



State of Wisconsin  
2001 - 2002 LEGISLATURE

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**SENATE SUBSTITUTE AMENDMENT 1,  
TO 2001 SENATE BILL 168**

June 15, 2001 - Offered by Senator COWLES.

1     **AN ACT** *to amend* 196.795 (5) (k) 1.; and *to create* 196.52 (9) and 196.795 (5) (k)  
2             3. of the statutes; **relating to:** leased generation contracts between public  
3             utilities and affiliated interests.

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

4             **SECTION 1.** 196.52 (9) of the statutes is created to read:

5             196.52 (9) (a) In this subsection, "leased generation contract" means a contract  
6             or arrangement under which an affiliated interest of a public utility agrees to  
7             construct or improve electric generating equipment and associated facilities and to  
8             lease to the public utility land and such equipment and facilities for operation by the  
9             public utility.

10            (b) The commission may approve a leased generation contract under sub. (3)  
11            only if all of the following apply:

1           1. The commission has not issued a certificate under s. 196.49 or a certificate  
2 of public convenience and necessity under s. 196.491 (3) before January 1, 2001, for  
3 any construction or improvement that is subject to the leased generation contract.

4           2. Construction or improvement of the electric generating equipment and  
5 associated facilities that is subject to the leased generation contract commences on  
6 or after January 1, 2001.

7           3. No electric generating equipment and associated facilities, or electric  
8 generating equipment, held or used by the public utility for the provision of electric  
9 service is transferred to the affiliated interest.

10          4. The estimated gross cost of the construction or improvement that is subject  
11 to the leased generation contract is at least \$10 million.

12          5. Any real property that the public utility transfers to the affiliated interest  
13 for the purpose of implementing the leased generation contract is transferred at book  
14 value which is determined on the basis of the regulated books of account at the time  
15 of the transfer.

16          6. If the public utility transfers real property to the affiliated interest for the  
17 purpose of implementing the leased generation contract, the leased generation  
18 contract provides for transferring the real property back to the public utility, on the  
19 same terms and conditions as the original transfer, if the commission determines  
20 that the construction or improvement that is subject to the leased generation  
21 contract has not been completed.

22          7. The leased generation contract provides that, upon termination of the  
23 contract, all of the following apply:

24           a. The public utility shall have the option, subject to commission approval, to  
25 extend the contract, or purchase the electric generating equipment and associated

1 facilities that are constructed or improved, at fair market value as determined by a  
2 valuation process that is conducted by an independent third party and that is  
3 specified in the contract.

4 b. If the public utility exercises the option specified in subd. 7. a., the affiliated  
5 interest may require the public utility to extend the contract, rather than purchase  
6 the equipment and facilities, if the affiliated interest demonstrates to the  
7 commission that the extension avoids material adverse tax consequences.

8 8. For any gas-fired electric generating equipment and associated facilities  
9 that are constructed under the leased generation contract, the term of the lease is  
10 20 years or more.

11 9. For any coal-fired electric generating equipment and associated facilities  
12 that are constructed under the leased generation contract, the term of the lease is  
13 25 years or more.

14 10. The leased generation contract does not take effect until the date on which  
15 the affiliated interest commences construction or improvement of the electric  
16 generating equipment and associated facilities, except that, if the leased generation  
17 contract relates to the construction or improvement of more than one electric  
18 generating facility, the leased generation contract does not take effect with respect  
19 to the construction or improvement of an individual electric generating facility until  
20 the date on which the affiliated interest commences construction or improvement on  
21 that electric generating facility.

22 (c) Except as provided in par. (d), the commission may not increase or decrease  
23 the retail revenue requirements of a public utility on the basis of any income,  
24 expense, gain, or loss that is received or incurred by an affiliated interest of the public

1 utility and that arises from the ownership of electric generating equipment and  
2 associated facilities by an affiliated interest under a leased generation contract.

3 (d) The commission shall allow a public utility that has entered into a leased  
4 generation contract that has been approved by the commission under sub. (3) to  
5 recover fully in its retail rates that portion of any payments under the leased  
6 generation contract that is allocated to the public utility's retail electric service, and  
7 that portion of all other costs that is prudently incurred in the public utility's  
8 operation and maintenance of the electric generating equipment and associated  
9 facilities constructed or improved under the leased generation contract and that is  
10 allocated to the public utility's retail electric service.

11 (e) Notwithstanding sub. (5) (a), the commission may not modify a leased  
12 generation contract approved under sub. (3) except as specified in the leased  
13 generation contract or the commission's order approving the leased generation  
14 contract.

15 (f) The commission shall maintain jurisdiction to ensure that the construction  
16 or improvement under a leased generation contract approved under sub. (3) is  
17 completed as provided in the leased generation contract.

18 (g) Nothing in this subsection prohibits a cooperative association organized  
19 under ch. 185, a municipal utility, as defined in s. 196.377 (2) (a) 3., or a municipal  
20 electric company, as defined in s. 66.0825 (3) (d), from acquiring an interest in electric  
21 generating equipment and associated facilities that are constructed pursuant to a  
22 leased generation contract or from acquiring an interest in land on which such  
23 electric generating equipment and associated facilities are located.

24 **SECTION 2.** 196.795 (5) (k) 1. of the statutes is amended to read:

