



State of Wisconsin
2011 - 2012 LEGISLATURE



LRB-4009/en
SRM:med:...

2011 SENATE BILL 428

1 **AN ACT** *to renumber* 196.395 and 196.491 (3m) (e); *to renumber and amend*
2 15.79, 134.40 (title), 134.40 (1), 134.40 (2) and 196.81 (3); *to amend* 196.02 (7),
3 196.378 (1) (fm), 196.378 (3) (a) 1., 196.378 (3) (a) 1m., 196.378 (3) (a) 2., 196.395
4 (title), 196.40, 196.491 (3m) (a) (intro.), 196.491 (3m) (c) 3. (intro.), 196.50 (2)
5 (i), 196.52 (3) (b) 1., 196.795 (6m) (c), 227.48 (1) and 230.08 (2) (mL); *to repeal*
6 *and recreate* 196.491 (3m) (e) (title); and *to create* 15.79 (2), 196.378 (2) (bm),
7 196.395 (2), 196.49 (5g), 196.49 (5r), 196.491 (3m) (e) 2., 196.52 (3) (b) 1m.,
8 196.52 (3) (d), 196.81 (3) (b), 941.40 (2), 941.40 (3) and 941.40 (4) (b) of the
9 statutes; **relating to:** commissioners of the Public Service Commission;
10 notices, orders, and determinations of the commission; certificates of authority
11 issued by the commission; approval of contracts by the commission; electricity
12 sales from certain wholesale merchant plants; public utility removal of certain

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1 electric service lines; renewable resource credits; tampering or interfering with
2 utility equipment; granting rule-making authority; and providing penalties.

Analysis by the Legislative Reference Bureau

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

3 **SECTION 1.** 15.79 of the statutes is renumbered 15.79 (1) and amended to read:

4 15.79 (1) There is created a public service commission. No member of the
5 commission may have a financial interest in a railroad, water carrier, or public
6 utility. If any member voluntarily becomes so interested, the member's office shall
7 become vacant. If the member involuntarily becomes so interested, the member's
8 office shall become vacant unless the member divests himself or herself of the
9 interest within a reasonable time. ~~No commissioner may serve on or under any~~
10 ~~committee of a political party.~~ Each commissioner shall hold office until a successor
11 is appointed and qualified.

12 **SECTION 2.** 15.79 (2) of the statutes is created to read:

13 15.79 (2) A commissioner of the public service commission may not do any of
14 the following:

15 (a) Be a candidate for public office in any election.

16 (b) Directly or indirectly solicit or receive any contribution, as defined in s.
17 11.01 (6), for any political purpose, as defined in s. 11.01 (16), from any person within
18 or outside of the state.

19 (c) Act as an officer or manager for any candidate, political party, or committee
20 organized to promote the candidacy of any person for any public office.

21 (d) Serve on or under any committee of a political party.

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1 **SECTION 3.** 134.40 (title) of the statutes is renumbered 941.40 (title) and
2 amended to read:

3 **941.40 (title) Injury to wires by removal of building, etc.; tampering**
4 **with telecommunication or electric wires.**

5 **SECTION 4.** 134.40 (1) of the statutes is renumbered 941.40 (1) and amended
6 to read:

7 941.40 (1) Except as provided under sub. ~~(2)~~ (4), any person having the right
8 so to do who ~~shall willfully remove or change~~ intentionally removes or changes any
9 building or other structure or any timber, standing or fallen, to which any telegraph,
10 telecommunications, electric light, or electric power lines or wires are in any manner
11 attached, or ~~cause~~ causes the same to be done, ~~which shall destroy, disturb or injure~~
12 and consequently destroys, disturbs, or injures the wires, poles, or other property of
13 any telegraph, telecommunications, electric light, or electric power company,
14 including a cooperative association organized under ch. 185, transacting business in
15 this state, without first giving to such the company, at its office nearest to such the
16 place of injury, at least 24 hours' ~~previous~~ notice thereof, ~~shall be imprisoned not~~
17 ~~more than 30 days or fined not more than \$50.~~ And any person who shall unlawfully
18 ~~break down, interrupt or remove any telegraph, telecommunications, electric light~~
19 ~~or electric power line or wire or destroy, disturb, interfere with or injure the wires,~~
20 ~~poles or other property of any telegraph, telecommunications, electric light or electric~~
21 ~~power company in this state shall be imprisoned not more than 3 months or fined not~~
22 ~~more than \$100~~ is guilty of a Class B misdemeanor.

23 **SECTION 5.** 134.40 (2) of the statutes is renumbered 941.40 (4) (a) and amended
24 to read:

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1 941.40 (4) (a) ~~This section does~~ Subsections (1) and (2) do not apply to any
2 person who is lawfully using a land survey marker for land surveying purposes no
3 more than 30 inches below ground level.

4 **SECTION 6.** 196.02 (7) of the statutes is amended to read:

5 196.02 (7) COMMISSION INITIATIVE. In any matter within its jurisdiction,
6 including, but not limited to, chs. 197 and 201 and this chapter, the commission may
7 initiate, investigate, and order a hearing at its discretion upon such notice as it
8 deems proper. The commission may use personal delivery, mail, electronic mail, or
9 any other reasonable method to provide notice, including notice for a contested case
10 hearing, notwithstanding s. 227.44 (1).

11 **SECTION 7.** 196.378 (1) (fm) of the statutes is amended to read:

12 196.378 (1) (fm) “Renewable energy percentage” means, with respect to an
13 electric provider for a particular year, the percentage that results from dividing the
14 sum of the megawatt hours represented by the following by the total amount of
15 electricity that the electric provider sold to retail customers or members in that year:

16 1. The renewable resource credits created from the electric provider’s total
17 renewable energy in that year.

18 2. The Any renewable resource credits ~~created or purchased by the electric~~
19 ~~provider, if any,~~ in addition to the renewable resource credits specified in subd. 1. that
20 the electric provider elects to use in that year.

21 **SECTION 8.** 196.378 (2) (bm) of the statutes is created to read:

22 196.378 (2) (bm) Each electric provider shall annually retire renewable
23 resource credits sufficient to satisfy the electric provider’s renewable energy
24 percentage required under par. (a) 2.

25 **SECTION 9.** 196.378 (3) (a) 1. of the statutes is amended to read:

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1 196.378 (3) (a) 1. Each megawatt hour of an electric provider's total renewable
2 energy creates one renewable resource credit for the electric provider. Subject to
3 subd. 2., an electric provider that ~~provides total renewable energy to its retail electric~~
4 ~~customers or members in excess of the percentages specified in~~ exceeds its renewable
5 energy percentage required under sub. (2) (a) 2., or that satisfies the requirements
6 specified in rules promulgated under subd. 1m., may, in the applicable year, create
7 a bank any excess renewable resource credit and credits or any portion of any excess
8 renewable resource credit for use in a subsequent year or sell any excess renewable
9 resource credits or any portion of any excess renewable resource credit to any other
10 electric provider ~~the renewable resource credit or a portion of the renewable resource~~
11 ~~credit~~ at any negotiated price. An electric provider that creates or purchases a
12 renewable resource credit or portion may use the credit or portion, as provided under
13 par. (c), to establish compliance with sub. (2) (a) 2. The commission shall promulgate
14 rules that establish requirements for the creation and use of a renewable resource
15 credit created on or after January 1, 2004, including calculating the amount of a
16 renewable resource credit, and for the tracking of renewable resource credits by a
17 regional renewable resource credit tracking system. The rules shall specify the
18 manner for aggregating or allocating credits under this subdivision or sub. (2) (b) 4.
19 or 5.

20 **SECTION 10.** 196.378 (3) (a) 1m. of the statutes is amended to read:

21 196.378 (3) (a) 1m. The commission shall promulgate rules that allow an
22 electric provider or customer or member of an electric provider to create a renewable
23 resource credit based on use in a year by the electric provider, ~~or a customer, or~~
24 ~~member of the electric provider,~~ of solar energy, including solar water heating and
25 direct solar applications such as solar light pipe technology; wind energy;

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1 hydroelectric energy; geothermal energy; biomass; biogas; synthetic gas created by
2 the plasma gasification of waste; densified fuel pellets described in sub. (1) (h) 1. i.;
3 or fuel described in sub. (1) (h) 1. j.; but only if the use displaces the electric provider's,
4 customer's, or member's use of electricity that is derived from conventional
5 resources, and only if the displacement is verifiable and measurable, as determined
6 by the commission. The rules shall allow an electric provider, customer, or member
7 to create a renewable resource credit based on 100 percent of the amount of the
8 displacement. The rules may not allow an electric provider to create renewable
9 resource credits under this subdivision based on renewable energy upon which
10 renewable resource credits are created under subd. 1. The rules may also not allow
11 an electric provider to create renewable resource credits under this subdivision
12 based on hydroelectric energy that is not eligible for creating renewable resource
13 credits under subd. 1.

14 **SECTION 11.** 196.378 (3) (a) 2. of the statutes is amended to read:

15 196.378 **(3)** (a) 2. The commission shall promulgate rules for calculating the
16 amount of a renewable resource credit that is created bankable from a renewable
17 facility placed into service before January 1, 2004. The rules shall provide that the
18 amount of a bankable renewable resource credit created on or after January 1, 2004,
19 from such a renewable facility, except a renewable facility owned by a retail customer
20 of an electric provider, is limited to the incremental increase in output from the
21 renewable facility that is due to capacity improvements made on or after January 1,
22 2004.

23 **SECTION 12.** 196.395 (title) of the statutes is amended to read:

24 **196.395 (title) Test, conditional, emergency and supplemental orders;**
25 **waiver of conditions in orders order conditions.**

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1 **SECTION 13.** 196.395 of the statutes is renumbered 196.395 (1).

2 **SECTION 14.** 196.395 (2) of the statutes is created to read:

3 196.395 (2) As a condition of any order, the commission may not require a
4 public utility to lobby on a legislative issue or to take a specific position on a
5 legislative issue.

6 **SECTION 15.** 196.40 of the statutes is amended to read:

7 **196.40 Orders and determinations; time of taking effect.** Every order or
8 determination of the commission shall take effect ~~20 days~~ the day after the order or
9 determination has been filed and served by personal delivery ~~or, mail, electronic~~
10 mail, or any other method that the commission determines is likely to reach the
11 parties or their attorneys, to all parties to the proceeding in which the order or
12 determination was made or to their attorneys, unless the commission specifies a
13 different date upon which the order or determination shall be effective. After the
14 effective date every order or determination shall be on its face lawful and reasonable
15 unless a court determines otherwise under s. 227.57.

16 **SECTION 16.** 196.49 (5g) of the statutes is created to read:

17 196.49 (5g) (a) A public utility is exempt from the requirement to obtain a
18 certification or approval of the commission under this section before beginning a
19 proposed project if the estimated gross cost of the proposed project is not more than
20 one of the following cost thresholds:

21 1. For an electric public utility whose electric operating revenues in the prior
22 year were less than \$5,000,000, the cost threshold is \$250,000.

23 2. For an electric public utility whose electric operating revenues in the prior
24 year were \$5,000,000 or more and less than \$250,000,000, the cost threshold is 4
25 percent of those operating revenues.

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1 3. For an electric public utility whose electric operating revenues in the prior
2 year were \$250,000,000 or more, the cost threshold is \$10,000,000.

3 4. For a natural gas public utility, the cost threshold is \$2,500,000 or 4 percent
4 of the public utility's natural gas operating revenues in the prior year, whichever is
5 less.

6 5. For a water public utility or combined water and sewer public utility, the cost
7 threshold is \$250,000 or 25 percent of the utility's operating revenues in the prior
8 year, whichever is less.

9 (b) Beginning on May 1, 2014, and on May 1 of each successive even-numbered
10 year thereafter, the commission shall adjust the cost thresholds specified in par. (a)
11 to reflect changes to the cost of utility construction based on the applicable industry
12 cost index numbers published in the Handy-Whitman Index of Public Utility
13 Construction Costs, or an equivalent successor index, and publicize the adjusted cost
14 thresholds on the commission's Web site.

15 **SECTION 17.** 196.49 (5r) of the statutes is created to read:

16 196.49 (5r) (a) If a hearing is held on an application filed under sub. (1), (2),
17 (3), or (5), the commission shall take final action on the application within 180 days
18 after the commission issues a notice of hearing on the application. The chairperson
19 of the commission may extend the time period for an additional 180 days for good
20 cause. If the commission fails to take final action within the initial 180-day period,
21 or the extended 180-day time period, the commission is considered to have issued
22 a certificate of authority with respect to the application.

23 (b) If a hearing is not held on an application filed under sub. (1), (2), (3), or (5),
24 the commission shall take final action on the application within 90 days after the
25 commission issues a notice opening a docket on the application. The chairperson of

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1 the commission may extend the time period for an additional 90 days for good cause.
2 If the commission fails to take final action within the initial 90–day period, or the
3 extended 90–day time period, the commission is considered to have issued a
4 certificate of authority with respect to the application.

5 **SECTION 18.** 196.491 (3m) (a) (intro.) of the statutes is amended to read:

6 196.491 **(3m)** (a) *Commission approval required.* (intro.) Except as provided
7 in par. (e) 1., an affiliated interest of a public utility may not own, control or operate
8 a wholesale merchant plant without the approval of the commission. The
9 commission shall grant its approval only if each of the following is satisfied:

10 **SECTION 19.** 196.491 (3m) (c) 3. (intro.) of the statutes is amended to read:

11 196.491 **(3m)** (c) 3. (intro.) ~~An~~ Except as provided in par. (e) 2., an affiliated
12 interest may not make any firm sale to a public utility with which the affiliated
13 interest is affiliated if the firm sale satisfies any of the following:

14 **SECTION 20.** 196.491 (3m) (e) (title) of the statutes is repealed and recreated
15 to read:

16 196.491 **(3m)** (e) (title) *Exemptions.*

17 **SECTION 21.** 196.491 (3m) (e) of the statutes is renumbered 196.491 (3m) (e) 1.

18 **SECTION 22.** 196.491 (3m) (e) 2. of the statutes is created to read:

19 196.491 **(3m)** (e) 2. Paragraph (c) 3. does not apply to a firm sale from a
20 wholesale merchant plant located in Adams or Juneau county to a public utility if the
21 wholesale merchant plant is owned by an affiliated interest of the public utility and
22 the public utility owned, operated, or controlled the affiliated interest before January
23 1, 2012.

24 **SECTION 23.** 196.50 (2) (i) of the statutes, as created by 2011 Wisconsin Act 22,
25 is amended to read:

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1 196.50 (2) (i) A telecommunications utility certified under this subsection is
2 exempt from ss. 196.02 (2) and (6), 196.05, 196.06, 196.07, 196.08, 196.09, 196.10,
3 196.12, 196.13, 196.16, 196.18, 196.19, 196.20, 196.21, 196.219 (3) (c), (e), (g), and (L),
4 (4d), (4m), and (5), 196.24, 196.395 (1), 196.49, 196.52, 196.58, 196.60, 196.64,
5 196.78, and 196.79 and, except with respect to wholesale telecommunications
6 service, is exempt from s. 196.219 (4).

7 **SECTION 24.** 196.52 (3) (b) 1. of the statutes, as affected by 2011 Wisconsin Act
8 22, is amended to read:

9 196.52 (3) (b) 1. The requirement for written approval under par. (a) shall not
10 apply to any contract or arrangement if the amount of consideration involved is not
11 in excess of \$25,000 the threshold amount under subd. 1m. or 5% of the equity of the
12 public utility, whichever is smaller. The requirement under par. (a) also does not
13 apply to contracts or arrangements with joint local water authorities under s.
14 66.0823. Regularly recurring payments under a general or continuing arrangement
15 which aggregate a greater annual amount may not be broken down into a series of
16 transactions to come within the exemption under this paragraph. Any transaction
17 exempted under this paragraph shall be valid or effective without commission
18 approval under this section.

19 **SECTION 25.** 196.52 (3) (b) 1m. of the statutes is created to read:

20 196.52 (3) (b) 1m. The threshold amount under subd. 1. is \$250,000, except that
21 in 2014 and biennially thereafter, the commission shall adjust such threshold
22 amount to reflect adjustments to the U.S. consumer price index for all urban
23 consumers, U.S. city average, as determined by the U.S. department of labor, and
24 disseminate the adjusted threshold on the commission's Web site.

25 **SECTION 26.** 196.52 (3) (d) of the statutes is created to read:

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1 196.52 (3) (d) 1. If a hearing is held on an application under this subsection,
2 the commission shall take final action on the application within 180 days after the
3 commission issues a notice of hearing on the application. The chairperson of the
4 commission may extend the time period for an additional 180 days for good cause.
5 If the commission fails to take final action within the initial 180–day period, or the
6 extended 180–day time period, the commission is considered to have approved the
7 application.

8 2. If a hearing is not held on an application under this subsection, the
9 commission shall take final action on the application within 90 days after the
10 commission issues a notice opening a docket on the application. If the commission
11 fails to take final action within the initial 90–day period, the commission is
12 considered to have approved the application.

13 **SECTION 27.** 196.795 (6m) (c) of the statutes is amended to read:

14 196.795 (6m) (c) *Wholesale merchant plants.* The assets of a wholesale
15 merchant plant shall not be included in the sum of the assets of a public utility
16 affiliate under par. (b) 1. a., b. or c. and shall not be included in a nonutility affiliate’s
17 total assets under par. (b) 2. a. if the requirements specified in s. 196.491 (3m) (a) 1.
18 and 2. are satisfied or if the wholesale merchant plant qualifies for the exemption
19 under s. 196.491 (3m) (e) 1.

20 **SECTION 28.** 196.81 (3) of the statutes, as affected by 2011 Wisconsin Act 22,
21 is renumbered 196.81 (3) (intro.) and amended to read:

22 196.81 (3) (intro.) This section does not apply to ~~a~~ any of the following:

23 (a) A service discontinuance by a public utility that is a telecommunications
24 provider.

25 **SECTION 29.** 196.81 (3) (b) of the statutes is created to read:

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1 196.81 (3) (b) A public utility's removal, at the request of a customer, of the
2 customer's electric service drop or electric or steam service lateral, including any
3 primary voltage or steam line that is used exclusively to serve the customer
4 requesting the removal.

5 **SECTION 30.** 227.48 (1) of the statutes is amended to read:

6 227.48 (1) ~~Every~~ Except as provided in s. 196.40, every decision when made,
7 signed and filed, shall be served forthwith by personal delivery or mailing of a copy
8 to each party to the proceedings or to the party's attorney of record.

9 **SECTION 31.** 230.08 (2) (mL) of the statutes is amended to read:

10 230.08 (2) (mL) One executive assistant of each commissioner of the public
11 service commission, created under s. 15.79 (1).

12 **SECTION 32.** 941.40 (2) of the statutes is created to read:

13 941.40 (2) Any person who intentionally breaks down, interrupts, or removes
14 any telegraph, telecommunications, electric light, or electric power line or wire
15 including grounds or who destroys, disturbs, interferes with, or injures the wires,
16 poles, or other property of any telegraph, telecommunications, electric light, or
17 electric power company, including a cooperative association organized under ch. 185,
18 is guilty of a Class B misdemeanor.

19 **SECTION 33.** 941.40 (3) of the statutes is created to read:

20 941.40 (3) Any person who, for any purpose, intentionally makes or causes to
21 be made a physical electrical connection with any wire, cable, conductor, ground,
22 equipment, facility, or other property of any telecommunications or electric power
23 company, including a cooperative association organized under ch. 185, is guilty of a
24 Class A misdemeanor.

25 **SECTION 34.** 941.40 (4) (b) of the statutes is created to read:

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1 941.40 (4) (b) Subsections (2) and (3) do not apply to a person who acts with the
2 permission of the telecommunications or electric power company, including a
3 cooperative association organized under ch. 185, that is affected or that owns the
4 wire, pole, cable, conductor, ground, equipment, facility, or other affected property
5 or with the permission of the person who owns the property on which the wire, pole,
6 cable, conductor, ground, equipment, facility, or other affected property is located.

7 **SECTION 35. Initial applicability.**

8 (1) COMMISSIONERS OF THE PUBLIC SERVICE COMMISSION. The treatment of section
9 15.79 (2) of the statutes first applies to an individual holding office as a commissioner
10 of the public service commission on the effective date of this subsection.

11 (2) UNLAWFUL TREATMENT OF EQUIPMENT. The treatment of sections 134.40 (title),
12 (1), and (2) and 941.40 (2), (3), and (4) (b) of the statutes first applies to acts that occur
13 on the effective date of this subsection.

14 (3) NOTICES. The treatment of section 196.02 (7) of the statutes first applies to
15 notices provided on the effective date of this subsection.

16 (4) PROHIBITION ON ORDERS. The treatment of section 196.395 (2) of the statutes
17 first applies to orders issued on the effective date of this subsection.

18 (5) ORDERS AND DETERMINATIONS. The treatment of sections 196.40 and 227.48
19 (1) of the statutes first applies to orders and determinations made on the effective
20 date of this subsection.

21 (6) CERTIFICATES AND APPROVALS.

22 (a) The treatment of section 196.49 (5r) of the statutes first applies to
23 applications filed with the public service commission under section 196.49 (1), (2),
24 (3), or (5) of the statutes on the effective date of this paragraph.

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1 (b) The treatment of section 196.49 (5g) of the statutes first applies to projects
2 proposed on the effective date of this paragraph.

3 (7) AFFILIATED INTEREST TRANSACTIONS. The treatment of section 196.52 (3) (b)
4 1. and 1m. and (d) of the statutes first applies to applications filed with the public
5 service commission under section 196.52 (3) of the statutes on the effective date of
6 this subsection.

7 (8) SERVICE LINE REMOVALS. The treatment of section 196.81 (3) (b) of the
8 statutes first applies to removals that occur on the effective date of this subsection.

9 (END)