

SENATE BILL 428 (LRB -4009)

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. (FE)

2012

- 02-06. S. Introduced by Senators **Zipperer, Holperin, Galloway, Hansen, King, Lasee, Olsen, Shilling and Taylor**; cosponsored by Representatives **Klenke, Zepnick, Ballweg, Bies, Brooks, Danou, Endsley, Hintz, Jacque, Kestell, Krug, T. Larson, Marklein, Molepske Jr, Mursau, Nerison, Nygren, A. Ott, J. Ott, Petersen, Petrowski, Petryk, Rivard, Staskunas, Tauchen, Tiffany and Weininger**.
- 02-06. S. Read first time and referred to committee on Judiciary, Utilities, Commerce, and Government Operations ..... 686
- 02-08. S. Public hearing held.
- 02-15. S. Senate amendment 1 offered by Senator Zipperer (**LRB a2316**) ..... 710
- 02-16. S. Fiscal estimate received.
- 02-16. S. Executive action taken.
- 02-17. S. Report adoption of Senate Amendment 1 recommended by committee on Judiciary, Utilities, Commerce, and Government Operations, Ayes 5, Noes 0 ..... 716
- 02-17. S. Report passage as amended recommended by committee on Judiciary, Utilities, Commerce, and Government Operations, Ayes 5, Noes 0 ..... 716
- 02-17. S. Available for scheduling.
- 02-20. S. Placed on calendar 2-21-2012 pursuant to Senate Rule 18(1) ..... 720
- 02-21. S. Read a second time ..... 3
- 02-21. S. **Senate amendment 1 adopted** ..... 3
- 02-21. S. Ordered to a third reading ..... 3
- 02-21. S. Rules suspended ..... 3
- 02-21. S. Read a third time and **passed** ..... 3
- 02-21. S. Ordered immediately messaged ..... 0
- 02-21. A. Received from Senate.
- 02-21. A. Read first time and referred to committee on Rules.
- 02-21. A. Rules suspended to withdraw from committee on Rules and take up.
- 02-21. A. Read a second time.
- 02-21. A. Ordered to a third reading.
- 02-21. A. Rules suspended.
- 02-21. A. Read a third time and **concurred in**.
- 02-21. A. Ordered immediately messaged.
- 02-22. S. Received from Assembly concurred in.

MB

**2011**  
**ENROLLED BILL**

11en S B-428

**ADOPTED DOCUMENTS:**

**Orig**     **Engr**         **SubAmdt**     

11-4009/1

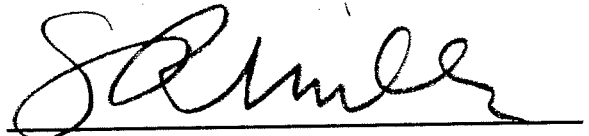
**Amendments to above (if none, write "NONE"):** SA1 — a2316/1

**Corrections - show date (if none, write "NONE"):** NONE ccc in MD enrolling 2/24/12

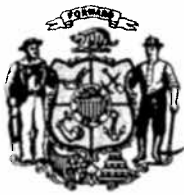
commissioners of the Public Service Commission; notices, orders, and determinations  
**Topic** of the commission; certificates of authority; approval of contracts; electricity sales;  
     renewable resource credits; tampering or interfering with utility equipment

2-23-2012

**Date**



**Enrolling Drafter**



State of Wisconsin  
2011-2012 LEGISLATURE

**CORRECTIONS IN:**

**2011 SENATE BILL 428**

Prepared by the Legislative Reference Bureau  
(February 24, 2012)

In enrolling, the following correction was made:

1. Page 7, line 1: delete "185," and substitute "185."

(END)



## 2011 SENATE BILL 428

February 6, 2012 – Introduced by Senators ZIPPERER, HOLPERIN, GALLOWAY, HANSEN, KING, LASEE, OLSEN, SHILLING and TAYLOR, cosponsored by Representatives KLENKE, ZEPNICK, BALLWEG, BIES, BROOKS, DANOU, ENDSLEY, HINTZ, JACQUE, KESTELL, KRUG, T. LARSON, MARKLEIN, MOLEPSKE JR, MURSAU, NERISON, NYGREN, A. OTT, J. OTT, PETERSEN, PETROWSKI, PETRYK, RIVARD, STASKUNAS, TAUCHEN, TIFFANY and WEININGER. Referred to Committee on Judiciary, Utilities, Commerce, and Government Operations.

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

**SENATE BILL 428**

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

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

***PSC notices, orders, and determinations.*** Under current law, the Public Service Commission (PSC) is allowed to initiate, investigate, and order a hearing at its discretion upon such notice as the PSC deems proper. This bill allows the PSC to provide the notice by personal delivery, mail, electronic mail, or any other reasonable method. The bill also allows the PSC to provide notice in such manner in contested cases, which are administrative proceedings involving parties whose interests are determined or adversely affected by the PSC. Current law generally requires notice for a contested case to be provided by mail.

Also under current law, unless the PSC specifies a different effective date, the PSC's orders and determinations take effect 20 days after the PSC files and serves an order or determination on the parties to the proceeding in which the PSC made the order or determination or on the parties' attorneys. This bill provides that an order or determination takes effect on the day after the order or determination is filed and served, unless the PSC specifies a different effective date. Current law also specifies that service must be done by personal delivery or mail. This bill allows service to be done by personal delivery, mail, electronic mail, or any other method that the PSC determines is likely to reach the parties or attorneys.

***Firm sales of electricity to affiliates.*** Current law generally prohibits an affiliated interest from making a firm sale of electricity of three years or more to a public utility with which the affiliated interest is affiliated. Under current law, an affiliated interest is considered to be affiliated with a public utility if the affiliated interest has specified ownership or control interests in common with the public utility. Current law defines "firm sale" as a sale in which electricity is intended to be available to a purchaser at all times during a specified period on an uninterruptible basis. This bill creates an exception to the prohibition for a firm sale from an affiliated interest's wholesale merchant plant located in Adams or Juneau county to an affiliated public utility, but only if the affiliated public utility owned, operated, or controlled the affiliated interest before January 1, 2012. Under current law, which the bill does not affect, a "wholesale merchant plant" is defined, in part, as an electric generating plant that does not provide retail electric service.

***Contracts or arrangements with affiliates.*** Current law generally requires the PSC to approve contracts or arrangements between public utilities and their affiliated interests. An exception to the requirement applies if the amount of consideration involved in the contract or arrangement does not exceed \$25,000 or 5 percent of the equity of the public utility, whichever is smaller. This bill revises the exception so that PSC approval is not required if the amount of consideration does not exceed \$250,000 or 5 percent of the equity, whichever is smaller. In addition, beginning in 2014 and biennially thereafter, the bill requires the PSC to adjust the \$250,000 amount based on inflation. Also, if PSC approval is required, the bill

**SENATE BILL 428**

requires the PSC to take final action on an application for approval within deadlines that depend on whether the PSC holds a hearing on the application. If no hearing is held, the PSC must take final action within 90 days after issuing a notice opening a docket on the application. If a hearing is held, the PSC must take final action within 180 days after issuing a notice of the hearing, except that, for good cause, the chairperson of the PSC may extend that deadline by an additional 180 days. If the PSC fails to take action within the foregoing deadlines, the bill provides that the PSC is considered to have approved the application.

***Certificates for certain projects.*** Current law generally requires a public utility to obtain a certificate from the PSC or apply with an applicable order or rule of the PSC before the public utility may engage in certain construction, installation, or improvement projects. This bill requires the PSC to take final action on an application for such a certificate or made pursuant to such an order or rule within deadlines that depend on whether the PSC holds a hearing on the application. If no hearing is held, the PSC must take final action within 90 days after issuing a notice opening a docket on the application, except that, for good cause, the chairperson of the PSC may extend the deadline by an additional 90 days. If a hearing is held, the PSC must take final action within 180 days after issuing a notice of the hearing, except that, for good cause, the chairperson of the PSC may extend the deadline by an additional 180 days. If the PSC fails to take action within the foregoing deadlines, the bill provides that the PSC is considered to have approved the application.

The bill also creates exemptions from the requirement for a public utility to obtain a certificate or approval prior to commencing certain proposed construction, installation, or improvement projects. The exemptions are based on the estimated gross cost of the project and the type of public utility that proposes the project. For a water public utility or combined water and sewer public utility, the exemption applies if the estimated cost does not exceed \$250,000 or 25 percent of the utility's operating revenues in the prior year, whichever is less. For a natural gas public utility, the exemption applies if the estimated cost does not exceed \$2,500,000 or 4 percent of the utility's natural gas operating revenues in the prior year, whichever is less. For an electric utility whose electric operating revenues in the prior year were less than \$5,000,000, the exemption applies if the estimated cost does not exceed \$250,000. 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 exemption applies if the estimated cost does not exceed 4 percent of those operating revenues. For an electric public utility whose electric operating revenues in the prior year were \$250,000,000 or more, the exemption applies if the cost estimate does not exceed \$10,000,000. Beginning on May 1, 2014, and on May 1 of each successive even-numbered year thereafter, the bill requires the PSC to adjust the foregoing dollar amounts based on changes in utility construction costs.

***Removal of certain electric and steam lines.*** Current law generally prohibits a public utility from abandoning or discontinuing any line or extension of service without the prior approval of the PSC. The prohibition does not apply to a public utility that provides telecommunications service. This bill creates another exception for a public utility's removal, at the request of a customer, of the customer's

**SENATE BILL 428**

electric service drop or electric or steam service lateral, including any primary voltage or steam line that is used exclusively to serve the customer.

**Renewable portfolio standards.** 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. The requirements are commonly referred to as renewable portfolio standards (RPSes), and current law refers to the foregoing percentage as an electric provider's "renewable energy percentage" (REP). Current law allows an electric provider to create a credit based on the amount of electricity derived from renewable resources that the electric provider provides to its customers or members in a year and that exceeds the RPS for that year. Current law refers to such a credit as a "renewable resource credit." Current law also allows the PSC to promulgate rules that allow an electric provider to create a renewable resource credit based on the use of specified types of energy applications by the provider or a customer or member of the provider. Current law allows an electric provider to include renewable resource credits in the electric provider's REP to help the provider comply with an RPS, or sell renewable resource credits to another electric provider for inclusion in the buyer's REP to help the buyer comply with an RPS.

This bill specifies that an electric provider creates one renewable resource credit for each megawatt hour of renewable energy the provider sells to customers or members in a year. If the amount of such credits exceeds that electric provider's REP for a year, the bill allows the electric provider to bank the credit or sell the credit to another electric provider. The bill also allows for the banking or sale of portions of credits. Although "banking" is not defined, the term is understood to refer to retaining a credit for future use. Also, for purposes of determining compliance with an RPS for a particular year, the bill allows an electric provider to use the renewable resource credits created from renewable energy that the provider sold to customers or members in that year. The bill also allows an electric provider to use other renewable resource credits. The bill requires an electric provider to annually retire renewable resource credits that are used to comply with an RPS. In addition, the bill requires the PSC to promulgate rules that allow a customer or member of an electric provider to create the renewable resource credit described above that is based on the use of specified energy applications.

**PSC commissioners.** Current law prohibits a commissioner of the PSC from serving on or under any committee of a political party. The bill further prohibits a commissioner from doing any of the following: 1) being a candidate for public office in any election; 2) directly or indirectly soliciting or receiving any contribution for any political purpose from any person within or outside of the state; or 3) acting as an officer or manager for any candidate, political party, or committee organized to promote the candidacy of any person for any public office.

**Tampering or interfering with utility equipment.** Under current law, a person who removes or changes a building or other structure to which a telegraph, telecommunications, electric light, or electric power line is attached in a way that destroys or disturbs the wire, pole, or other property of a telegraph,

**SENATE BILL 428**

telecommunications, or electric company without giving at least 24 hours' notice to the company generally may be imprisoned up to 30 days and fined up to \$50. A person who breaks down, interrupts, or moves any telegraph, telecommunications, electric light, or electric power line or wire, pole, or other property of a telegraph, telecommunications, or electric company generally may be imprisoned up to three months and fined up to \$100.

Under the bill, a person who commits any of those acts is guilty of a Class B misdemeanor, and may be imprisoned for up to 90 days, fined up to \$1,000, or both. Additionally, under the bill, a person who 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 company is guilty of a Class A misdemeanor, and may be imprisoned for up to nine months, fined up to \$10,000,000, or both.

The bill clarifies that a telegraph, telecommunications, or electric company may include a cooperative organized under the laws of this state and exempts from criminal liability a person who is acting with the permission of the telegraph, telecommunications, or electric company or cooperative or with the permission of the person who owns the land on which the affected property is located.

Because this bill creates a new crime or revises a penalty for an existing crime, the Joint Review Committee on Criminal Penalties may be requested to prepare a report concerning the proposed penalty and the costs or savings that are likely to result if the bill is enacted.

For further information see the *state* fiscal estimate, which will be printed as an appendix to this bill.

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

1           SECTION 1. 15.79 of the statutes is renumbered 15.79 (1) and amended to read:  
2           15.79 (1) There is created a public service commission. No member of the  
3           commission may have a financial interest in a railroad, water carrier, or public  
4           utility. If any member voluntarily becomes so interested, the member's office shall  
5           become vacant. If the member involuntarily becomes so interested, the member's  
6           office shall become vacant unless the member divests himself or herself of the  
7           interest within a reasonable time. ~~No commissioner may serve on or under any~~



## SENATE BILL 428

1 ~~committee of a political party.~~ Each commissioner shall hold office until a successor  
2 is appointed and qualified.

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

4 15.79 (2) A commissioner of the public service commission may not do any of  
5 the following:

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

7 (b) Directly or indirectly solicit or receive any contribution, as defined in s.  
8 11.01 (6), for any political purpose, as defined in s. 11.01 (16), whatever, from any  
9 person within or outside of the state.

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

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

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

15 **941.40 (title) Injury to wires by removal of building, etc.; tampering**  
16 **with telecommunication or electric wires.**

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

19 941.40 (1) Except as provided under sub. ~~(2)~~ (4), any person having the right  
20 so to do who ~~shall willfully remove or change~~ intentionally removes or changes any  
21 building or other structure or any timber, standing or fallen, to which any telegraph,  
22 telecommunications, electric light, or electric power lines or wires are in any manner  
23 attached, or ~~cause~~ causes the same to be done, ~~which shall destroy, disturb or injure~~  
24 and consequently destroys, disturbs, or injures the wires, poles, or other property of  
25 any telegraph, telecommunications, electric light, or electric power company,

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↓

1 including a cooperative association organized under ch. 185, transacting business in  
2 this state, without first giving to ~~such~~ the company, at its office nearest to ~~such~~ the  
3 place of injury, at least 24 hours' ~~previous~~ notice thereof, ~~shall be imprisoned not~~  
4 ~~more than 30 days or fined not more than \$50.~~ And any person who shall unlawfully  
5 ~~break down, interrupt or remove any telegraph, telecommunications, electric light~~  
6 ~~or electric power line or wire or destroy, disturb, interfere with or injure the wires,~~  
7 ~~poles or other property of any telegraph, telecommunications, electric light or electric~~  
8 ~~power company in this state shall be imprisoned not more than 3 months or fined not~~  
9 ~~more than \$100~~ is guilty of a Class B misdemeanor.

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

12 941.40 (4) (a) ~~This section does~~ Subsections (1) and (2) do not apply to any  
13 person who is lawfully using a land survey marker for land surveying purposes no  
14 more than 30 inches below ground level.

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

16 196.02 (7) COMMISSION INITIATIVE. In any matter within its jurisdiction,  
17 including, but not limited to, chs. 197 and 201 and this chapter, the commission may  
18 initiate, investigate, and order a hearing at its discretion upon such notice as it  
19 deems proper. The commission may use personal delivery, mail, electronic mail, or  
20 any other reasonable method to provide notice, including notice for a contested case  
21 hearing, notwithstanding s. 227.44 (1).

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

23 196.378 (1) (fm) "Renewable energy percentage" means, with respect to an  
24 electric provider for a particular year, the percentage that results from dividing the

## SENATE BILL 428

## SECTION 7

1 sum of the megawatt hours represented by the following by the total amount of  
2 electricity that the electric provider sold to retail customers or members in that year:

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

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

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

9 196.378 (2) (bm) Each electric provider shall annually retire renewable  
10 resource credits sufficient to satisfy the electric provider's renewable energy  
11 percentage required under par. (a) 2.

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

13 196.378 (3) (a) 1. Each megawatt hour of an electric provider's total renewable  
14 energy creates one renewable resource credit for the electric provider. Subject to  
15 subd. 2., an electric provider that ~~provides total renewable energy to its retail electric~~  
16 ~~customers or members in excess of the percentages specified in~~ exceeds its renewable  
17 energy percentage required under sub. (2) (a) 2., or that satisfies the requirements  
18 specified in rules promulgated under subd. 1m., may, in the applicable year, create  
19 a ~~bank any excess~~ renewable resource credit and credits or any portion of any excess  
20 renewable resource credit for use in a subsequent year or sell any excess renewable  
21 resource credits or any portion of any excess renewable resource credit to any other  
22 electric provider ~~the renewable resource credit or a portion of the renewable resource~~  
23 ~~credit~~ at any negotiated price. An electric provider that creates or purchases a  
24 renewable resource credit or portion may use the credit or portion, as provided under  
25 par. (c), to establish compliance with sub. (2) (a) 2. The commission shall promulgate

## SENATE BILL 428

1 rules that establish requirements for the creation and use of a renewable resource  
2 credit created on or after January 1, 2004, including calculating the amount of a  
3 renewable resource credit, and for the tracking of renewable resource credits by a  
4 regional renewable resource credit tracking system. The rules shall specify the  
5 manner for aggregating or allocating credits under this subdivision or sub. (2) (b) 4.  
6 or 5.

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

8 196.378 (3) (a) 1m. The commission shall promulgate rules that allow an  
9 electric provider or customer or member of an electric provider to create a renewable  
10 resource credit based on use in a year by the electric provider, ~~or a customer, or~~  
11 ~~member of the electric provider,~~ of solar energy, including solar water heating and  
12 direct solar applications such as solar light pipe technology; geothermal energy;  
13 biomass; biogas; synthetic gas created by the plasma gasification of waste; densified  
14 fuel pellets described in sub. (1) (h) 1. i.; or fuel described in sub. (1) (h) 1. j.; but only  
15 if the use displaces the electric provider's, customer's, or member's use of electricity  
16 that is derived from conventional resources, and only if the displacement is verifiable  
17 and measurable, as determined by the commission. The rules shall allow an electric  
18 provider, customer, or member to create a renewable resource credit based on 100  
19 percent of the amount of the displacement.

INS.  
SAI-2

INS. SAI-3

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

21 196.378 (3) (a) 2. The commission shall promulgate rules for calculating the  
22 amount of a renewable resource credit that is ~~created~~ bankable from a renewable  
23 facility placed into service before January 1, 2004. ~~The rules shall provide that the~~  
24 amount of a bankable renewable resource credit created on or after January 1, 2004,  
25 from such a renewable facility, except a renewable facility owned by a retail customer

**SENATE BILL 428****SECTION 11**

1 of an electric provider, is limited to the incremental increase in output from the  
2 renewable facility that is due to capacity improvements made on or after January 1,  
3 2004.

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

5 **196.395 (title) Test, conditional, emergency and supplemental orders;**  
6 **~~waiver of conditions in orders~~ order conditions.**

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

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

9 196.395 (2) As a condition of any order, the commission may not require a  
10 public utility to lobby on a legislative issue or to take a specific position on a  
11 legislative issue.

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

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

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

23 196.49 (5g) (a) A public utility is exempt from the requirement to obtain a  
24 certification or approval of the commission under this section before beginning a

**SENATE BILL 428**

1 proposed project if the estimated gross cost of the proposed project is not more than  
2 one of the following cost thresholds:

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

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

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

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

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

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

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

23 196.49 (5r) (a) If a hearing is held on an application filed under sub. (1), (2),  
24 (3), or (5), the commission shall take final action on the application within 180 days  
25 after the commission issues a notice of hearing on the application. The chairperson

**SENATE BILL 428****SECTION 17**

1 of the commission may extend the time period for an additional 180 days for good  
2 cause. If the commission fails to take final action within the initial 180-day period,  
3 or the extended 180-day time period, the commission is considered to have issued  
4 a certificate of authority with respect to the application.

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

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

13 196.491 (3m) (a) *Commission approval required.* (intro.) Except as provided  
14 in par. (e) 1, an affiliated interest of a public utility may not own, control or operate  
15 a wholesale merchant plant without the approval of the commission. The  
16 commission shall grant its approval only if each of the following is satisfied:

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

18 196.491 (3m) (c) 3. (intro.) An Except as provided in par. (e) 2., an affiliated  
19 interest may not make any firm sale to a public utility with which the affiliated  
20 interest is affiliated if the firm sale satisfies any of the following:

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

23 196.491 (3m) (e) (title) *Exemptions.*

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

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

**SENATE BILL 428**

1           196.491 **(3m)** (e) 2. Paragraph (c) 3. does not apply to a firm sale from a  
2           wholesale merchant plant located in Adams or Juneau county to a public utility if the  
3           wholesale merchant plant is owned by an affiliated interest of the public utility and  
4           the public utility owned, operated, or controlled the affiliated interest before January  
5           1, 2012.

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

8           196.50 **(2)** (i) A telecommunications utility certified under this subsection is  
9           exempt from ss. 196.02 (2) and (6), 196.05, 196.06, 196.07, 196.08, 196.09, 196.10,  
10          196.12, 196.13, 196.16, 196.18, 196.19, 196.20, 196.21, 196.219 (3) (c), (e), (g), and (L),  
11          (4d), (4m), and (5), 196.24, 196.395 (1), 196.49, 196.52, 196.58, 196.60, 196.64,  
12          196.78, and 196.79 and, except with respect to wholesale telecommunications  
13          service, is exempt from s. 196.219 (4).

14          **SECTION 24.** 196.52 (3) (b) 1. of the statutes, as affected by 2011 Wisconsin Act  
15          22, is amended to read:

16          196.52 **(3)** (b) 1. The requirement for written approval under par. (a) shall not  
17          apply to any contract or arrangement if the amount of consideration involved is not  
18          in excess of ~~\$25,000~~ the threshold amount under subd. 1m. or 5% of the equity of the  
19          public utility, whichever is smaller. The requirement under par. (a) also does not  
20          apply to contracts or arrangements with joint local water authorities under s.  
21          66.0823. Regularly recurring payments under a general or continuing arrangement  
22          which aggregate a greater annual amount may not be broken down into a series of  
23          transactions to come within the exemption under this paragraph. Any transaction  
24          exempted under this paragraph shall be valid or effective without commission  
25          approval under this section.



**SENATE BILL 428**

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

2           196.52 (3) (b) 1m. The threshold amount under subd. 1. is \$250,000, except that  
3 in 2014 and biennially thereafter, the commission shall adjust such threshold  
4 amount to reflect adjustments to the U.S. consumer price index for all urban  
5 consumers, U.S. city average, as determined by the U.S. department of labor, and  
6 disseminate the adjusted threshold on the commission's Web site.

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

8           196.52 (3) (d) 1. If a hearing is held on an application under this subsection,  
9 the commission shall take final action on the application within 180 days after the  
10 commission issues a notice of hearing on the application. The chairperson of the  
11 commission may extend the time period for an additional 180 days for good cause.  
12 If the commission fails to take final action within the initial 180-day period, or the  
13 extended 180-day time period, the commission is considered to have approved the  
14 application.

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

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

21           196.795 (6m) (c) *Wholesale merchant plants.* The assets of a wholesale  
22 merchant plant shall not be included in the sum of the assets of a public utility  
23 affiliate under par. (b) 1. a., b. or c. and shall not be included in a nonutility affiliate's  
24 total assets under par. (b) 2. a. if the requirements specified in s. 196.491 (3m) (a) 1.

**SENATE BILL 428**

1 and 2. are satisfied or if the wholesale merchant plant qualifies for the exemption  
2 under s. 196.491 (3m) (e) 1.

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

5 196.81 (3) (intro.) This section does not apply to ~~a~~ any of the following:

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

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

9 196.81 (3) (b) A public utility's removal, at the request of a customer, of the  
10 customer's electric service drop or electric or steam service lateral, including any  
11 primary voltage or steam line that is used exclusively to serve the customer  
12 requesting the removal.

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

14 227.48 (1) ~~Every~~ Except as provided in s. 196.40, every decision when made,  
15 signed and filed, shall be served forthwith by personal delivery or mailing of a copy  
16 to each party to the proceedings or to the party's attorney of record.

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

18 230.08 (2) (mL) One executive assistant of each commissioner of the public  
19 service commission, created under s. 15.79 (1).

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

21 941.40 (2) Any person who intentionally breaks down, interrupts, or removes  
22 any telegraph, telecommunications, electric light, or electric power line or wire  
23 including grounds or who destroys, disturbs, interferes with, or injures the wires,  
24 poles, or other property of any telegraph, telecommunications, electric light, or

**SENATE BILL 428**

1 electric power company, including a cooperative association organized under ch. 185,  
2 is guilty of a Class B misdemeanor.

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

4 941.40 (3) Any person who, for any purpose, intentionally makes or causes to  
5 be made a physical electrical connection with any wire, cable, conductor, ground,  
6 equipment, facility, or other property of any telecommunications or electric power  
7 company, including a cooperative association organized under ch. 185, is guilty of a  
8 Class A misdemeanor.

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

10 941.40 (4) (b) Subsections (2) and (3) do not apply to a person who acts with the  
11 permission of the telecommunications or electric power company, including a  
12 cooperative association organized under ch. 185, that is affected or that owns the  
13 wire, pole, cable, conductor, ground, equipment, facility, or other affected property  
14 or with the permission of the person who owns the property on which the wire, pole,  
15 cable, conductor, ground, equipment, facility, or other affected property is located.

16 **SECTION 35. Initial applicability.**

17 (1) COMMISSIONERS OF THE PUBLIC SERVICE COMMISSION. The treatment of section  
18 15.79 (2) of the statutes first applies to an individual holding office as a commissioner  
19 of the public service commission on the effective date of this subsection.

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

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





State of Wisconsin  
2011 - 2012 LEGISLATURE



LRBa2316/1  
MDK:cjs&kjf:ph

SENATE AMENDMENT 1,  
TO 2011 SENATE BILL 428

February 15, 2012 - Offered by Senator ZIPPERER.

1 At the locations indicated, amend the bill as follows:

2 1. Page 6, line 8: delete "whatever,".

3 2. Page 9, line 12: after "technology;" insert "wind energy; hydroelectric  
4 energy,".

5 3. Page 9, line 19: after "displacement." insert "The rules may not allow an  
6 electric provider to create renewable resource credits under this subdivision based  
7 on renewable energy upon which renewable resource credits are created under subd.  
8 1. The rules may also not allow an electric provider to create renewable resource  
9 credits under this subdivision based on hydroelectric energy that is not eligible for  
10 creating renewable resource credits under subd. 1.".

11

(END)

SAI-2

SAI-3