

State of Wisconsin
2011 - 2012 LEGISLATURE



LRB-1579/S
MDK:jld:rs

O - NOTE

4

Today

2011 BILL

PM has been

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AN ACT *to amend* 196.378 (1) (h) 1m. and 196.378 (2) (b) 1m.; and *to create* 196.378 (1) (dm), 196.378 (1) (m) and 196.378 (2) (b) 1o. of the statutes; **relating to:** eligibility of hydroelectric resources under the renewable portfolio standard.

Analysis by the Legislative Reference Bureau

Under current law, an electric utility or retail electric cooperative (electric provider) is subject to certain requirements for ensuring that, in a given year, a specified percentage of the electricity that the electric provider sells to retail customers or members is derived from renewable resources. These requirements are commonly collectively referred to as the renewable portfolio standard (RPS). "Renewable resource" is defined to include certain resources, including a resource deriving electricity from hydroelectric power that has a capacity of less than 60 megawatts. An electric provider may count toward compliance with the RPS electricity purchased by the electric provider that is generated from such a hydroelectric resource. Subject to certain requirements, an electric provider can also count electricity generated from such a hydroelectric resource that the electric provider owns or operates.

Effective December 31, 2015, this bill allows, under certain circumstances, an electric provider to count toward compliance with the RPS electricity derived by a hydroelectric facility with a capacity of 60 megawatts or more, which the bill defines as a "large hydroelectric facility." The bill allows an electric provider to count electricity derived from a large hydroelectric facility only if the facility was initially

BILL

placed in service on or after December 31, 2010. In addition, for a large hydroelectric facility located in Manitoba, Canada, the electricity may be counted toward compliance only if the Province of Manitoba informs the Public Service Commission in writing that final licenses which are in effect under Canadian law have replaced interim licenses for two specified hydroelectric projects located in the province. The bill does change the requirements under current law relating to electricity derived from a hydroelectric facility with a capacity of less than 60 megawatts, except that the bill defines such a facility as a “small hydroelectric facility.”

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

1 **SECTION 1.** 196.378 (1) (dm) of the statutes is created to read:

2 196.378 (1) (dm) “Large hydroelectric facility” means an electric generating
3 facility with a capacity of 60 megawatts or more that derives electricity from
4 hydroelectric power.

5 **SECTION 2.** 196.378 (1) (h) 1m. of the statutes is amended to read:

6 196.378 (1) (h) 1m. A resource ~~with a capacity of less than 60 megawatts~~ that
7 derives electricity from hydroelectric power.

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9 196.378 (1) (m) “Small hydroelectric facility” means an electric generating
10 facility with a capacity of less than 60 megawatts that derives electricity from
11 hydroelectric power.

12 **SECTION 4.** 196.378 (2) (b) 1m. of the statutes is amended to read:

13 196.378 (2) (b) 1m. The amount of electricity derived from small hydroelectric
14 ~~renewable resources~~ facilities that an electric provider may count toward satisfying
15 the requirements of par. (a) 2. shall be all electricity provided by ~~hydroelectric power~~
16 such facilities that the electric provider purchased in the reporting year plus all of
17 the following:

BILL

1 a. The average of the amounts of hydroelectric power generated by small
2 hydroelectric facilities owned or operated by the electric provider for 2001, 2002, and
3 2003, adjusted to reflect the permanent removal from service of any of those facilities
4 and adjusted to reflect any capacity increases from improvements made to those
5 facilities on or after January 1, 2004.

6 b. The amount of hydroelectric power generated in the reporting year by small
7 hydroelectric facilities owned or operated by the electric provider that are initially
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13 a. The facility was initially placed in service on or after December 31, 2010.

14 b. If the facility is located in Manitoba, Canada, the province of Manitoba has
15 informed the commission in writing that the interim licenses under which the Lake
16 Winnipeg Regulation Project and the Churchill River Diversion Project were
17 operating on the effective date of this subd. 1o. b. [LRB inserts date], have been
18 replaced by final licenses that are in effect under Canadian law.

19 **SECTION 6. Effective date.**

20 (1) This act takes effect on December 31, 2015.

21 (END)

D-note
↓

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

LRB-1579/4dn

MDK:ⁿ....

date

jld

Sen. Lasee: ✓

This version corrects a typo in the analysis. ✓

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-1579/4dn
MDK;jld:md

April 13, 2011

Sen. Lasee:

This version corrects a typo in the analysis.

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

Kunkel, Mark

From: Henkel, Matt
Sent: Thursday, April 14, 2011 3:37 PM
To: Kunkel, Mark
Cc: Kruse, Jon
Subject: RE: LRB 1579

Mark, I thought we were done but could you make one more change to the drafts LRB 1903/2 and LRB 1579/4?

The change needs to be made to the last part regarding the final licenses remaining in effect.

The draft ran the sentence together instead of making it clear that two separate actions must occur.

1. Commission informed that final license were obtained and...
2. the final licenses remain in effect

This should help ensure proper final licensing and that everything is done properly on the front end so as not to risk a court overturning the final licenses.

SECTION 5. 196.378 (2) (b) 1o. of the statutes is created to read:

196.378 (2) (b) 1o. An electric provider may count electricity derived from large hydroelectric facilities toward satisfying the requirements of par. (a) 2. only if all of the following are satisfied:

a. The facility was initially placed in service on or after December 31, 2010.

b. If the facility is located in Manitoba, Canada, the province of Manitoba has informed the commission in writing that the interim licenses under which the Lake Winnipeg Regulation Project and the Churchill River Diversion Project were operating on the effective date of this subd. 1o. b. [LRB inserts date], have been replaced by final licenses, and the final licenses are in effect under Canadian law.

Could you send both our offices updated drafts as soon as you can?

-Matt

Matt Henkel
Office of Representative John Klenke
Room 21-North, State Capitol
608-266-0485

From: Kunkel, Mark
Sent: Thursday, April 14, 2011 2:07 PM
To: Henkel, Matt
Subject: RE: LRB 1579

Yes, they are the same.

From: Henkel, Matt
Sent: Thursday, April 14, 2011 11:54 AM

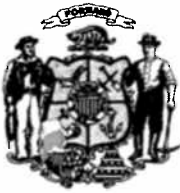
To: Kunkel, Mark
Subject: LRB 1579

Hi Mark, does the last draft you sent me - LRB 1903/2 reflect Senator Lasee's LRB 1579/4? I just want to make sure both drafts are the same.

Thanks,

-Matt

Matt Henkel
Office of Representative John Klenke
Room 21-North, State Capitol
608-266-0485



5

Robert
Allen run

Friday
4-15
NOON

2011 BILL

X

Regen

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 2 196.378 (1) (dm), 196.378 (1) (m) and 196.378 (2) (b) 1o. of the statutes; **relating**
 3 **to:** eligibility of hydroelectric resources under the renewable portfolio
 4 standard.

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Under current law, an electric utility or retail electric cooperative (electric provider) is subject to certain requirements for ensuring that, in a given year, a specified percentage of the electricity that the electric provider sells to retail customers or members is derived from renewable resources. These requirements are commonly collectively referred to as the renewable portfolio standard (RPS). "Renewable resource" is defined to include certain resources, including a resource deriving electricity from hydroelectric power that has a capacity of less than 60 megawatts. An electric provider may count toward compliance with the RPS electricity purchased by the electric provider that is generated from such a hydroelectric resource. Subject to certain requirements, an electric provider can also count electricity generated from such a hydroelectric resource that the electric provider owns or operates.

Effective December 31, 2015, this bill allows, under certain circumstances, an electric provider to count toward compliance with the RPS electricity derived by a hydroelectric facility with a capacity of 60 megawatts or more, which the bill defines as a "large hydroelectric facility." The bill allows an electric provider to count electricity derived from a large hydroelectric facility only if the facility was initially

BILL

*and only if those final licenses
remain in effect* ✓

placed in service on or after December 31, 2010. In addition, for a large hydroelectric facility located in Manitoba, Canada, the electricity may be counted toward compliance only if the Province of Manitoba informs the Public Service Commission in writing that final licenses ~~and are in effect under Canadian law~~ have replaced interim licenses for two specified hydroelectric projects located in the province. The bill does not change the requirements under current law relating to electricity derived from a hydroelectric facility with a capacity of less than 60 megawatts, except that the bill defines such a facility as a "small hydroelectric facility."

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

- 1 **SECTION 1.** 196.378 (1) (dm) of the statutes is created to read:
2 196.378 (1) (dm) "Large hydroelectric facility" means an electric generating
3 facility with a capacity of 60 megawatts or more that derives electricity from
4 hydroelectric power.
- 5 **SECTION 2.** 196.378 (1) (h) 1m. of the statutes is amended to read:
6 196.378 (1) (h) 1m. A resource with a capacity of less than 60 megawatts that
7 derives electricity from hydroelectric power.
- 8 **SECTION 3.** 196.378 (1) (m) of the statutes is created to read:
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17 the following:

BILL

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 3 2003, adjusted to reflect the permanent removal from service of any of those facilities
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10 ~~196.378 (2) (b) 1o. An electric provider may count electricity derived from large~~
 11 ~~hydroelectric facilities toward satisfying the requirements of par. (a) 2. only if all of~~
 12 ~~the following are satisfied:~~

13 ~~a. The facility was initially placed in service on or after December 31, 2010.~~

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 15 ~~informed the commission in writing that the interim licenses under which the Lake~~
 16 ~~Winnipeg Regulation Project and the Churchill River Diversion Project were~~
 17 ~~operating on the effective date of this subd. 1o. b. [LRB inserts date] have been~~
 18 ~~replaced by final licenses that are in effect under Canadian law.~~

19 **SECTION 6. Effective date.**

20 (1) This act takes effect on December 31, 2015.

21 (END)

INSEAT 3-9 ✓

Kunkel, Mark

From: Henkel, Matt
Sent: Friday, April 15, 2011 10:52 AM
To: Kunkel, Mark
Subject: RE: Hydr Cap Bill

Good catch. Yes add a "that" and say "and **THAT** the final licenses are in effect under Canadian law."

-Matt

Matt Henkel
Office of Representative John Klenke
Room 21-North, State Capitol
608-266-0485

From: Kunkel, Mark
Sent: Friday, April 15, 2011 10:31 AM
To: Henkel, Matt
Cc: Kruse, Jon
Subject: RE: Hydr Cap Bill

Do you want the notification from the province to say the following 2 things: 1) that interim license are replaced by final license and 2) that the final licenses are in effect? If so, I would revise your language to add a "that" and say "and **that** the final licenses are in effect under Canadian law."

-- Mark

From: Henkel, Matt
Sent: Friday, April 15, 2011 10:21 AM
To: Kunkel, Mark
Cc: Kruse, Jon
Subject: Hydr Cap Bill

Mark, could you make one more change?

SECTION 5. 196.378 (2) (b) 1o. of the statutes is created to read:
196.378 **(2)** (b) 1o. An electric provider may count electricity derived from large hydroelectric facilities toward satisfying the requirements of par. (a) 2. only if all of the following are satisfied:
a. The facility was initially placed in service on or after December 31, 2010.
b. If the facility is located in Manitoba, Canada, the province of Manitoba has informed the commission in writing that the interim licenses under which the Lake Winnipeg Regulation Project and the Churchill River Diversion Project were operating on the effective date of this subd. 1o. b. [LRB inserts date], have been replaced by final licenses, and the final licenses are in effect under Canadian law.

Thanks,

-Matt

Matt Henkel
Office of Representative John Klenke
Room 21-North, State Capitol
608-266-0485



State of Wisconsin
2011 - 2012 LEGISLATURE



LRB-1579/5
MDK:jld:ph

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2011 BILL

TODAY

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BILL

placed in service on or after December 31, 2010. In addition, for a large hydroelectric facility located in Manitoba, Canada, the electricity may be counted toward compliance only if the Province of Manitoba informs the Public Service Commission in writing that final licenses have replaced interim licenses for two specified hydroelectric projects located in the province and only those final licenses ~~are~~ in effect. The bill does not change the requirements under current law relating to electricity derived from a hydroelectric facility with a capacity of less than 60 megawatts except that the bill defines such a facility as a "small hydroelectric facility."

are

(1)

(3)

(2)

under Canadian law

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15 the requirements of par. (a) 2. shall be all electricity provided by hydroelectric power
16 such facilities that the electric provider purchased in the reporting year plus all of
17 the following:

BILL

1 a. The average of the amounts of hydroelectric power generated by small
2 hydroelectric facilities owned or operated by the electric provider for 2001, 2002, and
3 2003, adjusted to reflect the permanent removal from service of any of those facilities
4 and adjusted to reflect any capacity increases from improvements made to those
5 facilities on or after January 1, 2004.

6 b. The amount of hydroelectric power generated in the reporting year by small
7 hydroelectric facilities owned or operated by the electric provider that are initially
8 placed in service on or after January 1, 2004.

9 SECTION 5. 196.378 (2) (b) 1o. of the statutes is created to read:

10 196.378 (2) (b) 1o. An electric provider may count electricity derived from a
11 large hydroelectric facility toward satisfying the requirements of par. (a) 2. only if the
12 facility was initially placed in service on or after December 31, 2010, if the
13 facility is located in Manitoba, Canada, ~~all of the following are satisfied:~~

all of the following are satisfied:
a.
b.

14 ~~NO~~ The province of Manitoba has informed the commission in writing that the
15 interim licenses under which the Lake Winnipeg Regulation Project and the
16 Churchill River Diversion Project were operating on the effective date of this subd.

17 1o. ^b.... [LRB inserts date], have been replaced by final licenses under Canadian law
18 ~~and that these~~ final licenses ~~specified in subd. 1o. a. remain~~ in effect under Canadian
19 law. *are*

20 SECTION 6. Effective date.

21 (1) This act takes effect on December 31, 2015.

22 (END)

Godwin, Gigi

From: Kruse, Jon
Sent: Monday, April 18, 2011 1:58 PM
To: LRB.Legal
Subject: Draft Review: LRB 11-1579/6 Topic: Hydroelectric renewable resources

Please Jacket LRB 11-1579/6 for the SENATE.

Kunkel, Mark

From: Kruse, Jon
Sent: Monday, April 25, 2011 4:37 PM
To: Kunkel, Mark
Subject: LRB 1579/6 soon to be /7
Attachments: Manitoba Hydro Language April 2011.doc

Mark,
Can you please add the following language? See attached.

Thanks!

Jon Kruse
Chief of Staff
Office of Senator Frank Lasee

phone: 608-266-3512
jon.kruse@legis.wisconsin.gov

SECTION 5. 196.378 (2) (b) 1o. of the statutes is created to read:

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- a. The facility was initially placed in service on or after December 31, 2010.
- b. If the facility is located in Manitoba, Canada:
 1. The province of Manitoba has informed the commission in writing that the interim licenses under which the Lake Winnipeg Regulation Project and the Churchill River Diversion Project were operating on the effective date of this subd. 1o. b. ... [LRB inserts date], have been replaced by final licenses; and
 2. The final licenses are in effect under Canadian law.

Kunkel, Mark

From: Kunkel, Mark
Sent: Tuesday, April 26, 2011 9:38 AM
To: Kruse, Jon
Subject: RE: LRB 1579/6 soon to be /7

Jon,

I will draft your attached language as follows, which will accomplish the same thing. However, for technical drafting reasons, I can't use your exact structure, because we have limitations on the level of subdivisions that we can use.

196.378 (2) (b) 1o. An electric provider may count electricity derived from large hydroelectric facilities toward satisfying the requirements of par. (a) 2. only if the facility was initially placed in service on or after December 31, 2010 and, if the facility is located in Manitoba, Canada, all of the following are satisfied:

- a. The province of Manitoba has informed the commission in writing that the interim licenses under which the Lake Winnipeg Regulation Project and the Churchill River Diversion Project were operating on the effective date of this subd. 1o. a. ... [LRB inserts date], have been replaced by final licenses.
- b. The final licenses specified in subd. 1o. a. are in effect under Canadian law.

Note that as I read the above, the PSC will have to determine whether the final licenses are in effect under Canadian law. That's okay with you, right?

-- Mark

From: Kruse, Jon
Sent: Monday, April 25, 2011 4:37 PM
To: Kunkel, Mark
Subject: LRB 1579/6 soon to be /7

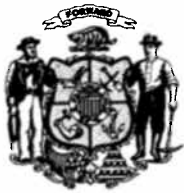
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Thanks!

Jon Kruse
Chief of Staff
Office of Senator Frank Lasee

phone: 608-266-3512
jon.kruse@legis.wisconsin.gov

4/26/2011



State of Wisconsin
2011 - 2012 LEGISLATURE



LRB-1579/6e 7
MDK:jld:md

due
Today

2011 BILL

RM has
been
sent

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Regen

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BILL

following are satisfied: 1) the ✓,

* placed in service on or after December 31, 2010. In addition, for a large hydroelectric facility located in Manitoba, Canada, the electricity may be counted toward compliance only if the Province of Manitoba informs the Public Service Commission in writing that ~~the~~ final licenses have replaced interim licenses for two specified hydroelectric projects located in the province; and 2) those final licenses are in effect under Canadian law. The bill does not change the requirements under current law relating to electricity derived from a hydroelectric facility with a capacity of less than 60 megawatts, except that the bill defines such a facility as a "small hydroelectric facility."

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BILL

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 15 ~~informed the commission in writing that the interim licenses under which the Lake~~
 16 ~~Winnipeg Regulation Project and the Churchill River Diversion Project were~~
 17 ~~operating on the effective date of this subd. 1o. b. [LRB inserts date], have been~~
 18 ~~replaced by final licenses under Canadian law and that those final licenses are in~~
 19 ~~effect under Canadian law.~~

SECTION 6. Effective date.

(1) This act takes effect on December 31, 2015.

(END)

22 *INSEAT 3-9* ✓

2011-2012 DRAFTING INSERT
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-1579/7ins
MDK:.....

1

INSERT 3-9:

2

196.378 (2) (b) 1o. ✓ An electric provider may count electricity derived from a

3

large hydroelectric facility ✓ toward satisfying the requirements of par. (a) 2. only if the

4

facility was initially placed in service on or after December 31, 2010 ✓ and, if the facility

5

is located in Manitoba, Canada ✓, all of the following are satisfied: ✓

6

a. The province of Manitoba ✓ has informed the ✓ commission in writing that the

7

interim licenses under which the Lake Winnipeg Regulation Project ✓ and the

8

Churchill River Diversion Project ✓ were operating on the effective date of this subd.

9

1o. a. ✓ [LRB inserts date], have been replaced by final licenses. ✓

10

b. The final licenses specified in subd. 1o. a. ✓ are in effect under Canadian law. ✓

(end ins 3-9)