

# State of Wisconsin



2011 Senate Bill 428

Date of enactment: **March 26, 2012**

Date of publication\*: **April 9, 2012**

## 2011 WISCONSIN ACT 155

AN ACT *to renumber* 196.395 and 196.491 (3m) (e); *to renumber and amend* 15.79, 134.40 (title), 134.40 (1), 134.40 (2) and 196.81 (3); *to amend* 196.02 (7), 196.378 (1) (fm), 196.378 (3) (a) 1., 196.378 (3) (a) 1m., 196.378 (3) (a) 2., 196.395 (title), 196.40, 196.491 (3m) (a) (intro.), 196.491 (3m) (c) 3. (intro.), 196.50 (2) (i), 196.52 (3) (b) 1., 196.795 (6m) (c), 227.48 (1) and 230.08 (2) (mL); *to repeal and recreate* 196.491 (3m) (e) (title); and *to create* 15.79 (2), 196.378 (2) (bm), 196.395 (2), 196.49 (5g), 196.49 (5r), 196.491 (3m) (e) 2., 196.52 (3) (b) 1m., 196.52 (3) (d), 196.81 (3) (b), 941.40 (2), 941.40 (3) and 941.40 (4) (b) of the statutes; **relating to:** commissioners of the Public Service Commission; notices, orders, and determinations of the commission; certificates of authority issued by the commission; approval of contracts by the commission; electricity sales from certain wholesale merchant plants; public utility removal of certain electric service lines; renewable resource credits; tampering or interfering with utility equipment; granting rule-making authority; and providing penalties.

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

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

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

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

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

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

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

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

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

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

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

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

941.40 (1) Except as provided under sub. ~~(2)~~ (4), any person having the right so to do who ~~shall willfully remove or change~~ intentionally removes or changes any building or other structure or any timber, standing or

\* Section 991.11, WISCONSIN STATUTES 2009-10: Effective date of acts. "Every act and every portion of an act enacted by the legislature over the governor's partial veto which does not expressly prescribe the time when it takes effect shall take effect on the day after its date of publication as designated" by the secretary of state [the date of publication may not be more than 10 working days after the date of enactment].

fallen, to which any telegraph, telecommunications, electric light, or electric power lines or wires are in any manner attached, or cause causes the same to be done, which shall destroy, disturb or injure and consequently destroys, disturbs, or injures the wires, poles, or other property of any telegraph, telecommunications, electric light, or electric power company, including a cooperative association organized under ch. 185, transacting business in this state, without first giving to such the company, at its office nearest to such the place of injury, at least 24 hours' previous notice thereof, shall be imprisoned not more than 30 days or fined not more than \$50. And any person who shall unlawfully break down, interrupt or remove any telegraph, telecommunications, electric light or electric power line or wire or destroy, disturb, interfere with or injure the wires, poles or other property of any telegraph, telecommunications, electric light or electric power company in this state shall be imprisoned not more than 3 months or fined not more than \$100 is guilty of a Class B misdemeanor.

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

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

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

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

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

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

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

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

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

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

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

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

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

196.378 (3) (a) 1m. The commission shall promulgate rules that allow an electric provider or customer or member of an electric provider to create a renewable resource credit based on use in a year by the electric provider, or a customer, or member of the electric provider, of solar energy, including solar water heating and direct solar applications such as solar light pipe technology; wind energy; hydroelectric energy; geothermal energy; biomass; biogas; synthetic gas created by the plasma gasification of waste; densified fuel pellets described in sub. (1) (h) 1. i.; or fuel described in sub. (1) (h) 1. j.; but only if the use displaces the electric provider's, customer's, or member's use of electricity that is derived from conventional resources, and only if the displacement is verifiable and measurable, as determined by the commission. The rules shall allow an electric provider, customer, or member to create a renewable resource credit based on 100 percent of the amount of the displacement. The rules may not allow an electric provider to create renewable resource credits under this subdivision based on renewable energy upon which renewable resource credits are created under subd. 1. The rules may also not allow an electric provider to create renewable resource credits under this subdivision based on hydroelectric energy that

is not eligible for creating renewable resource credits under subd. 1.

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

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

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

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

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

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

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

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

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

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

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

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

2. For an electric public utility whose electric operating revenues in the prior year were \$5,000,000 or more

and less than \$250,000,000, the cost threshold is 4 percent of those operating revenues.

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

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

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

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

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

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

(b) If a hearing is not held on an application filed under sub. (1), (2), (3), or (5), the commission shall take final action on the application within 90 days after the commission issues a notice opening a docket on the application. The chairperson of the commission may extend the time period for an additional 90 days for good cause. If the commission fails to take final action within the initial 90-day period, or the extended 90-day time period, the commission is considered to have issued a certificate of authority with respect to the application.

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

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

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

196.491 (3m) (c) 3. (intro.) ~~An~~ Except as provided in par. (e) 2., an affiliated interest may not make any firm

sale to a public utility with which the affiliated interest is affiliated if the firm sale satisfies any of the following:

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

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

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

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

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

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

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

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

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

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

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

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

196.52 (3) (d) 1. If a hearing is held on an application under this subsection, the commission shall take final

action on the application within 180 days after the commission issues a notice of hearing on the application. The chairperson of the commission may extend the time period for an additional 180 days for good cause. If the commission fails to take final action within the initial 180-day period, or the extended 180-day time period, the commission is considered to have approved the application.

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

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

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

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

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

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

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

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

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

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

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

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

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

941.40 (2) Any person who intentionally breaks down, interrupts, or removes any telegraph, telecommunications, electric light, or electric power line or wire

including grounds or who destroys, disturbs, interferes with, or injures the wires, poles, or other property of any telegraph, telecommunications, electric light, or electric power company, including a cooperative association organized under ch. 185, is guilty of a Class B misdemeanor.

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

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

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

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

**SECTION 35. Initial applicability.**

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

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

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

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

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

(6) CERTIFICATES AND APPROVALS.

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

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

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

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