

2011 DRAFTING REQUEST

Bill

Received: 11/29/2010

Wanted: As time permits

For: Michael Ellis (608) 266-0718

May Contact:

Subject: Public Util. - misc.

Received By: mkunkel

Companion to LRB:

By/Representing: Mike

Drafter: mkunkel

Addl. Drafters:

Extra Copies: TKK

Submit via email: YES

Requester's email: Sen.Ellis@legis.wisconsin.gov

Carbon copy (CC:) to:

Pre Topic:

No specific pre topic given

Topic:

Unbilled utility service

Instructions:

Revise s. 196.635 so that, if reason for underbilling is utility's fault (e.g. faulty meter), then utility may not collect any underbilling. (Current law allows utility to collect underbilling for previous 2 years.) See also 196.22 and 196.60 (discrim)?

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>
/?				_____			Local
/1	mkunkel 12/13/2010	jdye 12/14/2010	rschluet 12/15/2010	_____	lparisi 12/15/2010		Local
/2	mkunkel 01/20/2011	jdye 01/24/2011	phenry 01/24/2011	_____	mbarman 01/24/2011	ggodwin 03/25/2011	

FE Sent For:

*at intro
4/12/11*

<END>

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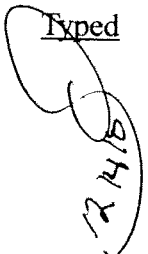
Topic:

Unbilled utility service

Instructions:

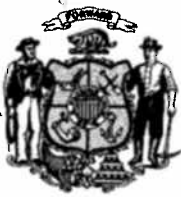
Revise s. 196.635 so that, if reason for underbilling is utility's fault (e.g. faulty meter), then utility may not collect any underbilling. (Current law allows utility to collect underbilling for previous 2 years.) See also 196.22 and 196.60 (discrim)?

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/?	mkunkel	1/12/14 jld		==			Local

FE Sent For:

<END>



State of Wisconsin
2011 - 2012 LEGISLATURE



LRB-0601/1

MDK: A:...

Q-note

Jld

*12
12-13*

2011 BILL

4

Gen

1

AN ACT ...; relating to: liability of public utility customers for utility service.

g two
Analysis by the Legislative Reference Bureau

Current law imposes a ~~2~~^{g two}-year deadline on public utility bills for service. Under the deadline, a public utility must bill a customer for service within ~~2~~^{g two} years of the service. In addition, a customer is not liable for unbilled service ~~2~~^{g two} years after the date of the service, unless one of the following exceptions applies: 1) the public utility made a reasonable effort to measure the service, but the customer did not allow the utility access necessary to measure service; 2) the customer obtained the service by fraud or deception; or 3) the customer obtained the service by negligent interference with equipment necessary to measure service and the interference causes service to go unmeasured. ✓

This bill repeals the ~~2~~^{e two}-year deadline and requires instead that each bill for service supplied by a public utility to a customer must identify the month or other period of service for which the utility is demanding payment. In addition, a customer is not liable for service supplied prior to the month or period identified in a public utility's bill, unless an exception under current law described above applies, or unless one of the following new exceptions applies: 1) the customer entered into an agreement with the utility for budgeting the customer's payment for the service; 2) the utility previously billed the customer for the service and the customer is delinquent in making payment for the service; or 3) the utility failed to accurately measure the service and the failure was caused, in whole or part, by an act or omission of the customer. ✓

BILL

For further information see the *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. 196.635 (intro.)^x of the statutes is repealed and recreated to read:

2 **196.635 Utility service bills.** (intro.)^x Each bill for service supplied by a public utility
3 to a customer shall identify the month or other period of service for which the utility
4 is demanding payment. A customer is not liable for service supplied prior to the
5 month or period so identified by the public utility unless any of the following[✓] applies:

6 SECTION 2. 196.635 (4)^x of the statutes is created to read:

7 196.635 (4) The customer entered into an agreement with the utility for
8 budgeting the customer's payment for the service.[✓]

9 SECTION 3. 196.635 (5)^x of the statutes is created to read:

10 196.635 (5) The utility previously billed the customer for the service and the
11 customer is delinquent in making payment for the service.[✓]

12 SECTION 4. 196.635 (6)^x of the statutes is created to read:

13 196.635 (6) The utility failed to accurately measure the service and the failure
14 was caused, in whole or part, by an act or omission of the customer.[✓]

15 SECTION 5. **Initial applicability.**

16 (1) This act first applies to service supplied on the effective date of this
17 subsection.[✓]

18 SECTION 6. **Effective date.**

19 (1) This act takes effect on the first day of the 4th[✓] month beginning after
20 publication.[✓]

21

(END)

d-note



DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-0601/1dn
MDK:.....

date

Jld

Sen. Ellis: ✓

This bill repeals the ^{e two} 2-year deadline applicable to utility bills under current law and instead prohibits a utility from collecting on bill that is not "timely," unless certain exceptions apply. The bill accomplishes this by requiring a utility to identify the month or other billing period for a bill, and prohibits a utility from collecting for a prior month or billing period, unless certain exceptions apply. ✓

As for the ^{e three} exceptions, I retained the ^{e three} 3 exceptions under current law and created the following ^{e three} 3 additional exceptions: 1) the customer entered into an agreement with the utility for budgeting the customer's payment for the service; ✓ 2) the utility previously billed the customer for the service and the customer is delinquent in making payment for the service; and 3) the utility failed to accurately measure the service and the failure was caused, in whole or part, by an act or omission of the customer. ✓ Note the the 3rd ^{e third} exception that I created is intended to address the concern you raised in requesting this bill.

Also note that I delayed the effective date of the bill by approximately ^{e three} 3 months to give utilities time to change their billing practices.

If you have any questions or want any changes to the bill, please let me know. ✓

Mark D. Kunkel
Senior Legislative Attorney
Phone: (608) 266-0131
E-mail: mark.kunkel@legis.wisconsin.gov

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

LRB-0601/1dn
MDK:jld:rs

December 15, 2010

Sen. Ellis:

This bill repeals the two-year deadline applicable to utility bills under current law and instead prohibits a utility from collecting on a bill that is not "timely," unless certain exceptions apply. The bill accomplishes this by requiring a utility to identify the month or other billing period for a bill, and prohibits a utility from collecting for a prior month or billing period, unless certain exceptions apply.

As for the exceptions, I retained the three exceptions under current law and created the following three additional exceptions: 1) the customer entered into an agreement with the utility for budgeting the customer's payment for the service; 2) the utility previously billed the customer for the service and the customer is delinquent in making payment for the service; and 3) the utility failed to accurately measure the service and the failure was caused, in whole or part, by an act or omission of the customer. Note the third exception that I created is intended to address the concern you raised in requesting this bill.

Also note that I delayed the effective date of the bill by approximately three months to give utilities time to change their billing practices.

If you have any questions or want any changes to the bill, please let me know.

Mark D. Kunkel
Senior Legislative Attorney
Phone: (608) 266-0131
E-mail: mark.kunkel@legis.wisconsin.gov

Kunkel, Mark

From: Lovell, David
Sent: Monday, January 03, 2011 2:49 PM
To: Boerger, Michael
Cc: Kunkel, Mark
Subject: RE: Follow up

Mike,

I think that the utility billing draft (LRB-0601/1) works, but probably could be done more simply. It may be an example where good drafting (i.e., comprehensively revising a statute rather than just adding a new clause) makes a relatively simple concept hard to explain. I have scratched my head trying to figure out what makes this confusing and concluded that it is the fact that the draft changes the focus from *unbilled* service to service *delivered prior to the most recent billing cycle*. As I said, while I think this works, I am not sure it is necessary.

As an alternative, consider:

- Retaining the current title of 196.635.
- Renumbering s. 196.635 to be 196.635 (1) and amending it to read "Except as provided in sub. (2), ...".
- Creating 196.635 (2) to read something like "No customer shall be liable for service for which the utility fails to bill the customer in a timely manner if the failure to bill the service in a timely manner resulted from the inaccurate measurement of service caused in whole or in part by an act or omission of the utility. In this subsection, utility service is billed in a timely manner if it is billed in the same billing cycle in which it is delivered."

I have not run this idea past Mark Kunkel yet. I am copying him on this message so that he can weigh in. I have used Mark's wording, to the extent it fits in this approach.

One thing to note about the wording is that, if the utility bears *any* responsibility for the inaccurate measurement of service -- e.g., if it is 99% the customer's fault and 1% the utility's fault -- the utility may not bill for the service. The utilities are likely to criticize the proposal on this basis. Note that uncollectible charges are treated as a cost of doing business and, as such, go into the utility's rate base. The result of this is that the utility's customers, collectively, bear the cost of uncollectible charges.

Another point to consider is that both the draft and my alternative apply a very strict concept of timeliness in billing. The utilities are likely to argue, also, that this is effectively a "zero-tolerance" approach to billing errors related to inaccurate measurement of service and gives them no opportunity at all to correct such errors.

Be sure that the Senator understands these points before he advances this proposal.

Let me know if you need further assistance on this topic.

Best regards --

David

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

From: Boerger, Michael
Sent: Wednesday, December 29, 2010 10:15 AM
To: Lovell, David
Subject: Follow up

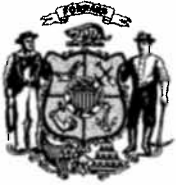
David,

To follow up on our telephone conversation on a couple of items we can discuss after the new year:

- I am sending a draft of a bill related to utility billing -- specifically, prohibiting back-billing for undercharges that were the fault of the utility. The draft is something of a head-scratcher for me and Mark Kunkel agrees it may not have been the best approach.
- I am wondering, based on a request from Sens. Cowles and Ellis, about the status of the wind-siting rules and what, if any, opportunities are available to legislators who may still have concerns about the rules. As we discussed, the rules may have gone forward last week, but I also remember seeing something in the statutes that says the legislature -- JCRAR -- can suspend a rule that has already been promulgated.

Thanks for your help.

Mike



State of Wisconsin
2011 - 2012 LEGISLATURE



LRB-0601/Re
MDK:jld:rs

2

2011 BILL

1-20 SOON

RM has been run

Gen Gen cut

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AN ACT to repeal and recreate 196.635 (intro.); and to create 196.635 (4), 196.635 (5) and 196.635 (6) of the statutes; relating to: liability of public utility customers for utility service.

Current law also provides that

Analysis by the Legislative Reference Bureau

INSERT IA

Current law imposes a two-year deadline on public utility bills for service. Under the deadline, a public utility must bill a customer for service within two years of the service. In addition, a customer is not liable for unbilled service two years after the date of the service, unless one of the following exceptions applies: 1) the public utility made a reasonable effort to measure the service, but the customer did not allow the utility access necessary to measure service; 2) the customer obtained the service by fraud or deception, or 3) the customer obtained the service by negligent interference with equipment necessary to measure service and the interference causes service to go unmeasured.

This bill repeals the two-year deadline and requires instead that each bill for service supplied by a public utility to a customer must identify the month or other period of service for which the utility is demanding payment. In addition, a customer is not liable for service supplied prior to the month or period identified in a public utility's bill, unless an exception under current law described above applies, or unless one of the following new exceptions applies: 1) the customer entered into an agreement with the utility for budgeting the customer's payment for the service; 2) the utility previously billed the customer for the service and the customer is delinquent in making payment for the service; or 3) the utility failed to accurately

INSERT IB

BILL

~~measure the service and the failure was caused, in whole or part, by an act or omission of the customer.~~

For further information see the *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:

✓ INSERT 12-1

~~SECTION 1. 196.635 (intro.) of the statutes is repealed and recreated to read:~~

~~2 **196.635 Utility service bills.** (intro.) Each bill for service supplied by a public
3 utility to a customer shall identify the month or other period of service for which the
4 utility is demanding payment. A customer is not liable for service supplied prior to
5 the month or period so identified by the public utility unless any of the following
6 applies:~~

~~7 SECTION 2. 196.635 (4) of the statutes is created to read:~~

~~8 196.635 (4) The customer entered into an agreement with the utility for
9 budgeting the customer's payment for the service.~~

~~10 SECTION 3. 196.635 (5) of the statutes is created to read:~~

~~11 196.635 (5) The utility previously billed the customer for the service and the
12 customer is delinquent in making payment for the service.~~

~~13 SECTION 4. 196.635 (6) of the statutes is created to read:~~

~~14 196.635 (6) The utility failed to accurately measure the service and the failure
15 was caused, in whole or part, by an act or omission of the customer.~~

16 **SECTION 5. Initial applicability.**

17 (1) This act first applies to service ~~made~~ ^{delivered} on the effective date of this
18 subsection. ✓

19 **SECTION 6. Effective date.**

BILL

1 (1) This act takes effect on the first day of the 4th month beginning after
2 publication.

3

(END)

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INSERT 1A:

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certain specified exceptions apply. As a result, under current law, a customer is liable, without exception, for service billed within the 2-year deadline, but is liable for service billed after the 2-year deadline only if an exception applies.

two

*
*

INSERT 1B:

This bill creates an exception to customer liability for service billed within the 2-year deadline. Under the bill, a customer is not liable for service if a public utility fails to bill the customer in a timely manner and the failure resulted from the inaccurate measurement of service caused in whole or in part by the public utility's act or omission. The bill provides that service is considered billed in a timely manner if it is billed in the same billing cycle in which the service is delivered. The bill also prohibits the Public Service Commission from allowing a public utility to recover in rates any amounts that the bill prohibits the public utility from collecting from customers.

INSERT 2-1:

SECTION 1. 196.635 of the statutes is renumbered 196.635 (1m) and 196.635

(1m) (intro.), as renumbered, is amended to read:

196.635 (1m) All Except as provided in sub. (2m), all service supplied by a

public utility must be billed within 2 years of such service. No customer shall be

liable for unbilled service 2 years after the date of the service unless any of the

following ~~rules~~ applies:

History: 1977 c. 62; 1981 c. 179, 391; 1989 a. 40.

SECTION 2. 196.635 (2m) of the statutes is created to read:

196.635 (2m) (a) No customer shall be liable for service for which a public utility fails to bill the customer in a timely manner if the failure to bill the service in a timely manner resulted from the inaccurate measurement of service caused in whole or in part by an act or omission of the public utility. In this paragraph, service is considered billed in a timely manner if it is billed in the same billing cycle in which the service is delivered.



1 (b) The commission[✓] may not allow a public utility to recover in rates any
2 amounts that par. (a)[✓] prohibits the public utility from collecting from customers.

(end insert 2-1)

Parisi, Lori

From: Boerger, Michael
Sent: Friday, March 25, 2011 11:24 AM
To: LRB.Legal
Subject: Draft Review: LRB 11-0601/2 Topic: Unbilled utility service

Please Jacket LRB 11-0601/2 for the SENATE.