



WISCONSIN LEGISLATIVE COUNCIL AMENDMENT MEMO

2017 Assembly Bill 532

**Senate Amendments
1 and 2**

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2017 Assembly Bill 532 (the bill),¹ as passed by the Assembly, makes changes to current law regarding: (1) Digger’s Hotline requirements; (2) powers and duties of the Public Service Commission (PSC) regarding certain aspects of state energy policy; (3) exemptions from requirements to obtain certain certifications from the PSC for rebuilding electric transmission lines; (4) authority of the PSC with regard to advertising by water utilities; (5) authority of the PSC to accept settlement agreements; and (6) construction site erosion control and storm water management zoning ordinances.

THE BILL

Digger’s Hotline Requirements

Current law requires the owners of transmission facilities to establish a nonprofit organization to operate a “Digger’s Hotline” to which any person who engages in excavation must submit a notice of planned excavation. In response to notices, owners of transmission facilities must take certain actions, including marking the location of their transmission facilities. Current law authorizes a court to require a person who willfully and knowingly violates a requirement related to the Digger’s Hotline to pay a forfeiture of \$2,000 for each violation.

The **bill** requires excavators to call 911 upon discovering that flammable, toxic, or corrosive gas or liquid has escaped from damaged transmission facilities.

¹ “The bill” refers to 2017 Assembly Bill 532 as amended by Assembly Substitute Amendment 1.

The bill also creates a process for handling complaints regarding violations of Digger's Hotline requirements involving transmission facilities that transport natural gas or other hazardous materials. Among other provisions, the bill:

- Requires the nonprofit organization that operates the Digger's Hotline to appoint, for the purpose of receiving and reviewing complaints, a panel consisting of two transmission facility owners, two excavators, one employee of the Digger's Hotline, one member who represents the interests of a political subdivision, and one person employed as an underground line locator.
- Generally authorizes the Digger's Hotline, the Department of Transportation (DOT), a political subdivision, a transmission facility owner, an excavator, or an underground line locator to file a complaint regarding a person other than a state agency with the panel, and to file a complaint regarding a state agency with the PSC.
- Requires the panel, among other duties, to determine by a majority vote to either: (1) dismiss a complaint; or (2) find that there is probable cause to believe that a person has taken an action that the person knew or should have known was a violation, and subsequently either require the person to complete certain training or refer the complaint to the PSC for further investigation.
- Requires the PSC to investigate complaints filed with it or referred to it, and for each complaint, determine whether to dismiss the complaint, require a person subject to a complaint to complete certain training, or order the person to pay a forfeiture of up to \$25,000 per violation or up to \$500,000 for an ongoing violation.
- Provides for judicial review of the PSC's decision.

The bill exempts the following persons from forfeitures and training requirements for violations related to transmission facilities that transport hazardous or non-hazardous materials: (1) a residential property owner or tenant whose violation results from an excavation on property owned or leased by the owner or tenant; and (2) a person whose violation results from an excavation performed while the person is engaged in an agricultural activity.

Changes to PSC Powers and Duties With Regard to Certain Aspects of State Energy Policy

Under **current law**, if the Governor determines that a disruption of energy supplies poses a serious risk to economic well-being or public health or welfare, the Governor may issue an order declaring an energy alert. Upon the issuance of a declaration, the Department of Administration (DOA) may issue orders requiring producers, importers, and sellers of fuels other than electricity, natural gas, or wood, to disclose certain information about fuel supply and demand. The bill transfers this authority from DOA to the PSC.

The **bill** also:

- Requires the PSC to collect and maintain data needed for effective state agency energy planning.

- Requires the PSC to administer federal energy grants, when directed to by the Governor.
- Authorizes the PSC to provide technical assistance to local governments to assist in the planning and implementation of energy efficiency and renewable resources.
- Requires DOT to consult with the PSC, instead of DOA, when DOT waives motor vehicle weight limits during energy emergencies.
- Repeals certain reporting requirements for which the reporting deadlines have elapsed.
- Eliminates the requirement for an investor-owned public utility to pay a fee when applying to the PSC for permission to issue securities.

Exemptions From PSC Certifications Required for Rebuilding Certain Electric Transmission Lines

Current law generally requires a person to obtain from the PSC a Certificate of Public Convenience and Necessity (CPCN) before commencing a project to construct a high-voltage transmission line, unless the project qualifies for an exemption. If a project qualifies for an exemption from the CPCN requirement, a person may still be required to obtain from the PSC a Certificate of Authority (CA), unless the project qualifies for an exemption from the CA requirement as well.

Current law provides exemptions from both the CPCN and the CA requirement for a project that, among other requirements, consists of rebuilding an existing transmission line, and: (1) the rebuilt transmission line is located within 60 feet on either side of the centerline of the existing transmission line; and (2) the new transmission line requires the acquisition in total of one-half mile or less of rights-of-way from landowners from which rights-of-way **were not** required to be acquired for the existing transmission line.

The **bill** expands these exemptions by specifying that such projects are exempt, so long as, among other requirements: (1) **not more than one-half mile** of the centerline of the rebuilt transmission line is located **more than** 60 feet on either side of the centerline of the existing transmission line; and (2) the new transmission line requires the acquisition in total of one-half mile or less of rights-of-way from landowners from which rights-of-way **would not** be required to be acquired for the existing transmission line.

Recovery of Advertising Costs Incurred by Water Utilities

Current law prohibits certain public utilities from charging ratepayers for any expenditure for advertising, unless the advertising produces a demonstrated, direct, and substantial benefit for ratepayers.

The **bill** adds water public utilities to the types of public utilities that are subject to this requirement.

Settlement Agreements in PSC Dockets

The **bill** sets forth requirements regarding certain agreements between parties to a “docket” which is defined as an investigation, proceeding, or other matter opened by a vote of the PSC, except for rule making.

Under the bill, parties to a docket may agree upon some or all of the facts in a docket by filing with the PSC a written stipulation, which will be used as evidence in the docket. Parties also may agree upon a resolution of some or all of the issues in a docket by entering into a settlement agreement.

If a settlement agreement is “proposed by some of the parties” to a docket, the parties proposing the agreement must submit to the PSC the agreement, along with any documents, testimony, or exhibits that are relevant to the settlement agreement. In addition, those parties must serve a copy of the settlement agreement upon all parties to the docket.

Within 30 days after the agreement is served, each party to a docket must file with the PSC and serve on all other parties, the party’s agreement, objection, or nonobjection to the agreement. If objecting to an agreement, a party must specify all of its objections and explain how the party would be adversely affected by each provision of the agreement to which the party objects. A party’s failure to respond within 30 days constitutes a nonobjection, unless the PSC, for good cause, sets a different period in which a party must submit its response.

If a proposed agreement is “not supported by all parties” to a docket, the settling parties must convene at least one conference, with notice and opportunity to participate provided to all parties, for the purpose of discussing the settlement agreement.

The PSC may approve a settlement agreement, in whole or in part, if the PSC finds that all of the following conditions are met: (1) the agreement represents a fair and reasonable resolution to the docket; (2) the agreement is supported by substantial evidence in the record as a whole; (3) the agreement complies with applicable law, including that any rates resulting from the agreement are just and reasonable; (4) the public interest is adequately represented by the parties who entered into the agreement; and (5) each party who has objected, filed a nonobjection, or failed to respond, has been given a reasonable opportunity to present evidence and arguments in opposition to the agreement.

In accepting a settlement agreement, the PSC may impose conditions it deems necessary. If a settlement agreement does not resolve all of the issues in a docket, the PSC must decide the remaining issues in accordance with applicable law and procedure.

Construction Site Erosion Control and Storm Water Management

The **bill** provides that the construction or maintenance of certain facilities owned by a public utility or a cooperative shall be considered to satisfy county zoning ordinances regarding construction site erosion control and storm water management, if either of the following conditions are satisfied:

- The Department of Natural Resources (DNR) has issued all required approvals for the construction or maintenance.
- No approvals from the DNR are required, and the construction or maintenance is conducted in a manner that employs best management practices to control storm water runoff.

SENATE AMENDMENT 1

Under **current law**, the PSC is authorized to award broadband expansion grants funded by an appropriation using money from an accumulated fund balance in the Universal Service Fund (USF). The USF provides Wisconsin residents access to telecommunications service through 12 programs administered by PSC, the Department of Public Instruction (DPI), the University of Wisconsin System (UW), and DOA. The USF is funded through an assessment on telecommunications providers, which the providers are statutorily permitted to recover directly from consumers.

2017 Wisconsin Act 59 provides additional funding for the Broadband Expansion Grant Program,² in part, by transferring to the program at the end of each fiscal year and biennium any unencumbered balances remaining in the appropriations for the USF-funded programs administered by the PSC, DOA, DPI, and the UW.

Senate Amendment 1 makes technical changes affecting how unencumbered balances in the appropriations for USF-funded programs are transferred to the Broadband Expansion Program. Senate Amendment 1 does not change the basis on which money is designated to be transferred to the Broadband Expansion Grant Program.

SENATE AMENDMENT 2

As noted above, the **bill** adds water public utilities to the types of public utilities that are prohibited from charging ratepayers for any expenditure for advertising, unless the advertising produces a demonstrated, direct, and substantial benefit for ratepayers.

Senate Amendment 2 expands the existing statutory list of advertising that produces a direct and substantial benefit for ratepayers. Specifically, Senate Amendment 2 adds to this list advertising that does the following:

- Demonstrates water conservation methods.
- Conveys health or safety information related to a water system or the use of water, including information on preventing frozen water laterals.

² The Broadband Expansion Grant Program provides funding for the construction of broadband infrastructure in underserved areas of the state.

- Identifies the public utility on public utility property or the location of public utility property.
- Is required by permit or administrative rule.

Senate Amendment 2 also authorizes a public utility to charge its ratepayers for expenditures for reasonable direct communication to ratepayers that will be directly and substantially impacted by ongoing or future water public utility operations or construction.

BILL HISTORY

Senate Action

Senator LeMahieu offered Senate Amendment 1 on January 4, 2018 and Senators Wanggaard and Kapenga offered Senate Amendment 2 on January 5, 2017. On January 9, 2018, the Senate Committee on Elections and Utilities voted to recommend adoption of Senate Amendments 1 and 2 on votes of Ayes, 4; Noes, 1. The committee subsequently voted to recommend concurrence in the bill, as amended, on a vote of Ayes, 3; Noes, 2.

Assembly Action

Representative Kuglitsch offered Assembly Substitute Amendment 1 (the substitute amendment) on October 23, 2017. On October 24, 2017, the Assembly Committee on Energy and Utilities recommended: (1) adoption of the substitute amendment, on a vote of Ayes, 11; Noes, 3; and (2) passage of the bill, as amended, on a vote of Ayes, 10; Noes, 4. On November 2, 2017, the Assembly adopted the substitute amendment, and passed the bill, as amended, on a vote of Ayes, 57; Noes, 36.

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