



State of Wisconsin
2017 - 2018 LEGISLATURE

LRBs0214/1
MDK&EHS:emw&ahe

**SENATE SUBSTITUTE AMENDMENT 1,
TO SENATE BILL 475**

January 4, 2018 - Offered by Senator LEMAHIEU.

1 **AN ACT to repeal** 196.025 (4), 196.025 (5), 196.192 (2) (am) and 201.10 (1); **to**
2 **renumber** 16.95 (12), 182.0175 (1) (bt) and 182.0175 (1) (bv); **to renumber**
3 **and amend** 16.955, 182.0175 (2) (am) 3., 182.0175 (3) (a) (title), 182.0175 (3)
4 (a), 182.0175 (3) (b) and 196.192 (2) (bm); **to amend** 26.03 (1v) (b), 101.80 (1g),
5 182.0175 (2) (am) (title), 182.0175 (2) (am) 7., 182.0175 (2) (bm) (title), 182.0175
6 (2m) (b) (intro.), 182.0175 (4), 182.0175 (5), 196.192 (2) (c), 196.192 (3m),
7 196.193 (3), 196.49 (5g) (ag), 196.49 (5g) (ar) 2m. b., 196.49 (5g) (ar) 2m. c.,
8 196.491 (4) (c) 1m. (intro.), 196.491 (4) (c) 1m. a., 196.491 (4) (c) 1m. b., 196.595
9 (1) (c), 201.10 (2), 348.17 (3) and 348.17 (4); **to repeal and recreate** 182.0175
10 (3) (title); and **to create** 59.693 (11), 182.0175 (1) (aa), 182.0175 (1) (ab),
11 182.0175 (1) (ac), 182.0175 (1) (ag), 182.0175 (1) (bq), 182.0175 (1) (br),
12 182.0175 (1) (bw), 182.0175 (1) (by), 182.0175 (1) (bz), 182.0175 (1m) (d) 8. to
13 12., 182.0175 (2) (as) (title), 182.0175 (3) (bc), (bg), (br) and (c), 182.0175 (3) (d)

1 2., 182.0175 (3) (e), 182.0175 (3) (f), 182.0175 (3) (g), 182.0175 (3g), 196.025 (7),
2 196.026 and 196.192 (2) (bm) 1. and 2. of the statutes; **relating to:** one-call
3 system enforcement and other requirements, Public Service Commission
4 authority regarding state energy policy, settlements between parties in Public
5 Service Commission dockets, various public utility regulatory requirements,
6 the regulation of utility facilities under a county construction site erosion
7 control and storm water management zoning ordinance, granting rule-making
8 authority, and providing a penalty.

Analysis by the Legislative Reference Bureau

This substitute amendment creates procedures for handling complaints about violations of requirements under current law regarding excavations, which are commonly referred to as “digger’s hotline” requirements. The substitute amendment also makes other changes to those requirements. In addition, the substitute amendment imposes duties on the Public Service Commission regarding state energy policy and makes various other changes to the PSC’s regulation of public utilities. Also, the substitute amendment creates settlement requirements in PSC dockets. Finally, the substitute amendment affects the treatment of certain utility facilities under county construction site erosion control and storm water management zoning ordinances.

DIGGER’S HOTLINE REQUIREMENTS

Current law generally requires owners of transmission facilities, which include pipes, pipelines, wires, cables, ducts, and associated facilities, to establish or designate a nonprofit organization to operate a statewide communication system for receiving excavation notices and transmitting information to transmission facility owners affected by the notices. Current law requires excavators to provide advance notice to the system and comply with other requirements. Transmission facility owners must take certain actions in response to the notices, including marking their facilities. The statewide communication system is called the “one-call system,” and current law generally requires transmission facility owners to be members of the system and pay membership fees. Current law exempts from the requirements transmission facilities on private property that do not cross public rights-of-way. Current law allows a court to require a person who willfully and knowingly violates the digger’s hotline requirements to pay a forfeiture of \$2,000 for each violation.

Natural gas and other hazardous materials. The substitute amendment creates procedures for handling complaints regarding violations of digger’s hotline requirements involving transmission facilities that transport natural gas or other hazardous materials. The complaint procedure does not apply to violations resulting

from excavations on residential property by owners or lessees or excavations performed while engaged in an agricultural activity, unless the excavation is performed by or on behalf of a person engaged in the business of performing excavations for the public. The substitute amendment allows the one-call system to file a complaint, as well as a city, village, town, or county (political subdivision) or the Department of Transportation, but only if the political subdivision or DOT has property affected by an alleged violation. In addition, a transmission facility owner, excavator, or underground line locator may file a complaint if its property or activities are affected by an alleged violation. If a complaint alleges that a person who is not a state agency is responsible for a violation, the complaint must be filed with a panel appointed by the one-call system. The panel has the following seven members: two transmission facility owners; two excavators; one employee of the one-call system's operational center; one member representing a political subdivision; and one person employed as an underground line locator. If the complaint alleges that a state agency is responsible for a violation, the complaint must be filed with the PSC.

A person who is allowed to file a complaint with the panel or the PSC must do so no later than 120 days after the person discovers an alleged violation. However, the substitute amendment allows the panel and the PSC for good cause to extend the filing deadline to no more than one year after the discovery. Neither the panel nor the PSC may dismiss a complaint solely due to absence of direct damage to the person filing the complaint, whom the substitute amendment refers to as the complainant.

For a complaint filed with the panel, the substitute amendment requires the panel to provide notice by certified mail to a person or a person's agent who is alleged to have violated digger's hotline requirements. The substitute amendment refers to that person or agent as the respondent. The substitute amendment also allows the panel to consolidate complaints. The substitute amendment requires the respondent to file a response to the complaint within 20 days after service of the notice, unless the panel extends the deadline upon request. In the response, the respondent must admit or deny the alleged violation or advise the panel that the complainant has agreed to dismiss the complaint based on the respondent's satisfaction of the complaint. Within a specified deadline, the panel must determine by majority vote whether there is probable cause that the respondent took an action that the respondent knew or should have known was in violation of digger's hotline requirements. If the respondent files a timely response, the panel must make that determination within 20 days after the response is filed. The substitute amendment specifies different deadlines if the respondent fails to file a timely response. The panel must dismiss a complaint for lack of probable cause or at the request of the complainant. If the panel determines that there is probable cause, the panel must either 1) refer the complaint to the PSC or 2) allow the respondent to attend an educational course administered by the one-call system.

If a person files a complaint with the PSC regarding a state agency, or the panel refers a complaint to the PSC, the substitute amendment allows the PSC, with or without notice, to investigate the complaint. If the PSC determines there is sufficient cause to warrant a hearing, the PSC must set the matter for public hearing upon ten

days' notice and treat the complaint as a contested case under the state's administrative procedure law. The PSC must also treat the complaint as a contested case if the PSC determines there is not sufficient cause to warrant a hearing, but the complainant or respondent contests that determination. If the PSC holds a hearing and determines that the respondent took an action that the respondent knew or should have known was in violation of digger's hotline requirements, the substitute amendment allows the PSC to issue an order that directly assesses a forfeiture against the respondent, requires the respondent to attend an educational course administered by the one-call system, or does both. The substitute amendment also allows the PSC to dismiss the complaint by executing a consent agreement with the respondent. Like an order, a consent agreement may directly assess a forfeiture, require educational course attendance, or do both.

Regarding forfeitures, the substitute amendment allows a PSC order or consent agreement to directly assess against the respondent a forfeiture of no more than \$25,000 for each violation, with each day of violation constituting a separate violation. In order for the PSC to assess a forfeiture against a person, the substitute amendment requires that the person must have known or should have known that the person's actions were violations. Also, for a single persisting violation, the maximum forfeiture is \$500,000. The foregoing replaces the \$2,000 forfeiture under current law for willful and knowing violations of digger's hotline requirements. The forfeitures must be deposited in the school fund. The substitute amendment provides that no other forfeiture may be imposed. If the PSC assesses a forfeiture in an order or consent agreement, the PSC must also require the respondent to pay a surcharge to the one-call system that is equal to 10 percent of the forfeiture. If the amount of a forfeiture is reduced on appeal, the surcharge must be proportionately reduced.

If the panel allows a respondent to attend the one-call system's educational course, or a PSC order or consent agreement requires attendance, the respondent must pay a fee for the course to the one-call system. The substitute amendment requires the one-call system to establish a damage prevention fund and deposit the fees in the fund. The one-call system must also deposit in the fund the surcharges described above. The substitute amendment requires the one-call system to use the fund to pay for the cost of producing and administering the educational course or for providing public outreach and underground utility damage prevention awareness programs.

Other forfeitures. For violations of digger's hotline requirements involving transmission facilities that do not transport natural gas or other hazardous materials, the substitute amendment retains the \$2,000 forfeiture under current law for willful and knowing violations, except that forfeitures do not apply to violations resulting from excavations on residential property by owners or lessees or excavations performed while engaged in an agricultural activity. However, that exception does not apply if the excavation is performed by or on behalf of a person engaged in the business of performing excavations for the public.

Other changes. The substitute amendment makes other changes, including the following:

1. Requires excavators to promptly make a report to the 911 emergency telephone number upon discovering that flammable, toxic, or corrosive gas or liquid that may endanger life, cause bodily harm, or result in damage to property has escaped from damaged transmission facilities.

2. Specifies that an owner has marked its transmission facilities in a reasonable manner as required under current law if the owner has located and marked the facilities to a level of accuracy and precision consistent with national standards.

3. Allows the one-call system to establish policies, procedures, and forms for complaints made to the panel and allows the PSC to promulgate rules regarding its duties under the substitute amendment.

STATE ENERGY POLICY AND OTHER PSC CHANGES

The substitute amendment transfers from the Department of Administration to the PSC powers regarding energy alert orders that are issued by the governor. Current law allows the governor to issue such an order upon determining that a disruption of energy supplies poses a serious risk to economic well-being or public health or welfare. If the governor issues such an order, current law authorizes DOA to issue orders and promulgate rules requiring producers, importers, and sellers of coal and other specified fuels to disclose information pertaining to fuel supply and demand. The substitute amendment transfers that authority from DOA to the PSC.

The substitute amendment also allows the PSC to exercise the following powers and duties: 1) maintaining data for state agency energy planning; 2) administering federal energy grants when designated to do so by the governor; 3) preparing and maintaining contingency plans for critical energy shortages; 4) providing technical assistance to local governments regarding energy efficiency and renewable resources; and 5) requiring public utilities to provide energy billing and use data about public schools. The substitute amendment also requires the Department of Transportation to consult with the PSC, instead of DOA, when DOT waives motor vehicle weight limits during energy emergencies.

The substitute amendment eliminates two outdated PSC reporting requirements. First, current law required the PSC to study the establishment of an incentive program for developing small-scale electric generating facilities. Second, current law required the PSC to contract for a study on the impact of horizontal market power on creating a competitive retail electricity market. Current law required the PSC to submit reports to the legislature on those studies by January 1, 2001. The substitute amendment eliminates those requirements.

The substitute amendment also does the following:

1. Requires the PSC to approve market-based rates for investor-owned electric utilities if the rates satisfy specified criteria.

2. Repeals an outdated filing requirement for such utilities regarding such rates.

3. Requires the PSC to consider interest rates for state and local bonds when setting the overall rate of return for municipal water and sewer utilities. This requirement replaces a requirement under current law for the PSC to apply an interest rate formula based on a federal reserve board publication.

4. Allows the PSC to regulate advertising by water public utilities to the same extent that the PSC regulates advertising by other public utilities under current law.

5. Eliminates a requirement for an investor-owned public utility to pay a fee when applying to the PSC to issue securities.

6. Makes changes to the criteria that must be satisfied to qualify for exemptions from the PSC certifications required for constructing or rebuilding certain electric transmission lines.

SETTLEMENTS IN PSC DOCKETS

The substitute amendment creates requirements regarding settlements in PSC “dockets,” which the substitute amendment defines as investigations, proceedings, or other matters opened by a vote of the PSC, except for rule making. The substitute amendment allows parties to a docket to agree upon some or all of the facts, which must be evidenced by a written stipulation and filed with the PSC or entered upon the record. The substitute amendment also allows the parties to agree upon a resolution of some or all of the issues. If some of the parties propose a written settlement agreement, those parties must submit the agreement and relevant documents to the PSC and serve a copy of the agreement on all parties to the docket. If not all parties support the proposed settlement agreement, the settling parties must convene at least one conference for all parties to discuss the proposed settlement agreement, except that a nonsettling party may waive its right to the conference. Within 30 days of service of a proposed settlement agreement, each party must make a written response that consists of the party’s agreement, objection, or nonobjection to the settlement agreement. A party must serve its response on all parties. If a party objects to a settlement agreement, the party must state its objections with particularity and specify how the party would be adversely affected by the agreement. If a party fails to respond within the 30-day deadline, the failure is considered a nonobjection, unless the PSC for good cause sets a different time for response.

The substitute amendment allows the PSC to approve a settlement agreement if all of the following conditions are met. First, each party that responded with an objection or nonobjection to the agreement or that failed to respond must have been given a reasonable opportunity to present evidence and arguments in opposition to the settlement agreement. Second, the PSC must find that the public interest is adequately represented by the parties who entered into the agreement. Finally, the PSC must find that the settlement agreement represents a fair and reasonable resolution to the docket, is supported by substantial evidence on the record as a whole, and complies with applicable law, including that any rates resulting from the settlement agreement are just and reasonable. The substitute amendment also allows the PSC to approve a settlement agreement in whole or in part and with conditions deemed necessary by the PSC. If a settlement agreement does not resolve all of the issues in the docket, the substitute amendment requires the PSC to decide the remaining issues in accordance with applicable law and procedure.

CONSTRUCTION SITE EROSION CONTROL AND STORM WATER MANAGEMENT

The substitute amendment affects the treatment under a county construction site erosion control and storm water management zoning ordinance of the construction or maintenance of a facility, defined in the substitute amendment as property or equipment used for the transmission, delivery, or furnishing of natural gas, heat, light, or power and owned by a public utility or cooperative association organized for the purpose of producing or furnishing heat, light, or power to its members only. Under the substitute amendment, the construction and maintenance of a facility is considered to satisfy such a zoning ordinance if the Department of Natural Resources has issued all required navigable water, water and sewage, and pollution discharge permits or approvals authorizing the construction or maintenance or, if no such permits or approvals are required, if the construction and maintenance is conducted in a manner that employs best management practices to infiltrate or otherwise control storm water runoff from that infrastructure. Under current law, the construction and maintenance of a facility with these permits or approvals is considered to satisfy a county's shoreland zoning ordinance.

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

- 1 **SECTION 1.** 16.95 (12) of the statutes is renumbered 196.025 (7) (a) 3.
- 2 **SECTION 2.** 16.955 of the statutes is renumbered 196.029, and 196.029 (1), (3)
- 3 (a), (b) and (c) and (4) (a), (b) and (d), as renumbered, are amended to read:
- 4 **196.029 (1) INFORMATION.** If the governor determines that a disruption of
- 5 energy supplies poses a serious risk to the economic well-being, health or welfare of
- 6 the citizens of this state, the governor may issue an order declaring an energy alert.
- 7 Upon declaration of an energy alert by the governor, the ~~department~~ commission
- 8 may issue general or special orders, as defined in s. 101.01 (7), or promulgate
- 9 emergency rules under ch. 227 to compel disclosure of information required for
- 10 purposes of this section. Any person, or agent of the person, who produces, imports
- 11 or sells, coal or other forms of fuel, other than electricity, natural gas or wood, who
- 12 is subject to an emergency rule or general or special order of the ~~department~~
- 13 commission within reasonable time limits specified in the order shall file or furnish

1 such reports, information, data, copies of extracts of originals as the department
2 commission deems necessary relating to existing and future energy supplies,
3 including but not limited to record of sales in years for 1970 and thereafter, storage
4 capacity, supplies on hand and anticipated supplies, and anticipated demand. To the
5 extent that the reports and data requested by the department commission are
6 presently available from other state or federal agencies, the department commission
7 shall coordinate its data reporting requirements with the agencies to avoid
8 duplication of reporting.

9 (3) (a) Any person, or agent of a person, who produces, imports or sells, coal or
10 other forms of fuel, other than electricity, natural gas or wood, who fails to provide
11 information requested by the department commission at the time and in the manner
12 specified by the department commission shall forfeit an amount not to exceed \$1,000.
13 Each day the violation of this section continues from the day notice has been received
14 constitutes a separate offense.

15 (b) Upon request of the department commission, the attorney general or the
16 district attorney of the proper county may aid in any investigation, enforce any
17 request of the department commission for information under this section or seek
18 forfeitures for violations of this section.

19 (c) Upon request of the department commission, the attorney general or the
20 district attorney of the proper county may apply to any court of competent
21 jurisdiction for a temporary or permanent injunction restraining any person from
22 violating this section.

23 (4) (a) The department commission or any of its authorized agents may, in
24 relation to any matter arising under this section, conduct hearings, administer
25 oaths, issue subpoenas and take testimony.

1 (b) The witnesses subpoenaed by the ~~department~~ commission or its agent and
2 officers who serve subpoenas shall be entitled to the fees allowed in courts of record.
3 The fees shall be audited and paid by the state in the same manner as other expenses
4 of the ~~department~~ commission are audited and paid. No witness subpoenaed at the
5 instance of any party other than the ~~department~~ commission is entitled to payment
6 of fees by the state, unless the ~~department~~ commission certifies that the testimony
7 of the witness was material.

8 (d) A record of all hearings shall be kept by the ~~department~~ commission. All
9 hearings shall be public.

10 **SECTION 3.** 26.03 (1v) (b) of the statutes is amended to read:

11 26.03 (1v) (b) An electric cooperative, as defined in s. ~~196.025 (5) (ag)~~ 101.80
12 (1g).

13 **SECTION 4.** 59.693 (11) of the statutes is created to read:

14 59.693 (11) UTILITY FACILITIES. (a) In this subsection, “facility” means any
15 property or equipment of a public utility, as defined in s. 196.01 (5), or a cooperative
16 association organized under ch. 185 for the purpose of producing or furnishing heat,
17 light, or power to its members only, that is used for the transmission, delivery, or
18 furnishing of natural gas, heat, light, or power.

19 (b) The construction and maintenance of a facility is considered to satisfy the
20 requirements of this section and any county ordinance enacted under this section if
21 any of the following applies:

22 1. The department has issued all required permits or approvals authorizing the
23 construction or maintenance under ch. 30, 31, 281, or 283.

24 2. No department permit or approval under subd. 1. is required for the
25 construction or maintenance and the construction or maintenance is conducted in a

1 manner that employs best management practices to infiltrate or otherwise control
2 storm water runoff from the facility.

3 **SECTION 5.** 101.80 (1g) of the statutes is amended to read:

4 101.80 (1g) “Electric cooperative” ~~has the meaning given in s. 196.025 (5) (ag)~~
5 means a cooperative association organized under ch. 185 for the purpose of
6 generating, distributing, or furnishing electric energy at retail or wholesale to its
7 members only.

8 **SECTION 6.** 182.0175 (1) (aa) of the statutes is created to read:

9 182.0175 (1) (aa) “Agricultural activity” has the meaning given in s. 101.10 (1)
10 (a).

11 **SECTION 7.** 182.0175 (1) (ab) of the statutes is created to read:

12 182.0175 (1) (ab) “Commission” means the public service commission.

13 **SECTION 8.** 182.0175 (1) (ac) of the statutes is created to read:

14 182.0175 (1) (ac) “Complainant” means a person who files a complaint under
15 sub. (3) (bg) 1. or 2.

16 **SECTION 9.** 182.0175 (1) (ag) of the statutes is created to read:

17 182.0175 (1) (ag) “Damage prevention fund” means the fund established under
18 sub. (1m) (d) 11.

19 **SECTION 10.** 182.0175 (1) (bq) of the statutes is created to read:

20 182.0175 (1) (bq) “One-call system” means the system established under sub.
21 (1m) (a).

22 **SECTION 11.** 182.0175 (1) (br) of the statutes is created to read:

23 182.0175 (1) (br) “Panel” means the panel appointed under sub. (1m) (d) 8.

24 **SECTION 12.** 182.0175 (1) (bt) of the statutes is renumbered 182.0175 (1) (bo).

25 **SECTION 13.** 182.0175 (1) (bv) of the statutes is renumbered 182.0175 (1) (bx).

1 **SECTION 14.** 182.0175 (1) (bw) of the statutes is created to read:

2 182.0175 (1) (bw) “Political subdivision” means a city, village, town, or county.

3 **SECTION 15.** 182.0175 (1) (by) of the statutes is created to read:

4 182.0175 (1) (by) “Respondent” means a person or a person’s agent who is
5 alleged in a complaint filed under sub. (3) (bg) 1. or 2. to have taken an action that
6 the person or agent knew or should have known was in violation of this section.

7 **SECTION 16.** 182.0175 (1) (bz) of the statutes is created to read:

8 182.0175 (1) (bz) “State agency” has the meaning given in s. 16.004 (12) (a).

9 **SECTION 17.** 182.0175 (1m) (d) 8. to 12. of the statutes are created to read:

10 182.0175 (1m) (d) 8. Appoint a panel consisting of the following 7 members to
11 carry out the duties specified in sub. (3) (bg) and (br):

12 a. Two transmission facility owners.

13 b. Two excavators.

14 c. One employee of the operational center established under par. (a).

15 d. One member who represents the interests of a political subdivision.

16 e. One person employed as an underground line locator.

17 9. Establish policies, procedures, and forms as necessary to implement the
18 requirements under sub. (3) (bg) and (br).

19 10. Provide for the production and administration of the educational course
20 under sub. (3) (br) 4.

21 11. Establish and maintain a damage prevention fund consisting of fees under
22 sub. (3) (br) 4. and (c) 5. and surcharges under sub. (3) (d) 2.

23 12. Use the damage prevention fund at the one-call system’s discretion to pay
24 the cost of producing and administering the educational course under sub. (3) (br) 4.

1 or providing for public outreach and underground utility damage prevention
2 awareness programs.

3 **SECTION 18.** 182.0175 (2) (am) (title) of the statutes is amended to read:

4 182.0175 (2) (am) (title) *Excavation notice and other duties.*

5 **SECTION 19.** 182.0175 (2) (am) 3. of the statutes is renumbered 182.0175 (2) (as)
6 1. and amended to read:

7 182.0175 (2) (as) 1. ~~Maintain~~ An excavator shall maintain an estimated
8 minimum clearance of 18 inches between a marking for an unexposed underground
9 transmission facility that is marked under sub. (2m) and the cutting edge or point
10 of any power-operated excavating or ~~earth-moving~~ earthmoving equipment, except
11 as is necessary at the beginning of the excavation process to penetrate and remove
12 the surface layer of pavement.

13 2. When the an underground transmission facility becomes exposed or if the
14 a transmission facility is already exposed, the excavator may reduce the clearance
15 to 2 times the known limit of control of the cutting edge or point of the equipment or
16 12 inches, whichever is greater.

17 **SECTION 20.** 182.0175 (2) (am) 7. of the statutes is amended to read:

18 182.0175 (2) (am) 7. Immediately notify the owner of a transmission facility if
19 an inspection reveals that the transmission facility has been or may have been
20 struck, damaged, dislocated, or disrupted and, if flammable, toxic, or corrosive gas
21 or liquid has escaped that may endanger life, cause bodily harm, or result in damage
22 to property, promptly make a report to the 911 emergency telephone number.

23 **SECTION 21.** 182.0175 (2) (as) (title) of the statutes is created to read:

24 182.0175 (2) (as) (title) *Minimum clearance.*

25 **SECTION 22.** 182.0175 (2) (bm) (title) of the statutes is amended to read:

1 182.0175 **(2)** (bm) (title) *Notice contents*.

2 **SECTION 23.** 182.0175 (2m) (b) (intro.) of the statutes is amended to read:

3 182.0175 **(2m)** (b) *Facilities marking*. (intro.) A person owning transmission
4 facilities, upon receipt of an excavation notice, shall mark in a reasonable manner
5 the locations of transmission facilities at the area described in the notice to enable
6 the excavator to locate the transmission facilities without endangering the security
7 of the facilities or the public. For purposes of this paragraph, transmission facilities
8 are marked in a reasonable manner if the owner of the transmission facilities locates
9 and marks the transmission facilities to a level of accuracy and precision consistent
10 with national standards. Except as provided in par. (bm), if the person is a local
11 governmental unit and if the excavation notice relates to sewer or water facilities
12 owned by the local governmental unit, the local governmental unit shall also mark
13 the locations within the public right-of-way of all laterals connected to the sewer or
14 water facilities at the area described in the notice. The marking of facilities shall be
15 completed within 3 working days after receipt of the notice, or if notice is given more
16 than 10 days before excavation is scheduled to begin, marking shall be completed at
17 least 3 working days before excavation is scheduled to begin. If the approximate
18 location of a transmission facility is marked with paint, flags, stakes or other
19 physical means, the following color coding of lines, cables or conduits shall comply
20 with the uniform color code adopted by the American National Standards Institute:

21 **SECTION 24.** 182.0175 (3) (title) of the statutes is repealed and recreated to
22 read:

23 182.0175 **(3)** (title) **ENFORCEMENT FOR NATURAL GAS AND OTHER HAZARDOUS**
24 **MATERIALS.**

1 **SECTION 25.** 182.0175 (3) (a) (title) of the statutes is renumbered 182.0175 (3)
2 (d) (title) and amended to read:

3 182.0175 (3) (d) (title) *Forfeitures; surcharges.*

4 **SECTION 26.** 182.0175 (3) (a) of the statutes is renumbered 182.0175 (3) (d) 1.
5 and amended to read:

6 182.0175 (3) (d) 1. Any In a consent agreement under par. (c) 2. or order issued
7 under par. (c) 4., the commission may directly assess a forfeiture of no more than
8 \$25,000 for each violation of this section against a person who willfully and
9 knowingly violates knew or should have known that the person's action was in
10 violation of this section may be required to forfeit \$2,000 for each offense. Each day
11 of continued violation constitutes a separate offense violation. No person may be
12 required by the commission to forfeit an amount exceeding \$500,000 for a single
13 persisting violation. The commission shall remit the forfeitures to the secretary of
14 administration for deposit in the school fund. No other forfeiture may be imposed
15 for violating this section.

16 **SECTION 27.** 182.0175 (3) (b) of the statutes is renumbered 182.0175 (3r) and
17 amended to read:

18 182.0175 (3r) MISDEMEANOR. Whoever intentionally removes, moves, or
19 obliterates a transmission facilities marking placed by the transmission facilities
20 owner may be fined not more than \$500 or imprisoned for not more than 30 days or
21 both. This ~~paragraph~~ subsection does not apply to an excavator who removes or
22 obliterates markings during an excavation.

23 **SECTION 28.** 182.0175 (3) (bc), (bg), (br) and (c) of the statutes are created to
24 read:

1 182.0175 **(3)** (bc) *Applicability.* 1. This subsection applies to violations
2 involving transmission facilities that transport natural gas or other hazardous
3 materials.

4 2. Except as provided in subd. 3., this subsection does not apply to violations
5 by any of the following:

6 a. A residential property owner or tenant whose violation of this section results
7 from an excavation on property owned or leased by the residential property owner
8 or tenant.

9 b. A person whose violation of this section results from an excavation performed
10 while the person is engaged in an agricultural activity.

11 3. Subdivision 2. does not apply to an excavation performed by or on behalf of
12 a person engaged in the business of performing excavations for the public.

13 (bg) *Complaints.* 1. Except as provided in subd. 4., any of the following may
14 file a written complaint with the panel that a person other than a state agency has
15 taken an action that the person knew or should have known was in violation of this
16 section:

17 a. The one-call system.

18 b. The department of transportation or a political subdivision, if property under
19 the jurisdiction of the department or political subdivision is affected by an alleged
20 violation of this section.

21 c. A transmission facility owner, excavator, or underground line locator whose
22 property or activities are affected by an alleged violation of this section.

23 2. Except as provide in subd. 4., a person specified in subd. 1. a. to c. may file
24 a written complaint with the commission that a state agency has taken an action that
25 the state agency knew or should have known was in violation of this section. If the

1 complaint also involves a respondent that is not a state agency, the commission may
2 consider and determine the complaint against each respondent separately and at
3 such times as the commission prescribes.

4 3. A written complaint under subd. 1. or 2. shall include all of the following

5 a. A short plain statement of the complaint that identifies the transaction or
6 occurrence or series of transactions or occurrences for which the complaint arises and
7 that shows that the person or state agency has taken an action that the person or
8 state agency knew or should have known was in violation of this section.

9 b. A statement of the provisions of statutes, rules, or commission orders that
10 the person's or state agency's action allegedly violated.

11 c. Copies of all records and papers on which the complaint is founded.

12 4. No person may file a complaint under subd. 1. or 2. more than 120 days after
13 the person discovers an alleged violation of this section, except that the panel or
14 commission may for good cause shown allow filing no later than one year after the
15 discovery of the alleged violation.

16 5. No complaint filed under subd. 1. or 2. may be dismissed solely because of
17 the absence of direct damage to the complainant.

18 (br) *Panel duties.* 1. Upon receipt of a complaint filed under par. (bg) 1., the
19 panel shall provide the respondent, by certified mail, a statement of the complaint
20 and a notice requiring the respondent to file a response with the panel within 20 days
21 after the date of service of the notice. The notice shall also advise the respondent of
22 the amount of the fee required for completion of the educational course under subd.

23 4. Upon request of the respondent, the panel may extend the period for filing the
24 response. The panel may consolidate complaints where appropriate. In the
25 response, the respondent shall admit or deny the violation or aiding in a violation

1 that is alleged in the complaint or advise the panel that, based on the respondent's
2 satisfaction of the complaint, the complainant has agreed to dismiss the complaint.

3 2. Within the period specified in subd. 3., the panel shall determine by majority
4 vote whether there is probable cause to believe that the respondent has taken an
5 action that the respondent knew or should have known was in violation of this
6 section or whether to dismiss the complaint. The panel shall dismiss a complaint for
7 lack of probable cause or at the request of the complainant. Except as provided in
8 subd. 4., if the panel determines there is probable cause to believe that a respondent
9 has taken an action that the respondent knew or should have known was in violation
10 of this section, the panel shall refer the complaint to the commission and include the
11 complaint and the response of the respondent.

12 3. The panel shall make a determination regarding probable cause under subd.
13 2. within one of the following periods:

14 a. If a respondent files a response within the period specified or extended under
15 subd. 1., within 20 days after the respondent files the response.

16 b. If a respondent fails to file a response within the period specified in subd. 1.
17 and the panel has not extended the period under subd. 1., within 40 days after the
18 panel's service of the notice under subd. 1.

19 c. If the panel has extended the period under subd. 1. and the respondent fails
20 to file a response within the extended period, within 20 days after expiration of the
21 extended period.

22 4. If the panel determines there is probable cause to believe that a respondent
23 has taken an action that the respondent knew or should have known was in violation
24 of this section, the panel may allow the respondent to attend an educational course
25 in lieu of providing notice of probable violation to the commission under subd. 2. The

1 one-call system shall require a respondent who agrees to attend the educational
2 course to pay a fee before completion of the course for recovering a portion of the cost
3 of producing the educational course and the direct cost of administering the
4 educational course for the respondent. The one-call system shall deposit any fees
5 collected in the damage prevention fund.

6 (c) *Commission duties.* 1. Upon the filing of a complaint under par. (bg) 2. or
7 receipt of a referral under par. (br) 2., the commission may, with or without notice,
8 investigate the complaint as it considers necessary to determine if sufficient cause
9 exists to warrant a hearing on the complaint. If the commission determines that
10 sufficient cause exists to warrant a hearing on the complaint, the commission shall
11 set the matter for a public hearing upon 10 days' notice and treat the complaint as
12 a contested case. If the commission determines that sufficient cause does not exist
13 to warrant a hearing on the complaint, and within 30 days of that determination the
14 complainant or respondent disputes that determination, the commission shall treat
15 the complaint as a contested case.

16 2. At any time before the commission issues an order under subd. 4., the
17 commission and the respondent may agree to dismiss the complaint by joint
18 execution of a consent agreement. A consent agreement shall become effective when
19 the commission issues an order approving the consent agreement.

20 3. A consent agreement under subd. 2. may assess against the respondent a
21 forfeiture under par. (d) 1., require the respondent to attend the educational course
22 under par. (br) 4., or do both. Each consent agreement under subd. 2. shall include
23 all of the following:

24 a. An admission by the respondent of all jurisdictional facts.

1 b. An express waiver of any further procedural steps and of the right to seek
2 judicial review or otherwise challenge or contest the validity of the commission's
3 order approving the consent agreement.

4 c. A statement of the actions required of the respondent and the time by which
5 the actions shall be completed.

6 4. If a complaint is treated as a contested case under subd. 1. and not dismissed
7 under a consent agreement under subd. 2., the commission shall determine whether
8 probable cause exists to believe the respondent has taken an action that the
9 respondent knew or should have known was in violation of this section. If the
10 commission determines that the respondent has taken an action that the respondent
11 knew or should have known was in violation of this section, the commission may
12 issue an order that assesses a forfeiture under par. (d) 1., requires the respondent to
13 attend the educational course under par. (br) 4., or does both. The commission may
14 not issue an order under this subdivision without a hearing.

15 5. If a consent agreement under subd. 2. or order under subd. 4. requires a
16 respondent to attend the educational course under par. (br) 4., the consent
17 agreement or order shall also require the respondent to pay the one-call system a fee
18 determined by the one-call system for the educational course, which the one-call
19 system shall deposit in the damage prevention fund.

20 **SECTION 29.** 182.0175 (3) (d) 2. of the statutes is created to read:

21 182.0175 (3) (d) 2. For each forfeiture assessed under subd. 1., the commission
22 shall require the person assessed to pay a surcharge equal to 10 percent of the
23 amount of the forfeiture to the one-call system, which the one-call system shall
24 deposit in the damage prevention fund. If the amount of a forfeiture is reduced on
25 appeal, the amount of the surcharge shall be proportionately reduced.

1 **SECTION 30.** 182.0175 (3) (e) of the statutes is created to read:

2 182.0175 (3) (e) *Lawful and reasonable orders and determinations.* After the
3 effective date of any order or determination of the commission under this section, the
4 order or determination shall be on its face lawful and reasonable unless a court
5 determines otherwise under s. 227.57.

6 **SECTION 31.** 182.0175 (3) (f) of the statutes is created to read:

7 182.0175 (3) (f) *Judicial review.* Judicial review of an order of the commission
8 under par. (c) 4. may be had by any person aggrieved in the manner prescribed in ch.
9 227.

10 **SECTION 32.** 182.0175 (3) (g) of the statutes is created to read:

11 182.0175 (3) (g) *Rules.* The commission may promulgate rules implementing
12 the requirements under pars. (c) to (e).

13 **SECTION 33.** 182.0175 (3g) of the statutes is created to read:

14 182.0175 (3g) **OTHER FORFEITURES.** (a) 1. This subsection applies to violations
15 involving transmission facilities that do not transport natural gas or other
16 hazardous materials.

17 2. Except as provided in subd. 3., this subsection does not apply to violations
18 by any of the following:

19 a. A residential property owner or tenant whose violation of this section results
20 from an excavation on property owned or leased by the residential property owner
21 or tenant.

22 b. A person whose violation of this section results from an excavation performed
23 while the person is engaged in an agricultural activity.

24 3. Subdivision 2. does not apply to an excavation performed by or on behalf of
25 a person engaged in the business of performing excavations for the public.

1 (b) Any person who willfully and knowingly violates this section may be
2 required to forfeit \$2,000 for each offense. Each day of continued violation
3 constitutes a separate offense.

4 **SECTION 34.** 182.0175 (4) of the statutes is amended to read:

5 182.0175 (4) RIGHT OF ACTION. This Except as provided in sub. (3) (d) 1. and (e),
6 this section shall not affect any right of action or penalty which this state or any
7 person may have.

8 **SECTION 35.** 182.0175 (5) of the statutes is amended to read:

9 182.0175 (5) RIGHT TO INJUNCTION. If any person engages in or is likely to
10 engage in excavation inconsistent with this section and which results or is likely to
11 result in damage to transmission facilities, the person who owns or operates the
12 facilities may seek injunctive relief in the circuit court for the county in which the
13 transmission facilities are located. If the transmission facilities are owned or
14 operated by a public utility as defined in s. 196.01 (5), including a
15 telecommunications carrier, as defined in s. 196.01 (8m), and the public utility does
16 not seek injunctive relief, the attorney general, upon request of the public service
17 commission, shall seek injunctive relief in the circuit court for the county in which
18 the transmission facilities are located.

19 **SECTION 36.** 196.025 (4) of the statutes is repealed.

20 **SECTION 37.** 196.025 (5) of the statutes is repealed.

21 **SECTION 38.** 196.025 (7) of the statutes is created to read:

22 196.025 (7) STATE ENERGY OFFICE. (a) The commission shall do all of the
23 following:

1 1. In cooperation with the other state agencies, collect, analyze, interpret, and
2 maintain the comprehensive data needed for effective state agency energy planning
3 and effective review of those plans by the governor and the legislature.

4 2. Administer federal energy grants, when so designated by the governor
5 pursuant to s. 16.54.

6 (b) The commission may provide technical assistance to units of government
7 other than the state to assist in the planning and implementation of energy efficiency
8 and renewable resources and may charge for those services. The commission may
9 request technical and staff assistance from other state agencies in providing
10 technical assistance to those units of government.

11 (c) The commission may require a public utility to provide energy billing and
12 use data regarding public schools, if the commission determines that the data is
13 necessary to provide technical assistance in the planning and implementation of
14 energy efficiency and renewable resources in public schools, including those with the
15 highest energy costs.

16 **SECTION 39.** 196.026 of the statutes is created to read:

17 **196.026 Settlements.** (1) All parties to dockets before the commission are
18 encouraged to enter into settlements when possible.

19 (2) In this section, "docket" means an investigation, proceeding, or other matter
20 opened by a vote of the commission, except for rule making.

21 (3) Parties to a docket may agree upon some or all of the facts. The agreement
22 shall be evidenced by a written stipulation filed with the commission or entered upon
23 the record. The stipulation shall be regarded and used as evidence in the docket.

24 (4) Parties to a docket may agree upon a resolution of some or all of the issues.
25 When a written settlement agreement is proposed by some of the parties, those

1 parties shall submit to the commission the settlement agreement and any
2 documents, testimony, or exhibits, including record citations if there is a record, and
3 any other matters those parties consider relevant to the proposed settlement and
4 serve a copy of the settlement agreement upon all parties to the docket.

5 (5) If a proposed settlement agreement is not supported by all parties, the
6 settling parties shall convene at least one conference with notice and opportunity to
7 participate provided to all parties for the purpose of discussing the proposed
8 settlement agreement. A nonsettling party may waive its right to the conference
9 provided in this subsection.

10 (6) Within 30 days of service of a settlement agreement under sub. (4), each
11 party to the docket shall respond in writing by filing and serving on all parties the
12 party's agreement, objection, or nonobjection to the settlement agreement. Failure
13 to respond in writing within 30 days of service, unless a different time is set by the
14 commission for good cause, shall constitute nonobjection to the settlement
15 agreement. A party objecting to a settlement agreement shall state all objections
16 with particularity and shall specify how the party would be adversely affected by
17 each provision of the settlement agreement to which the party objects.

18 (7) The commission may approve a settlement agreement under sub. (4) if all
19 of following conditions are met:

20 (a) All of the following have been given a reasonable opportunity to present
21 evidence and arguments in opposition to the settlement agreement:

22 1. Each party that has filed an objection or nonobjection to the settlement
23 agreement under sub. (6).

24 2. Each party whose failure to respond in writing constitutes a nonobjection to
25 the settlement agreement under sub. (6).

1 (b) The commission finds that the public interest is adequately represented by
2 the parties who entered into the settlement agreement.

3 (c) The commission finds that the settlement agreement represents a fair and
4 reasonable resolution to the docket, is supported by substantial evidence on the
5 record as a whole, and complies with applicable law, including that any rates
6 resulting from the settlement agreement are just and reasonable.

7 (8) The commission may approve a settlement agreement under sub. (4) in
8 whole or in part and with conditions deemed necessary by the commission. If the
9 settlement agreement does not resolve all of the issues in the docket, the commission
10 shall decide the remaining issues in accordance with applicable law and procedure.

11 **SECTION 40.** 196.192 (2) (am) of the statutes, as affected by 2017 Wisconsin Act
12 58, is repealed.

13 **SECTION 41.** 196.192 (2) (bm) of the statutes, as affected by 2017 Wisconsin Act
14 58, is renumbered 196.192 (2) (bm) (intro.) and amended to read:

15 196.192 (2) (bm) (intro.) The Except as provided in par. (br), the commission
16 shall approve market-based rates that are consistent with the options specified in
17 par. (am), except that the for each investor-owned electric public utility that satisfy
18 all of the following:

19 (br) The commission may not approve a market-based rate under par. (bm)
20 unless the commission determines that the rate will not harm shareholders of the
21 investor-owned electric public utility or customers who are not subject to the rate.

22 **SECTION 42.** 196.192 (2) (bm) 1. and 2. of the statutes are created to read:

23 196.192 (2) (bm) 1. The rates result in customers receiving market-based
24 compensation for voluntary interruptions of firm load during peak periods of electric
25 use.

1 2. The rates include market-based pricing options and options for individual
2 contracts that allow a retail customer, through service from its existing public utility,
3 to receive market benefits and take market risks for the customer's purchases of
4 capacity or energy.

5 **SECTION 43.** 196.192 (2) (c) of the statutes, as affected by 2017 Wisconsin Act
6 58, is amended to read:

7 196.192 (2) (c) Subject to any approval of the commission that is necessary, an
8 electric public utility that is not an investor-owned electric public utility may
9 implement market-based rates approved under par. (bm) ~~or implement the options~~
10 ~~in filings under par. (am) that are approved by the commission.~~

11 **SECTION 44.** 196.192 (3m) of the statutes, as affected by 2017 Wisconsin Act 58,
12 is amended to read:

13 196.192 (3m) Nothing in s. 196.20, 196.22, 196.37, 196.60 or 196.604 prohibits
14 the commission from approving a filing under sub. (2) ~~(am) or~~ (2m) (a) or approving
15 market-based rates under sub. (2) (bm) or (2m) (b).

16 **SECTION 45.** 196.193 (3) of the statutes is amended to read:

17 196.193 (3) DETERMINATION OF AN OVERALL RATE OF RETURN. Not later than
18 March 1 annually, the commission shall set the overall rate of return to be applicable
19 to municipally owned water public utilities or municipally owned combined water
20 and sewer public utilities for rate increases under this section. ~~The overall rate of~~
21 ~~return shall be equal to the simple average, rounded to the nearest tenth of 1 percent,~~
22 ~~of commission shall consider the interest rates listed for state and local bonds in the~~
23 ~~Federal Reserve Statistical Release H.15 (519) published by the federal reserve~~
24 ~~board, for the last quarter of the prior year, plus 2 percent setting the overall rate of~~
25 ~~return.~~ The overall rate of return need not be defined by rule.

1 **SECTION 46.** 196.49 (5g) (ag) of the statutes is amended to read:

2 196.49 **(5g)** (ag) In this subsection, “rebuild” means the replacement of all or
3 part of an existing electric transmission line and associated facilities ~~to increase the~~
4 ~~line’s capacity to carry current at the same voltage~~, including conductors, insulators,
5 transformers, or structures, for operation at the same voltage.

6 **SECTION 47.** 196.49 (5g) (ar) 2m. b. of the statutes is amended to read:

7 196.49 **(5g)** (ar) 2m. b. The Not more than one-half mile of the centerline of the
8 rebuilt electric transmission line is located ~~within~~ more than 60 feet on either side
9 of the centerline of an existing electric transmission line operating at a nominal
10 voltage of 69 kilovolts or more. In this subd. 2m. b., “centerline” has the meaning
11 given in s. 196.491 (4) (c) 1e.

12 **SECTION 48.** 196.49 (5g) (ar) 2m. c. of the statutes is amended to read:

13 196.49 **(5g)** (ar) 2m. c. The project requires the acquisition in total of one-half
14 mile or less of rights-of-way from landowners from which rights-of-way ~~were~~ would
15 not be required to be acquired for the existing electric transmission line specified in
16 subd. 2m. b.

17 **SECTION 49.** 196.491 (4) (c) 1m. (intro.) of the statutes is amended to read:

18 196.491 **(4)** (c) 1m. (intro.) Except as provided in subd. 1s., a certificate under
19 sub. (3) is not required for a person to construct a high-voltage transmission line
20 designed for operation at a nominal voltage of less than 345 kilovolts if not more than
21 one-half mile of the centerline of the new high-voltage transmission line is located
22 ~~within~~ more than 60 feet on either side of the centerline of an existing electric
23 transmission line operating at a nominal voltage of 69 kilovolts or more and the
24 applicant demonstrates all of the following apply:

25 **SECTION 50.** 196.491 (4) (c) 1m. a. of the statutes is amended to read:

1 196.491 (4) (c) 1m. a. ~~That the~~ The project will not have undue adverse
2 environmental impacts.

3 **SECTION 51.** 196.491 (4) (c) 1m. b. of the statutes is amended to read:

4 196.491 (4) (c) 1m. b. ~~That the~~ The new high-voltage transmission line requires
5 the acquisition in total of one-half mile or less of rights-of-way from landowners
6 from which rights-of-way were would not be required to be acquired for the existing
7 electric transmission line.

8 **SECTION 52.** 196.595 (1) (c) of the statutes is amended to read:

9 196.595 (1) (c) “Public utility” in this section means any public utility, as
10 defined in s. 196.01, engaged in the transmission, delivery, or furnishing of natural
11 gas by means of pipes or mains, heat, light, water, or power. “Public utility” does not
12 include any cooperative association organized under ch. 185.

13 **SECTION 53.** 201.10 (1) of the statutes is repealed.

14 **SECTION 54.** 201.10 (2) of the statutes is amended to read:

15 201.10 (2) ~~The fee provisions of sub. (1) shall not apply, but the provisions of~~
16 ~~sub. (3) shall apply,~~ to the issuance, renewal or assumption by a public service
17 corporation which is a public utility as defined in the federal power act, of evidences
18 of indebtedness maturing not more than one year after the date of issue, renewal or
19 assumption thereof.

20 **SECTION 55.** 348.17 (3) of the statutes is amended to read:

21 348.17 (3) During an energy emergency, after consultation with the
22 ~~department of administration~~ public service commission, the department may waive
23 the divisible load limitation of s. 348.25 (4) and authorize for a period not to exceed
24 30 days the operation of overweight vehicles having a registered gross weight of
25 50,000 pounds or more and carrying energy resources or fuel or milk commodities

1 designated by the governor or a designee, regardless of the highways involved, to
2 conserve energy. Such authorization may only allow weights not more than 10
3 percent greater than the gross axle and axle combination weight limitations, and not
4 more than 15 percent greater than the gross vehicle weight limitations under ss.
5 348.15 and 348.16. Nothing in this subsection shall be construed to permit the
6 department to waive the requirements of ss. 348.05 to 348.07. This subsection does
7 not apply to vehicles on highways designated as parts of the national system of
8 interstate and defense highways, except for the I 39 corridor and the I 41 corridor.

9 **SECTION 56.** 348.17 (4) of the statutes is amended to read:

10 348.17 (4) During an energy emergency, after consultation with the
11 ~~department of administration~~ public service commission, the department may
12 authorize motor vehicles that have a gross weight of 26,000 pounds or less and that
13 are transporting propane or heating oil for delivery to residences, businesses, or
14 other end users to exceed any special weight limitation imposed under ss. 348.17 (1)
15 and 349.16 (1) (a) and (2) in connection with the thawing of frozen highways. Any
16 person operating a motor vehicle as authorized under this subsection shall, to the
17 extent practicable, deliver propane or heating oil at times of the day when the
18 highways used are the least vulnerable.

19 **SECTION 57. Initial applicability.**

20 (1) SETTLEMENTS. The treatment of section 196.026 of the statutes first applies
21 to dockets, as defined in section 196.026 (2) of the statutes, that are first opened on
22 the effective date of this subsection.

23 (END)