject:** SB 180--outstanding issues

Jennifer,

Here are the items you requested regarding outstanding issues for SB 180.

*Should cover all of these  
issues.*

**MITIGATION PAYMENTS**

You asked for guidance on how to allow cost recovery for mitigation that is directly related to specific impacts of a plant, while prohibiting the same for cash payments not related to specific impacts. I suggest addressing it in the definition of "mitigation payment." The definition might look something like this:

*subject to  
staff's  
approval*

"Mitigation payment" means an unrestricted recurring cash payment to a <sup>or</sup> municipality in which an electric generating facility is located to mitigate the impact of the electric generating facility on the municipality. "Mitigation payment" does not include payments made or ~~costs incurred~~ for restricted purposes to directly address <sup>specific</sup> impacts of the electric generating facility on the municipality. *in-kind contributions health or safety*

*local unit's (make sure prohibiting school dist etc).*

The result of this would be to prohibit the PSC from allowing rate recovery of unrestricted recurring payments, but not payments or costs related to specific mitigation actions.

A "down side" to this approach is that shrewd negotiators (on both sides) may conspire to specify the uses of the payments that would otherwise have been unrestricted. I don't know how to eliminate this possibility. The PSC will still have to review and approve costs before they are recovered in rates, and that review process may screen out some of this kind of tactic.

**DEFINITION OF REPOWERING**

*see (C) attached*

You also asked for guidance on a response to the suggestion that the definition of "repowering" be made more general. The language that WEPCO representatives proposed describes the replacement of an entire generating unit. This raises two issues: first, it requires a definition of "generating unit;" second, it excludes some of the specific scenarios in the definition in the bill. Here is a possible pair of general definitions:

"Repowering" means the replacement of an existing electric generating unit with a new electric generating unit at the same location. *see Jennifer's email*

"Electric generating unit" means a complete set of electric generating equipment, as defined in s. 196.52 (9) (a) 1., that collectively is sufficient to generate electric power. *add definition*

*(PSC)*

As I noted in an earlier e-mail on this topic (4/25/03) PSC staff tell us that some facilities commonly know as "units" contain more than one set of electric generating equipment. I doubt that is a concern in this context.

As noted, the general definition of "repowering" that I offer excludes some of the scenarios in the bill's current definition. If the desire is to include them, then the current definition could be retained and the general definition could be added as another included meaning.

Finally, I received a call from PSC staff, who indicated that they are discussing this definition among themselves. I asked them to forward any suggested language to me, including other specific scenarios, other than a complete replacement of a unit, that they would suggest including in the definition. If I receive any more ideas from them tomorrow, I will pass them along right away.

**COGENERATION INCENTIVE**

You also asked for guidance regarding a new incentive for cogeneration facilities. Most of the language would be modeled after the other incentives; what is needed is a description or definition of cogeneration facilities. Here's an attempt:

*NO*

"Cogeneration facility" means an electric generating facility that produces steam that is usable for heating or cooling as a byproduct of electric generation.

If the term is used only once, Joe may prefer to substitute this sentence for the term itself, avoiding the need for a definition--that is a matter of drafting style.

I am less sure of this definition. I recommend that you have folks at MG&E or WEPCO check it out. Let me know if you want me to run it by PSC staff.

DEFINITION OF BASELOAD

- Yes

In earlier discussions, we had developed definitions of baseload and capacity factor. I think they may have been in LRB-2735/1, but I can't find a copy of that version of the bill--so I will recreate them as best I can.

"Baseload electric generating facility" means an electric generating facility with a capacity factor of 60% or greater.

"Capacity factor" means the actual <sup>annual</sup> output of an electric generating facility ~~over a period of time specified by the~~ ~~commission~~, expressed as a percentage of potential output. ← ~~baseline~~

Let me know if you need anything more on this project. I'll be at my computer for a while longer tonight and, of course, back in the morning.

David

David L. Lovell, Senior Analyst  
Wisconsin Legislative Council Staff  
608/266-1537

need addition

~~General Structures:~~

→ or, for an electric generating facility that has not been in operation for a year, the projected annual output of the electric generating facility.

## Halbur, Jennifer

---

**To:** molly.mulroy@we-energies.com; billb@broydrick.com; joel.haubrich@we-energies.com;  
bskewes@wisconsinutilities.com; george.petak@zjs.com; pawlisch@cwpb.com

**Subject:** SB 180...Changes

Hi,

Below are some possible changes to be made to SB 180. Please forward me any comments you may have ASAP on Wednesday morning. I expect Rep. Jensen and Sen. Cowles to meet early on Wednesday to make final decisions on these outstanding issues. Changes need to be drafted and the Committee has to vote on the sub amendment by 4:00pm.

Thank you,

Jennifer

### MITIGATION PAYMENTS

You asked for guidance on how to allow cost recovery for mitigation that is directly related to specific impacts of a plant, while prohibiting the same for cash payments not related to specific impacts. I suggest addressing it in the definition of "mitigation payment." The definition might look something like this:

"Mitigation payment" means an unrestricted recurring cash payment to a municipality in which an electric generating facility is located to mitigate the impact of the electric generating facility on the municipality. "Mitigation payment" does not include payments made or costs incurred for restricted purposes to directly address specific impacts of the electric generating facility on the municipality.

The result of this would be to prohibit the PSC from allowing rate recovery of unrestricted recurring payments, but not payments or costs related to specific mitigation actions.

### DEFINITION OF REPOWERING

You also asked for guidance on a response to the suggestion that the definition of "repowering" be made more general. The language that WEPCO representatives proposed describes the replacement of an entire generating unit. This raises two issues: first, it requires a definition of "generating unit;" second, it excludes some of the specific scenarios in the definition in the bill. Here is a possible pair of general definitions:

"Repowering" means the replacement of an existing electric generating unit with a new electric generating unit at the same location.

"Electric generating unit" means a complete set of electric generating equipment, as defined in s. 196.52 (9) (a) 1., that collectively is sufficient to generate electric power.

As I noted in an earlier e-mail on this topic (4/25/03) PSC staff tell us that some facilities commonly know as "units" contain more than one set of electric generating equipment. I doubt that is a concern in this context.

As noted, the general definition of "repowering" that I offer excludes some of the scenarios in the bill's current definition. If the desire is to include them, then the current definition could be retained and the general definition could be added as another included meaning.

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In earlier discussions, we had developed definitions of baseload and capacity factor. I think they may have been in LRB-2735/1, but I can't find a copy of that version of the bill--so I will recreate them as best I can.

"Baseload electric generating facility" means an electric generating facility with a capacity factor of 60% or greater.

"Capacity factor" means the actual output of an electric generating facility over a period of time specified by the commission, expressed as a percentage of potential output.

## Halbur, Jennifer

---

**From:** Kreye, Joseph  
**Sent:** Tuesday, May 27, 2003 9:37 AM  
**To:** Olin, Rick; Halbur, Jennifer; Healy, Brett  
**Subject:** RE: Comments on LRB-2735/3

In general, I agree with the Rick's comments and suggested changes.

With regard to questions related to whether "production plant" includes substations, general structures, and construction work-in-progress, it may be useful to have a bifurcated definition of "production plant." For example, the current law definition of "production plant" includes substations. That definition could apply to distributions under current law. I could then create another definition which would apply to the new payments under the bill and which would exclude substations and construction.

With regard to section 12 (payments for decommissioned plants), I don't believe that section needs to be changed because the property must be taxable for an aid payment to occur.

Having had some time to ponder the issue, I also think that the draft should provide a definition for "baseload." Although I don't specifically recall, it may be that the definition for "baseload" and "capacity factor" that was in the original draft may have been inadvertently deleted from the bill.

I don't think the initial applicability (IA) provision needs to be modified. The mitigation payment provision, as well as other provisions in the bill, are tied to certain dates that are embedded in the bill. Therefore, I don't think the general IA related to distributions will have any adverse impact on the effective date related to mitigation payments. In fact, given all the dates embedded in the bill, we may be able to delete the IA entirely.

**Joseph T. Kreye**  
Legislative Attorney  
Legislative Reference Bureau  
(608) 266-2263

-----Original Message-----

**From:** Olin, Rick  
**Sent:** Monday, May 26, 2003 3:38 PM  
**To:** Halbur, Jennifer; Healy, Brett; Kreye, Joseph  
**Subject:** Comments on LRB-2735/3

I understand the need to repeal the current law definition of substations. Otherwise, there may be some question regarding their treatment under the capacity aid payments. However, if payments on substations are to continue under current law provisions, substations should be included in references to qualifying property. For example, references to "a production plant or general structure" should be amended to read "a production plant, substation, or general structure." This will require amending some subsections or paragraphs that are not in the current bill draft. For example, see s. 79.04 (1)(b).

S. 79.04(5) is intended to replace the decommissioning payments currently under s. 79.04(c)3.

Therefore, s. 79.04(c)3. should probably be repealed.

The repealed sentence on Page 5, lines 12 - 14, seems consistent with this interpretation.

In Sections 6 and 9, I am mildly concerned about the phrase "for production plants that begin operation before January 1, 2004, other than plants that undergo repowering after December 31, 2003".

This implies that the current law payments are limited to production plants.

However, payments will also be made for substations and general structures, including substations and general structures to be constructed in the future. This may be the reason for Curt Pawlisch's e-mail.

A way to avoid confusion over the interpretation of this phrase would be to modify it as follows,

"Annually, except for production plants that begin operation after December 31, 2003, or undergo repowering after December 31, 2003,".

Regarding Section 10, Joe has previously remarked that this is a "place-holder" for a provision requested by Dairyland. As drafted, it could apply to other sites. I suggest narrowing this until we receive Dairyland's recommendation.

It could be drafted to apply to an ash disposal facility:

- in operation prior to the effective date of the bill; *- already in bill*
- that receives ash from a production plant located in another municipality; and
- is owned and operated by an electric cooperative. *add*

In Section 12 regarding payments for decommissioned plants, property taxes are deducted from the aid payment. Is there a desire to also deduct any aid payments on production plants constructed on the site of the decommissioned property?

This would apply to Port Washington.

Maybe this change is not necessary since the draft seems to require the property to be taxable for an aid payment to occur.

What do you think, Joe?

On page 10, line 5, "as if there are no other plants in that municipality" can be deleted.

This language was necessary in last session's JFC/Assembly proposal where payments were contingent on the total capacity in each municipality. Under this proposal, payments are calculated plant-by-plant, as under current law.

I am not sure how construction-work-in-progress should be handled for plants that begin operation after December 31, 2003.

On page 9, lines 1 & 2, it could be argued that plants must be operating to receive capacity aid.

By way of cross-reference, the same logic would apply to incentive aid.

Could one argue that the current law provision (3 or 6 mills multiplied by the value in place at year's end) would apply while the plant is under construction? Another option would be to prorate the capacity aid while the plant is under construction based on the percentage of completed construction. If that option is pursued, care should be taken not to inadvertently extend payments under incentive aid as well.

Like others, I am concerned about the lack of a definition for "baseload."

Calpine seems to think their plant(s) may qualify.

They are building gas-fired plants, which runs counter to my impression of baseload.

Joe, should the initial applicability provision be modified to exclude Section 15, regarding mitigation payments? Or, since Section 16 refers to "distributions" does it only apply to the shared revenue provisions?

Peace.

→ Repeal current law relating to const. work in progress.

**Halbur, Jennifer**

**From:** Stolzenberg, John  
**Sent:** Wednesday, May 28, 2003 9:14 AM  
**To:** Halbur, Jennifer  
**Subject:** SB 180 amendment on renewable resources

Jennifer,

Here's the renewable resource amendment to SB 180 that you requested:

- ① On page 11, lines 2 and 3, refer to an "alternative energy resource" rather than a "renewable resource, as defined in s. 196.378 (1) (h)."
- ② Define "alternative energy resource" to be a renewable resource, as defined in s. 196.378 (1) (h) or a resource that derives electricity from garbage, as defined in s. ~~29.01 (9)~~ <sup>from 289.01 (9)</sup>, or nonvegetation-based industrial, commercial or household waste ~~other than a waste that derives its energy content primarily from petroleum-based materials.~~

*Comment:* The generation of electricity from garbage and the nonvegetation-based industrial, commercial or household wastes in this definition are presently excluded from the definition of "biomass" in the renewable portfolio standards law in s. 196.378 (1) (a), and thus are not currently a "renewable resource" for purposes of the SB 180 renewable resource incentive.

- ③ Add a provision for a production plant that <sup>co-fires</sup> cofires an alternative energy resource with coal that for purposes of the renewable resource incentive in SB 180 in the ~~same plant~~ <sup>new plant</sup> capacity of the plant will be the portion of the energy content of the alternative energy resource to the energy content of both the alternative energy resource and conventional fuels.

*Comment:* This provision is based upon a similar provision for the cofiring of biomass fuels in s. 196.378 (2) (b) 2.

John

John Stolzenberg,  
Legislative Council Staff Scientist  
Suite 401, One East Main Street  
PO Box 2536  
Madison, WI 53701-2536  
Direct: 608-266-2988  
Fax: 608-266-3830

*revised annually*

## Kreye, Joseph

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**From:** Halbur, Jennifer  
**Sent:** Wednesday, May 28, 2003 3:52 PM  
**To:** Kreye, Joseph  
**Subject:** Changes to Section 12 of SB 180

Joe,

Here are the changes I mentioned:

79.04(5)(a) Beginning with the distributions in 2005, if property that was exempt from the property tax under s.70.112(4) and that was used to generate power by a light, heat, or power company, except property under s. 66.0813, **unless the production plant is owned or operated by a local governmental unit outside the municipality**, or by an electric cooperative, **or by a municipal electric company under s. 66.0825**, is decommissioned, the municipality shall be paid...

(b) Beginning with the distributions in 2005, if property that was exempt from the property tax under s. 70.112(4) and that was used to generate power by a light, heat, or power company, except property under s. 66.0813, **unless the production plant is owned or operated by a local governmental unit outside the municipality**, or by an electric cooperative, **or by a municipal electric company under s.66.0825**, is decommissioned, the municipality shall be paid...

Thanks again,

Jennifer



MEMBER:  
Environmental Resources Committee  
Health, Utilities, Veterans and  
Military Affairs Committee  
Joint Committee for Review of  
Administrative Rules

May 28, 2003

To: Joe Kreye

From: Jennifer Halbur

Re: Changes to Senate Bill 180

Joe the changes below should reflect the drafting instructions I provided earlier. Please let me know if there are any questions or concerns.

### MITIGATION PAYMENTS

- **Replace lines 16-18 on page 11 with the following:**

“Mitigation payment” means an unrestricted or recurring cash payment to a local unit of government in which an electric generating facility is located to mitigate the impact of the electric generating facility on the local unit of government. “Mitigation payment” does not include payments made or in kind contributions for restricted purposes to directly address health or safety impacts of the electric generating facility on the municipality.

- **Replace lines 3-5 on Page 12 with the following:**

Paragraph (b) does not apply to any public utility for which the utility has filed an application for a certificate under s. 196.491 (3) by June 1, 2003.

### DEFINITION OF REPOWERING

- **Replace lines 15-16 on page 3 with the following:**

(c) Demolishing or abandoning an existing power generation unit and replacing it with new generation unit at that site.

- **Also add the following definition for “Electric Generating Unit.”**

“Electric generating unit” means a complete set of electric generating equipment, as defined in s. 196.52 (9) (a) 1., that collectively is sufficient to generate electric power.

## DEFINITION OF BASELOAD

- **Page 11, lines 2-3, delete, “as determined by the public service commission.”**

### **Add the following definitions:**

“Baseload electric generating facility” means an electric generating facility with a capacity factor of 60% or greater.

“Capacity factor” means the actual annual output of an electric generating facility, expressed as a percentage of potential output or for an electric generating facility that has not been in operation for a year, the projected annual output of the electric generating facility.

- **Page 11, line 7, delete “\$1,000” and replace with \$600.”**

## RENEWABLE RESOURCE DEFINITION

- **On Page 11, lines 8 and 9, refer to an “alternative energy resource” rather than a “renewable resource, as defined in s. 196.378(1) (h).”**
- **Define “alternative energy resource” to be a renewable resource, as defined in s.196.378 (1) (h) or a resource that derives electricity from garbage, as defined in s. 29.01 (9), or nonvegetation-based industrial, commercial or household waste other than a waste that derives its energy content primarily from petroleum-based materials.**
- **Add a provision for a production plant that cofires an alternative energy resource with coal that for purposes of the renewable resource incentive in SB 180 in the name plate capacity of the plant will be the portion of the energy content of the alternative energy resource to the energy content of both the alternative energy resource and conventional fuels.**

RICK OLIN ~~MEMO~~ e-mail

- **Please make the changes suggested by Rick Olin in his May 26, 2003 e-mail with the following changes:**

Relating to ash disposal facility, accept Rick’s suggestion to add, “is owned and operated by an electric cooperative.” Do not include his suggestion to add: “the receives ash from a production plant located in another municipality.”

- **Rick suggests prorating capacity aid while the plant is under construction; this is not the intent of the authors. Rather, the intent is to allow for no payments**

**during construction and therefore, current law relating to construction work in progress should be repealed.**



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rheinemann@boardmanlawfirm.com

## MEMORANDUM

**TO:** Scott Meske  
**FROM:** Richard A. Heinemann  
**DATE:** May 27, 2003  
**RE:** Proposed Amendment to SB 180

---

As currently drafted, SB 180, section 12, states as follows:

79.04(5)(a) Beginning with the distributions in 2005, if property that was exempt from the property tax under s. 70.112(4) and that was used to generate power by a light, heat, or power company, except property under s. 66.0813, or by an electric cooperative, is decommissioned, the municipality shall be paid . . .

...

(b) Beginning with the distributions in 2005, if property that was exempt from the property tax under s. 70.112(4) and that was used to generate power by a light, heat, or power company, except property under s. 66.0813, or by an electric cooperative, is decommissioned, the county shall be paid . . .

LRB draft of SB 180, page 7, line 23 through page 8, line 1; page 8, lines 12-15.

The proposed amendment modifies these provisions in the bill to read as follows:

79.04(5)(a) Beginning with the distributions in 2005, if property that was exempt from the property tax under s. 70.112(4) and that was used to generate power by a light, heat, or power company, except property under s. 66.0813, **unless the production plant is owned or operated by a local governmental unit outside the municipality, or by an electric cooperative, or by a municipal electric company under s.66.0825**, is decommissioned, the municipality shall be paid . . .

(b) Beginning with the distributions in 2005, if property that was exempt from the property tax under s. 70.112(4) and that was used to generate power by a light, heat, or power company, except property under s. 66.0813, **unless the production plant is owned or operated by a local governmental unit outside the municipality, or by an electric cooperative, or by a municipal electric company under s.66.0825,** is decommissioned, the municipality shall be paid . . .

Section 12 of SB 180 is intended to provide a 5-year, phased-out payment to municipalities and counties for decommissioned production plants. The bill's current language excludes such payments when the decommissioned production plants are owned by municipal electric companies or local governments units outside the municipalities where the plants are located. The proposed amendment corrects this omission by adding back language that appears elsewhere in the bill (and in current law)<sup>1</sup>, clarifying that municipalities and counties with production plants owned by a local governmental unit or municipal electric company located outside the municipality are also entitled to the decommissioning payments. The amendment is therefore a technical correction to the bill as currently drafted that makes the bill internally consistent.

---

<sup>1</sup>See, for example, Section 6 of SB 180, which amends sec. 79.04(1) (LRB draft of SB 180, page 4, lines5-8).

2003

Date (time) needed

Thurs 5-29-03  
9 AM

LRBs 0096 1 1

**SUBSTITUTE AMENDMENT  
[TO A BILL]**

JK: [signature]

Use the appropriate components and routines developed for substitute amendments.

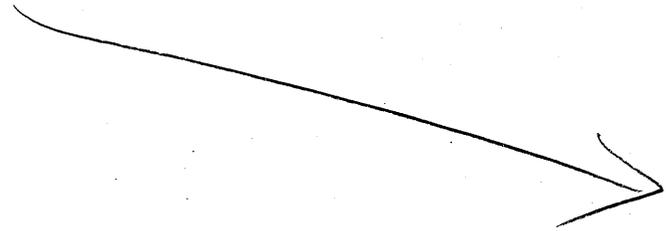
**S** A SUBSTITUTE AMENDMENT  
TO 2003 **SB** AB 180 (LRB- / )

~~AN ACT... [generate catalog] to repeal...; to renumber...; to consolidate and renumber...; to renumber and amend...; to consolidate, renumber and amend...; to amend...; to repeal and recreate...; and to create... of the statutes; relating to: .....~~

[NOTE: See section 4.02 (2) (br), Drafting Manual, for specific order of standard phrases.]

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

SECTION #.



50096/1

# 2003 SENATE BILL 180

May 23, 2003 - Introduced by Senators BROWN, COWLES, PANZER, M. MEYER and PLALE, cosponsored by Representatives GOTTLIEB, JENSEN, GIELOW and GRONEMUS. Referred to Committee on Energy and Utilities.

*re ju*

1 **AN ACT to repeal** 79.01 (1) (c) 3.; **to amend** 20.835 (1) (d), 79.04 (1) (intro.), 79.04  
 2 (1) (a), 79.04 (1) (c) 1., 79.04 (2) (a) and 79.04 (4); and **to create** 20.835 (1) (dm),  
 3 79.005 (4), 79.01 (2m), 79.04 (3m), 79.04 (5), 79.04 (6), 79.04 (7) and 196.20 (7)  
 4 of the statutes; **relating to:** payments to local governments for public utilities  
 5 and making an appropriation.

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

Under current law, generally, the property of a public utility is subject to a state tax rather than local property taxes. Instead of collecting property taxes on public utility property, municipalities and counties receive payments from the shared revenue account based on the value of public utility property located in the municipalities and counties. The amount of a municipality's payment is equal to the value of public utility property located in the municipality, not exceeding \$125,000,000 for each utility, multiplied by either three mills, for a town, or six mills, for a city or village. However, the payment may not exceed an amount that is equal to \$300 multiplied by the municipality's population. The amount of a county's payment is equal to the value of public utility property located in each municipality within the county, not exceeding \$125,000,000 for each utility, multiplied by either three mills, for a city or village located within the county, or six mills, for a town located within the county. However, the amount of the county's payment may not exceed an amount that is equal to \$100 multiplied by the county's population.

Under this bill, for public utilities that begin operation before January 1, 2004, municipalities and counties in which such utilities are located will continue to

**SENATE BILL 180**

receive payments from the shared revenue account as described above. Under the bill, beginning in 2005, the payments to municipalities and counties related to public utility production plants that begin operation after December 31, 2003, are paid from the public utility distribution account, which is created by the bill, instead of from the shared revenue account, and the amount of such payments is based on the megawatt capacity of all production plants located in the municipality and county, rather than on the value of the public utility property multiplied by the municipality's or county's mill rate. If a production plant is located in a city or village, the city or village in which the plant is located receives two-thirds of the amount of the payment determined by megawatt capacity, and the county in which the plant is located receives one-third of the amount of the payment determined by megawatt capacity. If a production plant is located in a town, the town in which the plant is located receives one-third of the amount of the payment determined by megawatt capacity, and the county in which the plant is located receives two-thirds of the amount of the payment determined by megawatt capacity. The total payment is equal to the production plant's megawatt capacity multiplied by \$2,000.

Under the bill, beginning in 2005, for production plants that begin operation after December, 31, 2003, each municipality and county in which a production plant is located will receive additional payments based on the megawatt capacity of a production plant located in the municipality or county, if the production plant meets any of the following criteria: 1) it is not a nuclear-powered production plant and it is built on the site of, or adjacent to, an existing or decommissioned production plant, on the site of, or adjacent to, brownfields, or on a site purchased by a public utility before January 1, 1980, and identified in an advance plan as a proposed production plant site; 2) it is a baseload electric generating facility, as determined by the Public Service Commission; or 3) it is a production plant that derives energy from a renewable resource. The amount of the payment under this first criterion equals the production plant's megawatt capacity multiplied by \$600, and the amount of the payment under the second and third criteria is equal to the production plant's megawatt capacity multiplied by \$1,000.

Under current law, if public utility property is decommissioned and thereby subject to local property taxes, the municipalities and counties in which the property is located no longer receive shared revenue payments based on the value of that property. Under the bill, shared revenue payments related to decommissioned utility property are phased out over five years.

For further information see the *state and 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.** 20.835 (1) (d) of the statutes is amended to read:

SENATE BILL 180

1 20.835 (1) (d) *Shared revenue account.* A sum sufficient to meet the  
2 requirements of the shared revenue account established under s. 79.01 (2) to provide  
3 for the distributions from the shared revenue account to counties, towns, villages and  
4 cities under ss. 79.03, 79.04 (1) to (4), and 79.06.

5 SECTION 2. 20.835 (1) (dm) of the statutes is created to read:

6 20.835 (1) (dm) *Public utility distribution account.* ~~Beginning in 2004,~~ a sum  
7 sufficient to make the payments under s. 79.04 (5), (6), and (7).

8 SECTION 3. 79.005 (4) of the statutes is created to read:

9 79.005 (4) "Repowering" means any of the following:

10 (a) Replacing the boiler on an existing fossil fuel steam unit with a combustion  
11 turbine and heat recovery steam generator and reusing the steam turbine and heat  
12 rejection system.

13 (b) Adding a heat recovery steam generator to a simple cycle combustion  
14 turbine. ~~and replacing it with a new power generation unit at the same~~ site

15 (c) Demolishing or abandoning an existing power generation unit and ~~adding~~  
16 ~~a new combustion turbine, heat recovery steam generator, and steam turbine.~~

17 SECTION 4. 79.01 (1) (c) 3. of the statutes is repealed.

18 SECTION 5. 79.01 (2m) of the statutes is created to read:

19 79.01 (2m) There is established an account in the general fund entitled the  
20 "Public Utility Distribution Account," referred to in this chapter as the "public utility  
21 account." There shall be appropriated to the public utility account the sums specified  
22 in s. 79.04 (5), (6), and (7).

23 SECTION 6. 79.04 (1) (intro.) of the statutes is amended to read:

24 79.04 (1) (intro.) Annually, ~~for production plants that begin operation before~~  
25 ~~January 1, 2004, other than plants that~~ <sup>except</sup> undergo repowering after December 31,  
after December 31, 2003 or

INSERT  
3-7  
7

15  
16  
17

H

SENATE BILL 180

SECTION 6

1 2003, the department of administration, upon certification by the department of  
 2 revenue, shall distribute to a municipality having within its boundaries a production  
 3 plant ~~or a general structure, including production plants and general structures~~  
 4 ~~under construction~~, <sup>or substation</sup> used by a light, heat, or power company assessed under s. 76.28  
 5 (2) or 76.29 (2), except property described in s. 66.0813 unless the production plant  
 6 is owned or operated by a local governmental unit located outside of the municipality,  
 7 or by an electric cooperative assessed under ss. 76.07 and 76.48, respectively, or by  
 8 a municipal electric company under s. 66.0825 the amount determined as follows:

SECTION 7. 79.04 (1) (a) of the statutes is amended to read:

10 79.04 (1) (a) An amount from the shared revenue account determined by  
 11 multiplying by 3 mills in the case of a town, and 6 mills in the case of a city or village,  
 12 the first \$125,000,000 of the amount shown in the account, plus leased property, of  
 13 each public utility except qualified wholesale electric companies, as defined in s.

14 76.28 (1) (gm), on December 31 of the preceding year for either "production plant,  
 15 exclusive of land" and "general structures", or "work in progress" for production  
 16 ~~plants and general structures under construction~~, <sup>and "substations"</sup> in the case of light, heat and power  
 17 companies, electric cooperatives or municipal electric companies, for all property  
 18 within a municipality in accordance with the system of accounts established by the  
 19 public service commission or rural electrification administration, less depreciation  
 20 thereon as determined by the department of revenue and less the value of treatment  
 21 plant and pollution abatement equipment, as defined under s. 70.11 (21) (a), as  
 22 determined by the department of revenue plus an amount from the shared revenue  
 23 account determined by multiplying by 3 mills in the case of a town, and 6 mills in the  
 24 case of a city or village, of the first \$125,000,000 of the total original cost of production  
 25 plant, general structures, and ~~work in progress~~ less depreciation, land and

substations

*or substation*

*))*

*))*

SENATE BILL 180

INSERT  
5-6

1 approved waste treatment facilities of each qualified wholesale electric company, as  
2 defined in s. 76.28 (1) (gm), as reported to the department of revenue of all property  
3 within the municipality. The total of amounts, as depreciated, from the accounts of  
4 all public utilities for the same production plant is also limited to not more than  
5 \$125,000,000. The amount distributable to a municipality under this subsection and  
6 sub. (6) in any year shall not exceed \$300 times the population of the municipality.

7 SECTION 8. 79.04 (1) (c) 1. of the statutes is amended to read:

8 79.04 (1) (c) 1. The payment for any municipality in which a production plant  
9 is located, which the public service commission certifies to the department of revenue  
10 will produce a nominal rated capacity of 200 megawatts or more, shall be no less than  
11 \$75,000 annually, except that the amount distributable to a municipality in any year  
12 shall not exceed the per capita limit specified in par. (a). ~~Payments under this~~  
13 ~~paragraph may be extended to decommissioned production plants as provided in~~  
14 ~~subd. 3.~~

15 SECTION 9. 79.04 (2) (a) of the statutes is amended to read:

16 79.04 (2) (a) Annually, <sup>except</sup> for production plants that begin operation before  
17 ~~January 1, 2004, other than plants that~~ <sup>or</sup> undergo repowering after December 31,  
18 2003, the department of administration, upon certification by the department of  
19 revenue, shall distribute from the shared revenue account to any county having  
20 within its boundaries a production plant ~~or a general structure, including production~~  
21 ~~plants and general structures under construction,~~ <sup>or substation</sup> used by a light, heat or power  
22 company assessed under s. 76.28 (2) or 76.29 (2), except property described in s.  
23 66.0813 unless the production plant <sup>or substation</sup> is owned or operated by a local governmental  
24 unit that is located outside of the municipality in which the production plant is  
25 located, or by an electric cooperative assessed under ss. 76.07 and 76.48, respectively,

INSERT  
5-14

or substation

after December 31,  
2003,

or substation

SENATE BILL 180

1 or by a municipal electric company under s. 66.0825 an amount determined by  
 2 multiplying by 6 mills in the case of property in a town and by 3 mills in the case of  
 3 property in a city or village the first \$125,000,000 of the amount shown in the  
 4 account, plus leased property, of each public utility except qualified wholesale  
 5 electric companies, as defined in s. 76.28 (1) (gm), on December 31 of the preceding  
 6 year for either "production plant, exclusive of land" and "general structures", or  
 7 ~~"work in progress" for production plants and general structures under construction~~  
 8 in the case of light, heat and power companies, electric cooperatives or municipal  
 9 electric companies, for all property within the municipality in accordance with the  
 10 system of accounts established by the public service commission or rural  
 11 electrification administration, less depreciation thereon as determined by the  
 12 department of revenue and less the value of treatment plant and pollution  
 13 abatement equipment, as defined under s. 70.11 (21) (a), as determined by the  
 14 department of revenue plus an amount from the shared revenue account determined  
 15 by multiplying by 6 mills in the case of property in a town, and 3 mills in the case of  
 16 property in a city or village, of the total original cost of production plant, general  
 17 structures, and ~~work in progress~~ <sup>substations</sup> less depreciation, land and approved waste  
 18 treatment facilities of each qualified wholesale electric company, as defined in s.  
 19 76.28 (1) (gm), as reported to the department of revenue of all property within the  
 20 municipality. The total of amounts, as depreciated, from the accounts of all public  
 21 utilities for the same production plant is also limited to not more than \$125,000,000.  
 22 The amount distributable to a county under this subsection and sub. (6) in any year  
 23 shall not exceed \$100 times the population of the county.

Handwritten notes in a circle: "and substations" with arrows pointing to "general structures" and "work in progress" in the text above. Another note says "strike comma" with an arrow pointing to a comma in the text.

24 SECTION 10. 79.04 (3m) of the statutes is created to read:

INSERT 6-23

SENATE BILL 180

*that is owned and operated by an electric cooperative*

1           79.04 (3m) For purposes of determining the amount of the payments under  
2           subs. (1) and (2), the payments for a municipality and county in which an ash disposal  
3           facility is operating prior to the effective date of this subsection .... [revisor inserts  
4           date], shall be calculated to include an amount that is equal to the net book value of  
5           the ash disposal facility multiplied by 2.

6           SECTION 11. 79.04 (4) of the statutes is amended to read:

7           79.04 (4) (a) Annually, in addition to the ~~amount~~ amounts distributed under  
8           ~~sub. (1)~~ subs. (1), (5), (6), and (7), the department of administration shall distribute  
9           \$50,000 to a municipality if spent nuclear fuel is stored within the municipality on  
10          December 31 of the preceding year. If a spent nuclear fuel storage facility is located  
11          within one mile of a municipality, that municipality shall receive \$10,000 annually  
12          and the municipality where that storage facility is located shall receive \$40,000  
13          annually.

14          (b) Annually, in addition to the ~~amount~~ amounts distributed under ~~sub. (2)~~  
15          subs. (2), (5), (6), and (7), the department of administration shall distribute \$50,000  
16          to a county if spent nuclear fuel is stored within the county on December 31 of the  
17          preceding year. If a spent nuclear fuel storage facility is located at a production plant  
18          located in more than one county, the payment shall be apportioned according to the  
19          formula under sub. (1) (c) 2., except that the formula, as it applies to municipalities  
20          in that subdivision, applies to counties in this paragraph. The payment under this  
21          paragraph may not be less than \$10,000 annually.

22          SECTION 12. 79.04 (5) of the statutes is created to read:

23          79.04 (5) (a) Beginning with the distributions in 2005, if property that was  
24          exempt from the property tax under s. 70.112 (4) and that was used to generate power  
25          by a light, heat, or power company, ~~except property under s. 66.0813,~~ *generated under s. 70.112 (4) or 70.112 (2)* or by an electric

*unless the production plant is owned or operated by a local governmental unit located outside of the municipality*

*or substitution*

SENATE BILL 180

SECTION 12

*amended under s. 76.078 & 76.48, respectively, or by a municipal electric company under s. 66.0825*

cooperative, is decommissioned, the municipality shall be paid, from the public utility account, an amount calculated by subtracting an amount equal to the property taxes paid for that property during the current year to the municipality for its general operations from the following percentages of the payment that the municipality received under this section during the last year that the property was exempt from the property tax:

1. In the first year that the property is taxable, 100%.
2. In the 2nd year that the property is taxable, 80%.
3. In the 3rd year that the property is taxable, 60%.
4. In the 4th year that the property is taxable, 40%.
5. In the 5th year that the property is taxable, 20%.

*amended under s. 76.287(2) or 76.296(7)*

(b) Beginning with the distributions in 2005, if property that was exempt from the property tax under s. 70.112 (4) and that was used to generate power by a light, heat, or power company, except property under s. 66.0813, or by an electric cooperative, is decommissioned, the county shall be paid, from the public utility account, an amount calculated by subtracting an amount equal to the property taxes paid for that property during the current year to the county for its general operations from the following percentages of the payment the county received under this section during the last year that the property was exempt from the property tax:

1. In the first year that the property is taxable, 100%.
2. In the 2nd year that the property is taxable, 80%.
3. In the 3rd year that the property is taxable, 60%.
4. In the 4th year that the property is taxable, 40%.
5. In the 5th year that the property is taxable, 20%.

*Unless the production plant is owned or operated by a local governmental unit located outside of the municipality*

SECTION 13. 79.04 (6) of the statutes is created to read:

**SENATE BILL 180**

1           79.04 (6) (a) Annually, beginning in 2005, for production plants that begin  
2 operation after December 31, 2003, or undergo repowering after December 31, 2003,  
3 the department of administration, upon certification by the department of revenue,  
4 shall distribute payments from the public utility account, as determined under par.  
5 (b), to each municipality and county in which a production plant is located, if the  
6 production plant has a name-plate capacity of at least one megawatt and is used by  
7 a light, heat, or power company assessed under s. 76.28 (2) or 76.29 (2), except  
8 property described in s. 66.0813, unless the production plant is owned or operated  
9 by a local governmental unit located outside of the municipality; by a qualified  
10 wholesale electric company, as defined in s. 76.28 (1) (gm); by a wholesale merchant  
11 plant, as defined in s. 196.491 (1) (w); by an electric cooperative assessed under ss.  
12 76.07 and 76.48, respectively; or by a municipal electric company under s. 66.0825.

13           (b) Subject to pars. (c) and (d), each municipality entitled to a payment under  
14 par. (a) and each county in which such a municipality is located shall receive a  
15 payment equal to a portion of an amount that is equal to the number of megawatts  
16 that represents the production plant's name-plate capacity, multiplied by \$2,000.

17           (c) 1. If the production plant is located in a city or village, the city or village  
18 receives a payment equal to two-thirds of the amount determined under par. (b) and  
19 the county in which the city or village is located receives a payment equal to  
20 one-third of the amount determined under par. (b). If the production plant is located  
21 in a town, the town receives a payment equal to one-third of the amount determined  
22 under par. (b), and the county in which the town is located receives a payment equal  
23 to two-thirds of the amount determined under par. (b). If a municipality is located  
24 in more than one county, the county in which the production plant is located shall  
25 receive the county portion of the payment.

## SENATE BILL 180

## SECTION 13

1           2. For the purpose of determining the amount of the payment under par. (b),  
2 if a production plant is located in more than one municipality, the name-plate  
3 capacity of the production plant is attributable to the municipality in which the  
4 majority of the plant is physically located and the payment amount ~~that would result~~  
5 under par. (b) ~~and there are no other plants in that municipality~~ shall be divided  
6 among the municipalities in which the plant is located based on the net book value  
7 of that portion of the plant located in each municipality as of December 31, 2004, or  
8 as of the date on which the plant is operational, whichever is later.

9           (d) The total amount distributable to a municipality under this subsection and  
10 sub. (1) in any fiscal year shall not exceed an amount equal to the municipality's  
11 population multiplied by \$300, and the total amount distributable to a county under  
12 this subsection and sub. (2) in any year shall not exceed an amount equal to the  
13 county's population multiplied by \$100.

14           **SECTION 14.** 79.04 (7) of the statutes is created to read:

15           79.04 (7) (a) Beginning with payments in 2005, if a production plant, as  
16 described in sub. (6) (a), other than a nuclear-powered production plant, is built on  
17 the site of, or on a site adjacent to, an existing or decommissioned production plant;  
18 or is built on a site purchased by a public utility before January 1, 1980, that was  
19 identified in an advance plan as a proposed site for a production plant; or is built on,  
20 or on a site adjacent to, brownfields, as defined in s. 560.13 (1) (a), after December  
21 31, 2003, and has a name-plate capacity of at least one megawatt, each municipality  
22 and county in which such a production plant is located shall receive annually from  
23 the public utility account a payment in an amount that is equal to the number of  
24 megawatts that represents the production plant's name-plate capacity, multiplied  
25 by \$600.

**SENATE BILL 180**

*except as provided in subd. 2.)*

1 (b) Beginning with payments in 2005, if a production plant, as described in sub.  
 2 (6) (a), that is a baseload electric generating facility, as determined by the public  
 3 service commission, is built after December 31, 2003, and has a name-plate capacity  
 4 of at least 50 megawatts, each municipality and county in which such a production  
 5 plant is located shall receive annually from the public utility account a payment in  
 6 an amount that is equal to the number of megawatts that represents the production  
 7 plant's name-plate capacity, multiplied by ~~\$1,000~~ \$600

8 (c) Beginning with payments in 2005, if a production plant, as described in sub.  
 9 (6) (a), that derives energy from ~~renewable~~ *an alternative energy resource*, as defined in s. ~~196.378(1)(a)~~,  
 10 is built after December 31, 2003, and has a name-plate capacity of at least one  
 11 megawatt, each municipality and county in which such a production plant is located  
 12 shall receive annually from the public utility account a payment in an amount that  
 13 is equal to the number of megawatts that represents the production plant's  
 14 name-plate capacity, multiplied by \$1,000.

**SECTION 15.** 196.20 (7) of the statutes is created to read:

16 ~~196.20 (7) (a) In this subsection, "mitigation payment" means an amount paid~~  
 17 ~~to a municipality in which an electric generating facility is located to mitigate the~~  
 18 ~~effects of the facility on the municipality.~~

19 (b) Except as provided in par. (c), an electric public utility may not recover in  
 20 rates any of the following:  
 21 1. The cost of mitigation payments paid by the utility.  
 22 2. The cost of mitigation payments paid by the owner or operator of an electric  
 23 generating facility that the owner or operator recovers from the utility by selling  
 24 electricity to the utility, by leasing the facility to the utility, or by any agreement

1.

INSERT  
11-14

INSERT  
11-18

SENATE BILL 180

SECTION 15

1 between the owner or operator of the electric generating facility and the public  
2 utility.

3 (c) Paragraph (b) does not apply to any public utility ~~for which the commission~~  
4 ~~has determined~~ that <sup>has filed</sup> an application for a certificate under s. 196.491 (3) is ~~complete~~  
5 ~~prior to the effective date of this paragraph . . . (revisor inserts date).~~ <sup>on or before</sup>

June 1, 2003

6 SECTION 16. Initial applicability.

7 (1) This act first applies to distributions made on the 4th Monday in July 2005.

8 (END)



**2003-2004 DRAFTING INSERT**  
**FROM THE**  
**LEGISLATIVE REFERENCE BUREAU**

LRBs0096/?ins  
JK:.....

**INSERT 3 - 7**

1           **SECTION 1.** 79.005 (1) of the statutes is renumbered 79.005 (1m).

2           **SECTION 2.** 79.005 (1b) of the statutes is created to read:

3           79.005 (1b) "Alternative energy resource" means a renewable resource, as  
4 defined in s. 196.378 (1) (h); garbage, as defined in s. 289.01 (9); or  
5 nonvegetation-based industrial, commercial, or household waste, unless the energy  
6 content of the waste is derived primarily from petroleum-based materials.

7           **SECTION 3.** 79.005 (1d) of the statutes is created to read:

8           79.005 (1d) "Baseload electric generating facility" means an electric  
9 generating facility that has a capacity factor that is greater than 60%.

10          **SECTION 4.** 79.005 (1f) of the statutes is created to read:

11          79.005 (1f) "Capacity factor" means the actual annual output of an electric  
12 generating facility expressed as a percentage of the facility's potential output or, for  
13 an electric generating facility that has not been in operation for one year, the  
14 projected annual output of an electric generating facility expressed as a percentage  
15 of the facility's potential output.

16          **SECTION 5.** 79.005 (2m) of the statutes is created to read:

17          79.005 (2m) "Power generation unit" means a complete set of electric  
18 generating equipment, as defined in s. 196.52 (9) (a) 1., that, collectively, is sufficient  
19 to generate electric power.

20          **SECTION 6.** 79.005 (3) of the statutes is amended to read:

21          79.005 (3) "Production plant" ~~also includes~~ does not include substations and  
22 general structures.

History: 1971 c. 125, 215; 1975 c. 39; 1981 c. 20 s. 1169; 1989 a. 336.

**INSERT 5 - 6**

1           **SECTION 7.** 79.04 (1) (b) 2. of the statutes is amended to read:

2           79.04 (1) (b) 2. When a light, heat or power company no longer uses property  
3 described under par. (a) as production plant, substation, or general structure in a  
4 municipality, the amount established under subd. 1. shall be reduced by the  
5 proportion that the property that is no longer used bears to the total value of all  
6 property described in par. (a) in the municipality. The proportion shall be determined  
7 according to the proportional value of the property when the light, heat or power  
8 company stops using the property.

History: 1971 c. 125, 215; 1973 c. 90 ss. 387, 391g; 1973 c. 243 s. 82; 1975 c. 39, 224; 1977 c. 29, 418; 1979 c. 34; 1983 a. 27; 1985 a. 29, 39; 1987 a. 27; 1989 a. 31; 1993 a. 16, 307; 1995 a. 27; 1999 a. 150 s. 672; 2001 a. 16; 2001 a. 30 s. 108.

**INSERT 5 - 14**

9           **SECTION 8.** 79.04 (1) (c) 2. of the statutes is amended to read:

10           79.04 (1) (c) 2. If a production plant or substation is located in more than one  
11 municipality, the total payment under subd. 1. shall be apportioned according to the  
12 amounts shown on the preceding December 31 for the production plant in the account  
13 described in par. (a) for "production plant exclusive of land" or "substation" within  
14 each municipality for all public utilities except qualified wholesale electric  
15 companies, as defined in s. 76.28 (1) (gm), or according to the value as reported to the  
16 department of revenue under par. (a) of the production plant or substation within  
17 each municipality for each qualified wholesale electric company. The payment to  
18 each municipality under this subdivision shall be no less than \$15,000 annually.

History: 1971 c. 125, 215; 1973 c. 90 ss. 387, 391g; 1973 c. 243 s. 82; 1975 c. 39, 224; 1977 c. 29, 418; 1979 c. 34; 1983 a. 27; 1985 a. 29, 39; 1987 a. 27; 1989 a. 31; 1993 a. 16, 307; 1995 a. 27; 1999 a. 150 s. 672; 2001 a. 16; 2001 a. 30 s. 108.

19           **SECTION 9.** 79.04 (1) (c) 3. of the statutes is repealed.

**INSERT 6 - 23**

20           **SECTION 10.** 79.04 (2) (am) 2. of the statutes is amended to read:

1           79.04 (2) (am) 2. When a light, heat or power company no longer uses property  
 2 described under par. (a) as production plant, substation, or general structure in a  
 3 county, the amount established under subd. 1. shall be reduced by the proportion that  
 4 the property that is no longer used bears to the total value of all property described  
 5 in par. (a) in the county. The proportion shall be determined according to the  
 6 proportional value of the property when the light, heat or power company stops using  
 7 the property.

History: 1971 c. 125, 215; 1973 c. 90 ss. 387, 391g; 1973 c. 243 s. 82; 1975 c. 39, 224; 1977 c. 29, 418; 1979 c. 34; 1983 a. 27; 1985 a. 29, 39; 1987 a. 27; 1989 a. 31; 1993 a. 16, 307; 1995 a. 27; 1999 a. 150 s. 672; 2001 a. 16; 2001 a. 30 s. 108.

8           **SECTION 11.** 79.04 (2) (b) of the statutes is amended to read:

9           79.04 (2) (b) The payment under par. (a) for any county in which a production  
 10 plant or substation is located, which the public service commission certifies to the  
 11 department of revenue will produce a nominal rated capacity of 200 megawatts or  
 12 more, shall be not less than \$75,000 annually, except that the amount distributable  
 13 to a county in any year shall not exceed the per capita limit specified in par. (a).

History: 1971 c. 125, 215; 1973 c. 90 ss. 387, 391g; 1973 c. 243 s. 82; 1975 c. 39, 224; 1977 c. 29, 418; 1979 c. 34; 1983 a. 27; 1985 a. 29, 39; 1987 a. 27; 1989 a. 31; 1993 a. 16, 307; 1995 a. 27; 1999 a. 150 s. 672; 2001 a. 16; 2001 a. 30 s. 108.

**INSERT 11 - 14** ✓

14           2. If a production plant as described under subd. 1. fires an alternative energy  
 15 resource together with a ~~conventional~~ <sup>fuel other than an alternative energy</sup> resource, the number of megawatts used to  
 16 calculate the payment under subd. 1. is the number of megawatts that represents the  
 17 production plant's name-plate capacity multiplied by a percentage that represents  
 18 the energy content of the alternative energy resource in the year <sup>in which</sup> the payment is  
 19 made as compared to the total energy content of the alternative energy resource and  
 20 the ~~conventional resource~~ <sup>in which</sup> in the year <sup>in which</sup> the payment is made.

**INSERT 11 - 18** ✓

*other fuel*

1           196.20 (7) (a) In this subsection, "mitigation payment" means, as approved by  
2 the commission, an unrestricted or recurring monetary payment to a local unit of  
3 government in which an electric generating facility is located to mitigate the impact  
4 of the electric generating facility on the local unit of government. "Mitigation  
5 payment" does not include payments made or in-kind contributions for restricted  
6 purposes to directly address health or safety impacts of the electric generating  
7 facility on the local unit of government.

**Kreye, Joseph**

---

**From:** Stolzenberg, John  
**Sent:** Friday, May 30, 2003 4:20 PM  
**To:** Halbur, Jennifer; Healy, Brett  
**Cc:** Gottlieb, Mark; Mnuk, Katie; Molitor, Ann; Olin, Rick; Kreye, Joseph; Lovell, David  
**Subject:** Follow-up on meeting on SB 180 sub amdt drafting instructions

Jennifer and Brett,

At the meeting this morning on the drafting instructions for the new version of the Senate substitute amendment to SB 180, I was asked to further examine 2 items - how "associated or shared facilities" should be excluded from the definition of "power generation unit" and the treatment of baseload plants that fall below 60% annual capacity factor.

I've now gathered appropriate information on these items, including discussing them with staff at the PSC and We Energies (the source of the shared facility suggested amendment), and here are my recommendations on them:

**Shared facilities exclusion in the definition of "power generation unit"** [page 2, lines 20 to 22 in LRBs0096/1]: Upon reviewing the definition of "electric generating equipment" that is referenced in SB 180's definition of "power generation unit," I would recommend that the definition of "power generation unit" does not need to be further modified to exclude "associated or shared facilities" because the definition of "electric generating equipment" in s. 196.52 (9) (a) 1. is sufficiently specific that it already excludes equipment or facilities, such as a smoke stack or water intake facility, which are shared with other sets of electric generating equipment at the same site. This point is re-enforced by the fact that the definition of "electric generating facility" in s. 196.52 (9) (a) 2., *which the sub does not use*, does include these "associated facilities," further distinguishing these definitions.

**Treatment of baseload plants that fall below the 60% capacity factor due to repairs and routine maintenance** [page 2, lines 14 to 18 in LRBs0096/1]: The current practice for coal-fired baseload plants is that even with significant outages for repairs and maintenance they are operated a sufficient amount of time to easily meet the 60% capacity factor test in the sub's definition of "baseload electric generating facility." These plants typically operate at capacity factors in the 80 to 90% range. Apparently, these plants have planned repairs on the order of a few weeks each year, with longer planned outages of a month or more for maintenance every 4 or 5 years. A plant that is down for 2 months and operated at full capacity for the remainder of the year will have a capacity factor of over 83%. The Columbia II unit, which has recently been reported to have more down time than other coal-fired baseload plants, had a capacity factor in 2002 well over 60%.

Nuclear powered plants may have longer outages and could fall below the 60% capacity factor threshold, but my understanding is that no nuclear plants will be built in Wisconsin in the foreseeable future. Thus, I assume that new nuclear power plants do not need to be addressed in the new substitute amendment at this time.

These observations lead me to recommend that the treatment of baseload plants does not need to be further addressed in the revised sub, as standard industry practices will ensure that, in all but extraordinary situations, a baseload plant will continue to meet the 60% capacity factor test and the incentive payments for a baseload plant will continue to be made to host communities even during the shutdowns for repairs and maintenance discussed above.

I identified an additional recommendation related to the baseload plant provisions after further reviewing this text. I'd now recommend deleting on page 12, lines 11 and 12 in LRBs0096/1 the phrase "as determined by the

Public service commission." The PSC doesn't collect capacity data from electric coops or wholesale electric companies. By deleting this phrase, the DOR will have to collect capacity factor data from all production plant operators, as part of its data collection efforts in administering the revised utility shared revenue law.

**Other background information:** Re the other situation we discussed this morning about a peaking plant being operated long enough to qualify as a baseload plant. Base on my conversations today, it is highly unlikely that a peaking plant will be operated a sufficient amount of time to have a capacity factor in excess of 60% due the relative high cost of fuel for these plants and the fact that they are physically not designed to operate continually for that amount of time. It is apparently conceivable, though unlikely, that an intermediate load plant could exceed a 60% capacity factor on an ad hoc basis. In that situation, the sub (both versions /1 and /2) would provide a baseload incentive payment for the years that the plant exceeds 60% capacity factor.

FYI, another point I forgot to share this morning. Even though 3 of the new payments in the sub apply to new or repowered plants with a capacity of at least 1 MW, in practice payments will be made only on larger plants operated by a wholesale electric company (or IPP). That's due to the definition of "qualified wholesale electric company" in the gross receipts law [s. 76.28 (1) (gm)] that is ultimately referenced in the sub's provisions. This definition limits these companies to ones that own or operate "electric generating facilities that have a total power production capacity of at least 50 megawatts" or that are a wholesale merchant plant with a capacity of at least 50 MW. Thus, for example, if a wholesale electric company had only one production plant in the state and that plant had 30 MW of capacity, the company would not be a "qualified wholesale electric company" and would not pay gross receipts tax, the plant would not be the subject of utility shared revenue payments under the sub and the company would pay local property taxes on the plant.

If you concur with the above recommendations, I assume that one of you will give the instruction to Joe to include the third one, that deletes the reference to the PSC, in the /2 version of the substitute amendment.

John

---

John Stolzenberg,  
Legislative Council Staff Scientist  
Suite 401, One East Main Street  
PO Box 2536  
Madison, WI 53701-2536  
Direct: 608-266-2988  
Fax: 608-266-3830

Petak

**george petak**

**From:** "george petak" <gpetak@tds.net>  
**To:** "Mulroy, Molly" <Molly.Mulroy@we-energies.com>; <joel.haubrich@we-energies.com>; "Bill Broydrick" <billb@broydrick.com>  
**Sent:** Wednesday, May 28, 2003 9:35 AM  
**Subject:** Fw: Oak Creek proposed language change

Molly,  
Here's the language we discussed by phone.  
FYI...  
GP

----- Original Message -----

**From:** george petak  
**To:** Halbur, Jennifer ; Brett.Healy@legis.state.wi.us  
**Cc:** Robert Kufrin ; Mark Osten ; PKent@andersonkent.com ; wmulligan@dkattorneys.com ; Mulligan, William J.  
**Sent:** Wednesday, May 28, 2003 9:22 AM  
**Subject:** Oak Creek proposed language change

Good morning.  
The City of Oak Creek would like you to consider the following change in LRB-2573/3:  
On page 12, line 3, replace the paragraph with:

" (c) Paragraph (b) does not apply to any agreement entered into before July 1, 2003 between a public utility and a municipality; and, the commission shall allow the cost of mitigation payments to be recovered in rates for such public utilities."

Thanks. Please call me if questions arise.  
GP

George Petak  
Vice President/Government Affairs  
Zigman Joseph Stephenson  
Two East Mifflin - Suite 400  
Madison, WI 53703  
608-252-9297 (o)  
414-315-2991 (c)

Outgoing mail is certified Virus Free.  
Checked by AVG anti-virus system (<http://www.grisoft.com>).  
Version: 6.0.483 / Virus Database: 279 - Release Date: 5/19/2003

*received before June 1, 2003*

*PSC shall not modify an agreement / that was rendered prior to the date of the PSC's approval of the agreement recorded*

*PSC approval on mitigation*

\* PSC may only approve agreements for mitigation projects received ~~for~~ before June 1, 2003, and of the PSC finds <sup>the agreement</sup> reasonable the PSC may not subsequently modify the agreement

5/28/2003

**Kreye, Joseph**

**From:** Halbur, Jennifer  
**Sent:** Thursday, May 29, 2003 5:01 PM  
**To:** Mnuk, Katie; Molitor, Ann; Olin, Rick; Stolzenberg, John; Kreye, Joseph  
**Subject:** FW: Utility Aid Legislation

Here are some concerns provided to me by Joel Haubrich of We Energies. We can discuss these at the meeting tomorrow. See ya then.

-----Original Message-----

**From:** Haubrich.Joel [mailto:Joel.Haubrich@we-energies.com]  
**Sent:** Thursday, May 29, 2003 4:28 PM  
**To:** 'Gottlieb, Rep. Mark'; Jennifer Halbur (E-mail); Brett Healy (E-mail)  
**Cc:** Mulroy.Molly  
**Subject:** Utility Aid Legislation

*change "repowering" to "repower"?*  
*and give to*  
*(a) To replace*  
*if*

Hello Everyone,

After further review with believe the mitigation section is good.

We still have a concern small concern with the three sections below. The intent of each section is to determine when plants will qualify for the capacity formula and the incentives.

It is our belief that the "trigger" for "old vs. new" is when the plant begins operating, as a "new" plant or a "repowered" plant

(page 3)

SECTION 11. 79.04 (1) (intro.) of the statutes is amended to read:

79.04 (1) (intro.) Annually, except for production plants that begin operation after December 31, 2003, or begin operation as a repowered production plant ~~undergo repowering~~ after December 31, 2003, the department of administration, upon certification by the department of revenue, shall distribute to a municipality having within its boundaries a production plant or a, general structure, including production plants and general structures under construction or substation,

(page 6)

SECTION 17. 79.04 (2) (a) of the statutes is amended to read:

79.04 (2) (a) Annually, except for production plants that begin operation after December 31, 2003, or begin operation as a repowered production plant ~~undergo repowering~~ after December 31, 2003, the department of administration, upon certification by the department of revenue, shall distribute from the shared revenue account to any county having within its boundaries a production plant or a, general structure,

(page 10)

SECTION 23. 79.04 (6) of the statutes is created to read:

79.04 (6) (a) Annually, beginning in 2005, for production plants that begin operation after December 31, 2003, or begin operation as a repowered production plant ~~undergo repowering~~ after December 31, 2003, the department of administration, upon certification by the department of revenue, shall distribute payments from the public utility account, as determined under par. (b), to each municipality and county in which a production plant is located,

Thanks for all you help.

**Joel M. Haubrich**  
**We Energies - Government Affairs**  
**231 W. Michigan St.**  
**P.O. Box 2046**  
**Milwaukee, WI 53290-0001**  
**414-221-4102 (MKE office)**  
**608-283-3004 (MDSN office)**  
**414-221-3853 (fax)**  
**[joel.haubrich@we-energies.com](mailto:joel.haubrich@we-energies.com)**

## Kreye, Joseph

---

**From:** Stolzenberg, John  
**Sent:** Monday, June 02, 2003 10:13 AM  
**To:** Halbur, Jennifer; Healy, Brett  
**Cc:** Gottlieb, Mark; Mnuk, Katie; Molitor, Ann; Olin, Rick; Kreye, Joseph; Lovell, David  
**Subject:** RE: Follow-up on meeting on SB 180 sub amdt drafting instructions

Brett and Jennifer,

The PSC staff person I contacted on baseload power plant capacity factors last week just gave me some additional historical information on these factors. The new information is based on data going back to 1990, whereas the data I reported in my note last Friday (reproduced below) was based on data for the last 5 years.

He indicated that in 1990 the Edgewater V unit had a capacity factor in the mid 50% range and in 1993 the Columbia I and II units had capacity factors in the high 50% range. While these capacity factors reflect lengthy outages; off hand he didn't know the reason for these lower capacity factors. In addition, since 1990, the capacity factor for baseload plants reported to the PSC typically ranged between 70% and mid 80%, which is lower than what I had reported in my note last Friday but still above the 60% threshold in the definition in the SB 180 substitute amendment.

John

> -----Original Message-----

> **From:** Stolzenberg, John  
> **Sent:** Friday, May 30, 2003 4:20 PM  
> **To:** Halbur, Jennifer; Healy, Brett  
> **Cc:** Gottlieb, Mark; Mnuk, Katie; Molitor, Ann; Olin, Rick;  
> Kreye, Joseph; Lovell, David  
> **Subject:** Follow-up on meeting on SB 180 sub amdt  
> drafting instructions

> Jennifer and Brett,

>  
> At the meeting this morning on the drafting instructions for  
> the new version of the Senate substitute amendment to SB 180,  
> I was asked to further examine 2 items - how "associated or  
> shared facilities" should be excluded from the definition of  
> "power generation unit" and the treatment of baseload plants  
> that fall below 60% annual capacity factor.

>  
> I've now gathered appropriate information on these items,  
> including discussing them with staff at the PSC and We  
> Energies (the source of the shared facility suggested  
> amendment), and here are my recommendations on them:

>  
> **Shared facilities exclusion in the definition of "power  
> generation unit"** [page 2, lines 20 to 22 in LRBs0096/1]: Upon  
> reviewing the definition of "electric generating equipment"  
> that is referenced in SB 180's definition of "power  
> generation unit," I would recommend that the definition of  
> "power generation unit" does not need to be further modified



State of Wisconsin  
2003 - 2004 LEGISLATURE

LRBs0096/1  
JK:kg:pg

2

SENATE SUBSTITUTE AMENDMENT,  
TO 2003 SENATE BILL 180

RM not R

now  
6-2-03

re you

1 AN ACT *to repeal* 79.04 (1) (c) 3.; *to renumber* 79.005 (1); *to amend* 20.835 (1)  
 2 (d), 79.005 (3), 79.04 (1) (intro.), 79.04 (1) (a), 79.04 (1) (b) 2., 79.04 (1) (c) 1.,  
 3 79.04 (1) (c) 2., 79.04 (2) (a), 79.04 (2) (am) 2., 79.04 (2) (b) and 79.04 (4); and *to*  
 4 *create* 20.835 (1) (dm), 79.005 (1b), 79.005 (1d), 79.005 (1f), 79.005 (2m), 79.005  
 5 (4), 79.01 (2m), 79.04 (3m), 79.04 (5), 79.04 (6), 79.04 (7) and 196.20 (7) of the  
 6 statutes; **relating to:** payments to local governments for public utilities ~~and~~  
 7 ~~making an appropriation.~~

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

8 **SECTION 1.** 20.835 (1) (d) of the statutes is amended to read:  
 9 20.835 (1) (d) *Shared revenue account.* A sum sufficient to meet the  
 10 requirements of the shared revenue account established under s. 79.01 (2) to provide  
 11 for the distributions from the shared revenue account to counties, towns, villages and  
 12 cities under ss. 79.03, 79.04 (1) to (4), and 79.06.

SECTION 2. 20.835 (1) (dm) of the statutes is created to read:

20.835 (1) (dm) *Public utility distribution account*. A sum sufficient to make the payments under s. 79.04 (5), (6), and (7).

SECTION 3. 79.005 (1) of the statutes is renumbered 79.005 (1m).

SECTION 4. 79.005 (1b) of the statutes is created to read:

79.005 (1b) "Alternative energy resource" means a renewable resource, as defined in s. 196.378 (1) (h); garbage, as defined in s. 289.01 (9); or nonvegetation-based industrial, commercial, or household waste, ~~unless the energy content of the waste is derived primarily from petroleum-based materials.~~

SECTION 5. 79.005 (1d) of the statutes is created to read:

79.005 (1d) "Baseload electric generating facility" means an electric generating facility that has a capacity factor that is greater than 60%.

SECTION 6. 79.005 (1f) of the statutes is created to read:

79.005 (1f) "Capacity factor" means the actual annual output of an electric generating facility expressed as a percentage of the facility's potential output or, for an electric generating facility that has not been in operation for one year, the projected annual output of an electric generating facility expressed as a percentage of the facility's potential output.

SECTION 7. 79.005 (2m) of the statutes is created to read:

79.005 (2m) "Power generation unit" means a complete set of electric generating equipment, as defined in s. 196.52 (9) (a) 1., that, collectively, is sufficient to generate electric power.

SECTION 8. 79.005 (3) of the statutes is amended to read:

79.005 (3) "Production plant" ~~also includes~~ does not include substations and general structures.

1 SECTION 9. 79.005 (4) of the statutes is created to read:

2 79.005 (4) "Repowering"<sup>ed ✓</sup> means any of the following:

3 (a) Replacing the boiler on an existing fossil fuel steam unit with a combustion  
4 turbine and heat recovery steam generator and reusing the steam turbine and heat  
5 rejection system.

6 (b) Adding a heat recovery steam generator to a simple cycle combustion  
7 turbine.

8 (c) Demolishing or abandoning an existing power generation unit and replacing  
9 it with a new power generation unit at the same site.

10 SECTION 10. 79.01 (2m) of the statutes is created to read:

11 79.01 (2m) There is established an account in the general fund entitled the  
12 "Public Utility Distribution Account," referred to in this chapter as the "public utility  
13 account." There shall be appropriated to the public utility account the sums specified  
14 in s. 79.04 (5), (6), and (7).

15 SECTION 11. 79.04 (1) (intro.) of the statutes is amended to read:

16 79.04 (1) (intro.) Annually, except for production plants that begin operation

17 after December 31, 2003, or ~~undergo repowering~~ after December 31, 2003, the

18 department of administration, upon certification by the department of revenue, shall

19 distribute to a municipality having within its boundaries a production plant ~~or a,~~

20 general structure, ~~including production plants and general structures under~~

21 ~~construction or substation,~~ used by a light, heat, or power company assessed under

22 s. 76.28 (2) or 76.29 (2), except property described in s. 66.0813 unless the production

23 plant or substation is owned or operated by a local governmental unit located outside

24 of the municipality, or by an electric cooperative assessed under ss. 76.07 and 76.48,

begin operation <sup>as</sup> a repowered production plant

1 respectively, or by a municipal electric company under s. 66.0825 the amount  
2 determined as follows:

3 **SECTION 12.** 79.04 (1) (a) of the statutes is amended to read:

4 79.04 (1) (a) An amount from the shared revenue account determined by  
5 multiplying by 3 mills in the case of a town, and 6 mills in the case of a city or village,  
6 the first \$125,000,000 of the amount shown in the account, plus leased property, of  
7 each public utility except qualified wholesale electric companies, as defined in s.  
8 76.28 (1) (gm), on December 31 of the preceding year for ~~either~~ "production plant, ←  
9 exclusive of land" and, "general structures", or "work in progress" for production  
10 plants and general structures under construction, and "substations," in the case of  
11 light, heat and power companies, electric cooperatives or municipal electric  
12 companies, for all property within a municipality in accordance with the system of  
13 accounts established by the public service commission or rural electrification  
14 administration, less depreciation thereon as determined by the department of  
15 revenue and less the value of treatment plant and pollution abatement equipment,  
16 as defined under s. 70.11 (21) (a), as determined by the department of revenue plus  
17 an amount from the shared revenue account determined by multiplying by 3 mills  
18 in the case of a town, and 6 mills in the case of a city or village, of the first  
19 \$125,000,000 of the total original cost of production plant, general structures, and  
20 ~~work in progress~~ substations less depreciation, land and approved waste treatment  
21 facilities of each qualified wholesale electric company, as defined in s. 76.28 (1) (gm),  
22 as reported to the department of revenue of all property within the municipality. The  
23 total of amounts, as depreciated, from the accounts of all public utilities for the same  
24 production plant is also limited to not more than \$125,000,000. The amount

1 distributable to a municipality under this subsection and sub. (6) in any year shall  
2 not exceed \$300 times the population of the municipality.

3 **SECTION 13.** 79.04 (1) (b) 2. of the statutes is amended to read:

4 79.04 (1) (b) 2. When a light, heat or power company no longer uses property  
5 described under par. (a) as production plant, substation, or general structure in a  
6 municipality, the amount established under subd. 1. shall be reduced by the  
7 proportion that the property that is no longer used bears to the total value of all  
8 property described in par. (a) in the municipality. The proportion shall be determined  
9 according to the proportional value of the property when the light, heat or power  
10 company stops using the property.

11 **SECTION 14.** 79.04 (1) (c) 1. of the statutes is amended to read:

12 79.04 (1) (c) 1. The payment for any municipality in which a production plant  
13 ~~or substation~~ is located, which the public service commission certifies to the  
14 department of revenue will produce a nominal rated capacity of 200 megawatts or  
15 more, shall be no less than \$75,000 annually, except that the amount distributable  
16 to a municipality in any year shall not exceed the per capita limit specified in par.  
17 (a). ~~Payments under this paragraph may be extended to decommissioned production~~  
18 ~~plants as provided in subd. 3.~~

19 **SECTION 15.** 79.04 (1) (c) 2. of the statutes is amended to read:

20 79.04 (1) (c) 2. If a production plant or substation is located in more than one  
21 municipality, the total payment under subd. 1. shall be apportioned according to the  
22 amounts shown on the preceding December 31 for the production plant in the account  
23 described in par. (a) for "production plant exclusive of land" or "substation" within  
24 each municipality for all public utilities except qualified wholesale electric  
25 companies, as defined in s. 76.28 (1) (gm), or according to the value as reported to the

INSERT  
6-4

1 department of revenue under par. (a) of the production plant or substation within  
2 each municipality for each qualified wholesale electric company. The payment to  
3 each municipality under this subdivision shall be no less than \$15,000 annually.

4 ~~SECTION 16. 79.04 (1) (c) 3. of the statutes is repealed.~~

5 SECTION 17. 79.04 (2) (a) of the statutes is amended to read:

6 79.04 (2) (a) Annually, except for production plants that begin operation after

7 December 31, 2003, or ~~undergo repowering~~ after December 31, 2003, the department

8 of administration, upon certification by the department of revenue, shall distribute

9 from the shared revenue account to any county having within its boundaries a

10 production plant ~~or a, general structure, including production plants and general~~

11 ~~structures under construction or substation~~, used by a light, heat or power company

12 assessed under s. 76.28 (2) or 76.29 (2), except property described in s. 66.0813 unless

13 the production plant or substation is owned or operated by a local governmental unit

14 that is located outside of the municipality in which the production plant or substation

15 is located, or by an electric cooperative assessed under ss. 76.07 and 76.48,

16 respectively, or by a municipal electric company under s. 66.0825 an amount

17 determined by multiplying by 6 mills in the case of property in a town and by 3 mills

18 in the case of property in a city or village the first \$125,000,000 of the amount shown

19 in the account, plus leased property, of each public utility except qualified wholesale

20 electric companies, as defined in s. 76.28 (1) (gm), on December 31 of the preceding

21 year for ~~either~~ <sup>→</sup> "production plant, exclusive of land" ~~and,~~ "general structures", ~~or~~

22 ~~"work in progress" for production plants and general structures under construction,~~

23 ~~," and "substations,"~~ in the case of light, heat and power companies, electric

24 cooperatives or municipal electric companies, for all property within the

25 municipality in accordance with the system of accounts established by the public

begin operation <sup>as</sup> a repowered production plant

1 service commission or rural electrification administration, less depreciation thereon  
2 as determined by the department of revenue and less the value of treatment plant  
3 and pollution abatement equipment, as defined under s. 70.11 (21) (a), as determined  
4 by the department of revenue plus an amount from the shared revenue account  
5 determined by multiplying by 6 mills in the case of property in a town, and 3 mills  
6 in the case of property in a city or village, of the total original cost of production plant,  
7 general structures, and ~~work-in-progress~~ substations less depreciation, land and  
8 approved waste treatment facilities of each qualified wholesale electric company, as  
9 defined in s. 76.28 (1) (gm), as reported to the department of revenue of all property  
10 within the municipality. The total of amounts, as depreciated, from the accounts of  
11 all public utilities for the same production plant is also limited to not more than  
12 \$125,000,000. The amount distributable to a county under this subsection and sub.  
13 (6) in any year shall not exceed \$100 times the population of the county.

14 **SECTION 18.** 79.04 (2) (am) 2. of the statutes is amended to read:

15 79.04 (2) (am) 2. When a light, heat or power company no longer uses property  
16 described under par. (a) as production plant, substation, or general structure in a  
17 county, the amount established under subd. 1. shall be reduced by the proportion that  
18 the property that is no longer used bears to the total value of all property described  
19 in par. (a) in the county. The proportion shall be determined according to the  
20 proportional value of the property when the light, heat or power company stops using  
21 the property.

22 ~~**SECTION 19.** 79.04 (2) (b) of the statutes is amended to read:~~

23 ~~79.04 (2) (b) The payment under par. (a) for any county in which a production~~  
24 ~~plant or substation is located, which the public service commission certifies to the~~  
25 ~~department of revenue will produce a nominal rated capacity of 200 megawatts or~~

1 more, shall be not less than \$75,000 annually, except that the amount distributable  
2 to a county in any year shall not exceed the per capita limit specified in par. (a).

3 **SECTION 20.** 79.04 (3m) of the statutes is created to read:

4 79.04 (3m) For purposes of determining the amount of the payments under  
5 subs. (1) and (2), the payments for a municipality and county in which an ash disposal  
6 facility that is owned and operated by an electric cooperative is operating prior to the  
7 effective date of this subsection .... [revisor inserts date], shall be calculated to  
8 include an amount that is equal to the net book value of the ash disposal facility  
9 multiplied by 2.

10 **SECTION 21.** 79.04 (4) of the statutes is amended to read:

11 79.04 (4) (a) Annually, in addition to the ~~amount~~ amounts distributed under  
12 ~~sub. (1)~~ subs. (1), (5), (6), and (7), the department of administration shall distribute  
13 \$50,000 to a municipality if spent nuclear fuel is stored within the municipality on  
14 December 31 of the preceding year. If a spent nuclear fuel storage facility is located  
15 within one mile of a municipality, that municipality shall receive \$10,000 annually  
16 and the municipality where that storage facility is located shall receive \$40,000  
17 annually.

18 (b) Annually, in addition to the ~~amount~~ amounts distributed under ~~sub. (2)~~  
19 subs. (2), (5), (6), and (7), the department of administration shall distribute \$50,000  
20 to a county if spent nuclear fuel is stored within the county on December 31 of the  
21 preceding year. If a spent nuclear fuel storage facility is located at a production plant  
22 ~~or substation~~, located in more than one county, the payment shall be apportioned  
23 according to the formula under sub. (1) (c) 2., except that the formula, as it applies  
24 to municipalities in that subdivision, applies to counties in this paragraph. The  
25 payment under this paragraph may not be less than \$10,000 annually.

1           **SECTION 22.** 79.04 (5) of the statutes is created to read:

2           79.04 (5) (a) Beginning with the distributions in 2005, if property that was  
3 exempt from the property tax under s. 70.112 (4) and that was used to generate power  
4 by a light, heat, or power company, except property under s. 66.0813, unless the  
5 production plant is owned or operated by a local governmental unit located outside  
6 of the municipality, or by an electric cooperative, or by a municipal electric company  
7 under s. 66.0825, is decommissioned, the municipality shall be paid, from the ~~public~~  
8 ~~utility~~ *shared revenue* account, an amount calculated by subtracting an amount equal to the  
9 property taxes paid for that property during the current year to the municipality for  
10 its general operations from the following percentages of the payment that the  
11 municipality received under this section during the last year that the property was  
12 exempt from the property tax:

- 13           1. In the first year that the property is taxable, 100%.
- 14           2. In the 2nd year that the property is taxable, 80%.
- 15           3. In the 3rd year that the property is taxable, 60%.
- 16           4. In the 4th year that the property is taxable, 40%.
- 17           5. In the 5th year that the property is taxable, 20%.

18           (b) Beginning with the distributions in 2005, if property that was exempt from  
19 the property tax under s. 70.112 (4) and that was used to generate power by a light,  
20 heat, or power company, except property under s. 66.0813, unless the production  
21 plant is owned or operated by a local governmental unit located outside of the  
22 municipality, or by an electric cooperative, or by a municipal electric company under  
23 s. 66.0825, is decommissioned, the county shall be paid, from the ~~public utility~~  
24 account, an amount calculated by subtracting an amount equal to the property taxes  
25 paid for that property during the current year to the county for its general operations

*shared  
revenue*

1 from the following percentages of the payment the county received under this section  
2 during the last year that the property was exempt from the property tax:

- 3 1. In the first year that the property is taxable, 100%.
- 4 2. In the 2nd year that the property is taxable, 80%.
- 5 3. In the 3rd year that the property is taxable, 60%.
- 6 4. In the 4th year that the property is taxable, 40%.
- 7 5. In the 5th year that the property is taxable, 20%.

*begin operation as a repowered production plant*

8 **SECTION 23.** 79.04 (6) of the statutes is created to read:

9 79.04 (6) (a) Annually, beginning in 2005, for production plants that begin  
 10 operation after December 31, 2003, or ~~undergo repowering~~ after December 31, 2003,  
 11 the department of administration, upon certification by the department of revenue,  
 12 shall distribute payments from the ~~public utility~~ *shared revenue* account, as determined under par.  
 13 (b), to each municipality and county in which a production plant is located, if the  
 14 production plant has a name-plate capacity of at least one megawatt and is used by  
 15 a light, heat, or power company assessed under s. 76.28 (2) or 76.29 (2), except  
 16 property described in s. 66.0813, unless the production plant is owned or operated  
 17 by a local governmental unit located outside of the municipality; by a qualified  
 18 wholesale electric company, as defined in s. 76.28 (1) (gm); by a wholesale merchant  
 19 plant, as defined in s. 196.491 (1) (w); by an electric cooperative assessed under ss.  
 20 76.07 and 76.48, respectively; or by a municipal electric company under s. 66.0825.

21 (b) Subject to pars. (c) and (d), each municipality entitled to a payment under  
 22 par. (a) and each county in which such a municipality is located shall receive a  
 23 payment equal to a portion of an amount that is equal to the number of megawatts  
 24 that represents the production plant's name-plate capacity, multiplied by \$2,000.

1 (c) 1. If the production plant is located in a city or village, the city or village  
2 receives a payment equal to two-thirds of the amount determined under par. (b) and  
3 the county in which the city or village is located receives a payment equal to  
4 one-third of the amount determined under par. (b). If the production plant is located  
5 in a town, the town receives a payment equal to one-third of the amount determined  
6 under par. (b), and the county in which the town is located receives a payment equal  
7 to two-thirds of the amount determined under par. (b). If a municipality is located  
8 in more than one county, the county in which the production plant is located shall  
9 receive the county portion of the payment.

10 2. For the purpose of determining the amount of the payment under par. (b),  
11 if a production plant is located in more than one municipality, <sup>D←</sup> ~~the name plate~~  
12 ~~capacity of the production plant is attributable to the municipality in which the~~  
13 ~~majority of the plant is physically located and~~ the payment amount under par. (b)  
14 shall be divided among the municipalities in which the plant is located based on the  
15 net book value of that portion of the plant located in each municipality as of  
16 December 31, 2004, or as of the date on which the plant is operational, whichever is  
17 later.

18 (d) The total amount distributable to a municipality under this subsection and  
19 sub. (1) in any fiscal year shall not exceed an amount equal to the municipality's  
20 population multiplied by \$300, and the total amount distributable to a county under  
21 this subsection and sub. (2) in any year shall not exceed an amount equal to the  
22 county's population multiplied by \$100.

23 **SECTION 24.** 79.04 (7) of the statutes is created to read:

24 79.04 (7) (a) Beginning with payments in 2005, if a production plant, as  
25 described in sub. (6) (a), other than a nuclear-powered production plant, is built on

1 the site of, or on a site adjacent to, an existing or decommissioned production plant;  
2 or is built on a site purchased by a public utility before January 1, 1980, that was  
3 identified in an advance plan as a proposed site for a production plant; or is built on,  
4 or on a site adjacent to, brownfields, as defined in s. 560.13 (1) (a), after December  
5 31, 2003, and has a name-plate capacity of at least one megawatt, each municipality  
6 and county in which such a production plant is located shall receive annually from  
7 the ~~public utility~~ <sup>shared revenue</sup> account a payment in an amount that is equal to the number of  
8 megawatts that represents the production plant's name-plate capacity, multiplied  
9 by \$600.

10 (b) Beginning with payments in 2005, if a production plant, as described in sub.  
11 (6) (a), that is a baseload electric generating facility, ~~as determined by the public~~  
12 ~~service commission~~, is built after December 31, 2003, and has a name-plate capacity  
13 of at least 50 megawatts, each municipality and county in which such a production  
14 plant is located shall receive annually from the ~~public utility~~ <sup>shared revenue</sup> account a payment in  
15 an amount that is equal to the number of megawatts that represents the production  
16 plant's name-plate capacity, multiplied by \$600.

17 (c) 1. Except as provided in subd. 2., beginning with payments in 2005, if a  
18 production plant, as described in sub. (6) (a), that derives energy from an alternative  
19 energy resource is built after December 31, 2003, and has a name-plate capacity of  
20 at least one megawatt, each municipality and county in which such a production  
21 plant is located shall receive annually from the ~~public utility~~ <sup>shared revenue</sup> account a payment in  
22 an amount that is equal to the number of megawatts that represents the production  
23 plant's name-plate capacity, multiplied by \$1,000.

24 2. If a production plant as described under subd. 1. fires an alternative energy  
25 resource together with a fuel other than an alternative energy resource, the number

1 of megawatts used to calculate the payment under subd. 1. is the number of  
 2 megawatts that represents the production plant's name-plate capacity multiplied by  
 3 a percentage that represents the energy content of the alternative energy resource  
 4 in the year <sup>prior to the year</sup> in which the payment is made as compared to the total energy content  
 5 of the alternative energy resource and the other fuel in the year <sup>prior to the year</sup> in which the payment  
 6 is made.

7 **SECTION 25.** 196.20 (7) of the statutes is created to read:

8 196.20 (7) (a) In this subsection, "mitigation payment" means, as approved by  
 9 the commission, an unrestricted or recurring monetary payment to a local unit of  
 10 government in which an electric generating facility is located to mitigate the impact  
 11 of the electric generating facility on the local unit of government. "Mitigation  
 12 payment" does not include payments made or in-kind contributions for restricted  
 13 purposes to directly address health or safety impacts of the electric generating  
 14 facility on the local unit of government.

15 (b) Except as provided in par. (c), an electric public utility may not recover in  
 16 rates any of the following:

- 17 1. The cost of mitigation payments paid by the utility.
- 18 2. The cost of mitigation payments paid by the owner or operator of an electric  
 19 generating facility that the owner or operator recovers from the utility by selling  
 20 electricity to the utility, by leasing the facility to the utility, or by any agreement  
 21 between the owner or operator of the electric generating facility and the public  
 22 utility.

23 (c) ~~Paragraph (b) does not apply to any public utility that has filed an~~  
 24 ~~application for a certificate under s. 196.491 (3) on or before June 1, 2003.~~

25 **SECTION 26. Initial applicability.**

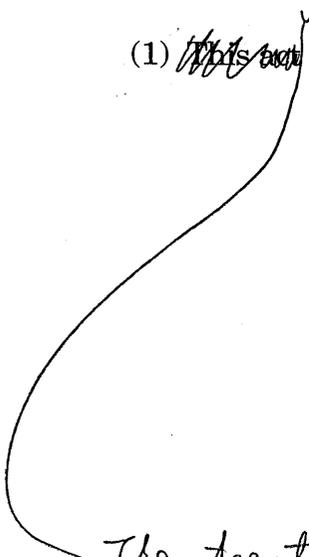
The commission shall only approve<sup>a</sup> mitigation payment agreement that is received  
 by the commission before June 1, 2003<sup>4</sup> and, if the commission finds the agreement  
 to be reasonable, shall not subsequently modify the agreement

1

(1) ~~This act~~ first applies to distributions made on the 4th Monday in July, 2005.

2

(END)



The treatment of sections 79.005 (1), (1b), (1c), (1f), (2m), (3), and (4) and 79.04 (1) (intro.), (a), (b) 2., and (c) 2., ~~and~~ (2) (a) and (am) 2., (3m), (4), (5), (6), and (7) of the statutes

INSERT 6-4



Section #. 79.04 (1) (c) 3. of the statutes is amended to read:

79.04 (1) (c) 3. If a production plant with a nominal rated capacity of 200 megawatts or more is decommissioned or becomes nonutility property, the \$75,000 minimum guaranteed payment under subd. 1. shall continue but diminish by \$7,500 annually, except that the minimum guaranteed payment under this subdivision shall cease in the year following the first year in which the property becomes taxable by the taxation district. In this subdivision, "nonutility property" has the meaning set forth in the uniform system of accounts established by the public service commission.

**History:** 1971 c. 125, 215; 1973 c. 90 ss. 387, 391g; 1973 c. 243 s. 82; 1975 c. 39, 224; 1977 c. 29, 418; 1979 c. 34; 1983 a. 27; 1985 a. 29, 39; 1987 a. 27; 1989 a. 31; 1993 a. 16, 307; 1995 a. 27; 1999 a. 150 s. 672; 2001 a. 16; 2001 a. 30 s. 108.

This subdivision does not apply after the distributions in 2004.

end of insert 6-4