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## WISCONSIN LEGISLATIVE COUNCIL AMENDMENT MEMO

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<b>2003 Assembly Bill 378</b>	<b>Assembly Substitute Amendment 1</b>
<i>Memo published:</i> June 19, 2003 <i>Contact:</i> John Stolzenberg, Chief of Research Services (266-2988) David L. Lovell, Senior Analyst (266-1537)	

Assembly Bill 378 modifies the state's utility shared revenue payments to local governments for decommissioned, new, and repowered electric generating "production plants" (or power plants) located within the boundaries of the local government, starting with the payments in July 2005. The substitute amendment also limits the ability of an electric utility to recover in its rates the costs of new mitigation payments to a local unit of government hosting an electric generating facility. This memo summarizes current law and Assembly Substitute Amendment 1 to Assembly Bill 378.

### **CURRENT LAW**

Under the public utility distribution in the state's revenue sharing with municipalities and counties for 2004, municipalities and counties, in which power plants, substations, and general structures used by electric public utilities, qualified wholesale electric companies, electric cooperatives and municipal electric companies are located, receive an annual distribution in two payments under a statutory formula. In general terms, the formula for computing the basic amount of this distribution is a specified mill rate times a portion of the net book value of the power plant, substation, or general structure located within a municipality or county. Current law sets forth additional considerations used in the computation of these distributions, including a cap on the total amount of the basic public utility distribution that a municipality or county may receive.

Specific features of the current basic public utility distribution include the following:

- If the utility property is in a city or village, the municipality's payment is calculated based upon a mill rate of six mills, and the county's payment is based on three mills. If the utility property is located in a town, the town's payment is calculated based upon a mill rate of three mills, and the county's payment is based on six mills.
- The value of the utility property at any single site is limited to \$125 million.

- Payments to an individual municipality are capped at \$300 per capita per year; payments to a county are capped at \$100 per capita per year.
- If a power plant with a capacity of 200 megawatts or more is located within a municipality or county, the municipality and county receives an annual distribution of at least \$75,000, subject to the caps identified above.

If a 200 megawatt or larger power plant is decommissioned, then the current \$75,000 minimum guaranteed distribution to a municipality for such a plant is continued under specified conditions. These conditions include that this distribution is decreased by \$7,500 annually and ceases in the year following the first year in which the property becomes taxable. Also, this payment may not exceed the distribution cap applicable to the municipality.<sup>1</sup>

In addition to the above distributions, each municipality and county where spent nuclear fuel is stored receives, in general, an annual distribution of \$50,000.

## **SUBSTITUTE AMENDMENT**

### **Overview**

Beginning with public utility shared revenue distributions in 2005, the substitute amendment does the following:

- Revises the basic distribution for new or repowered power plants to be based on the design capacity of the plant.
- Creates additional incentive payments for a new or repowered power plant that is:
  - Sited on or adjacent to an existing or decommissioned power plant or a brownfield.
  - A baseload electric generating facility.
  - Fueled by an alternative energy resource.
- Replaces the formula for computing the distributions for decommissioned power plants.
- Modifies the basic distribution under current law for certain ash disposal facilities.
- Establishes limits on mitigation payments by electric public utilities to local units of government.

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<sup>1</sup> Note that by definition, a decommissioned plant is not operating and not subject to the gross receipts tax, and is subject to local taxation. As a result, the phase-out of payments on a decommissioned property under current law is unworkable and not likely to occur.

- Creates a sum sufficient appropriation from the new Public Utility Account in the General Fund to make the utility shared revenue payments for new or repowered and for decommissioned power plants under the substitute amendment.

The substitute amendment does not affect the distribution to a municipality or county in which spent nuclear fuel is stored.

### **Basic Distribution**

Beginning with distributions in 2005, the amount of the annual distribution for a new or repowered power plant that begins operation after December 31, 2003 by an electric public utility, qualified wholesale electric company, electric cooperative or municipal electric utility shall be the design (or “name-plate”) capacity of the plant expressed in megawatts, times \$2,000. If the plant is located in a city or village, the municipality receives 2/3 of this amount and the county in which the municipality is located receives the other 1/3. If the plant is located in a town, the town receives 1/3 of this amount, and the county in which the town is located receives the other 2/3. If the plant is located in more than one municipality, the payment is divided among the municipalities in which it is located based on the net book value of the portion of the plant located in each municipality as of December 31, 2004 or the date on which the plant is in operation, whichever is later.

The substitute amendment defines “repowered” to mean any of the following:

- Replacing the boiler on the existing fossil fuel steam unit with a combustion turbine and heat recovery steam generator and reusing the steam turbine and heat rejection system.
- Adding a heat recovery steam generator to a simple cycle combustion turbine.
- Demolishing or abandoning an existing power generation unit and replacing it with a new power generation unit at the same site.
- Replacing steam generating equipment at a combustion-based electric generating facility fueled by a renewable resource that increases the efficiency or capacity of the facility.

A “power generation unit” is a complete set of electric generating equipment, as defined in public utility law, that collectively is sufficient to generate electric power. This equipment is the core equipment, such as generators, turbines, and boilers, used to generate electricity and excludes associated facilities, such as buildings.

The substitute amendment removes aid payments for construction work in progress from current law and otherwise continues to apply the distribution under current law to existing power plants, substations, and general structures and to new substations and general structures.

The total amount distributed to a municipality under the current basic distribution plus the new basic distribution, as affected by the substitute amendment, is capped at \$300 per capita per year. A county’s similar distribution is capped at \$100 per capita per year.

### **Incentive Payments**

The substitute amendment creates three incentive payments that are in addition to the basic distribution. These payments are made for power plants that are subject to the new basic distribution formula--that is, that are built or repowered after December 31, 2003--and that meet additional requirements described below. A power plant may meet the requirements for more than one incentive payment. In that case, the municipality and county in which the power plant is located will receive multiple incentive payments related to that power plant. Like payments under the new basic distribution formula, incentive payments begin with distributions in 2005.

#### ***Brownfields and Other Specified Sites***

This incentive applies to a power plant with a design capacity of at least one megawatt, other than a nuclear-powered facility, that is built: (a) on or adjacent to the site of an existing or decommissioned power plant; (b) on a site that was purchased by a public utility before January 1, 1980, and that was identified as a proposed power plant site in an advance plan; or (c) on or adjacent to a brownfield. Both the municipality and the county in which a qualifying power plant is located will receive an annual payment equal to the plant's design capacity, expressed in megawatts, times \$600.

#### ***Baseload Electric Generating Facility***

This incentive applies to a baseload electric generating facility that has a design capacity of at least 50 megawatts. A "baseload electric generating facility" is an electric generating facility that has a capacity factor that is greater than 60% as determined by the Public Service Commission (PSC). "Capacity factor" is the anticipated actual annual output of an electric generating facility expressed as a percentage of the facility's potential output. The PSC may review a facility's capacity factor at any time.

Both the municipality and county in which a qualifying power plant is located will receive a payment equal to the plant's design capacity, expressed in megawatts, times \$600.

Since power plants' outputs vary from year-to-year, some power plants could meet the definition of a baseload plant in some years, but not in others. It appears that baseload incentive payments could be made for such plants in years when they meet the definition and not in other years. The PSC determines whether a power plant is a baseload plant.

#### ***Alternative Energy Resource Fuel***

This incentive applies to a power plant that derives energy from an "alternative energy resource" and has a design capacity of at least one megawatt. Both the municipality and county in which a qualifying power plant is located will receive an annual payment equal to the design capacity of the plant, expressed in megawatts, times \$1,000.

If such a plant is powered by an alternative energy resource together with a fuel that is not an alternative energy resource, the capacity used in this formula is the portion of the plant's design capacity times a fraction equal to the energy content of the alternative energy resource used at the plant in the prior year divided by the energy content of all fuels used at the plant in that year.

An “alternative energy resource” is a renewable energy resource, as used in the public utility law’s provisions on renewable portfolio standards, garbage, or nonvegetation-based industrial, commercial, or household waste.

### **Decommissioned Power Plants**

Beginning with distributions in 2005, for a power plant that is subject to the current or new basic distribution and that is decommissioned, the municipality in which the plant is located shall be paid a distribution equal to the following percentages of the utility shared revenue distribution that the municipality received during the last year that the plant was exempt from the property tax, less the amount of property taxes paid for that property during the current year to the municipality:

- In the first year that the property is taxable, 100%.
- In the second year that the property is taxable, 80%.
- In the third year that the property is taxable, 60%.
- In the fourth year that the property is taxable, 40%.
- In the fifth year that the property is taxable, 20%.

A county receives a similar distribution for a decommissioned power plant located in the county, as reduced by the property taxes paid by the owner to the county for that plant.

### **Ash Disposal Facilities**

The substitute amendment changes the formula for computing the basic utility shared revenue distribution under current law to establish that payments to a municipality and county in which an ash disposal facility is owned and operated by an electric cooperative, that is operating prior to the effective date of this provision, must be calculated to be twice the net book value of the ash disposal facility.

### **Mitigation Payments**

The substitute amendment establishes that, in general, an electric public utility may not recover in its rates any of the following:

- The cost of mitigation payments paid by the utility.
- The cost of mitigation payments paid by the owner or operator of an electric generating facility that the owner or operator recovers from the utility by selling electricity to the utility, leasing the facility to the utility, or through any agreement between the owner or operator and the utility.

An exception to this general prohibition is that the PSC shall only approve a mitigation payment agreement that it receives by June 10, 2003. If the PSC finds the agreement to be reasonable, it shall not subsequently modify the agreement.

A “mitigation payment,” as approved by the PSC, is an unrestricted or recurring monetary payment to a local unit of government in which an electric generating facility is located to mitigate the impact of the facility on the local unit of government.<sup>2</sup> Mitigation payments do not include payments made or in-kind contributions for restricted purposes to directly address health or safety impacts of the facility on the local unit of government.

### **New Appropriation**

The substitute amendment creates a new account in the General Fund, the Public Utility Account, and makes a sum-sufficient appropriation from this account for new utility shared revenue distributions created by the substitute amendment for basic and incentive payments for new or repowered power plants and for payments for decommissioned power plants. Appropriations for utility shared revenue distributions for existing, operating power plants and for new or existing substations and general structures continue to be made from the current Shared Revenue Account in the General Fund.

### **COMPANION PROPOSALS**

Assembly Substitute Amendment 1 to 2003 Assembly Bill 378 is identical to Senate Substitute Amendment 2 to 2003 Senate Bill 180.

### **LEGISLATIVE HISTORY**

On June 5, 2003, Representatives Gottlieb and Jensen introduced Assembly Amendment 1 to 2003 Assembly Bill 378. On June 10, 2003, the Assembly Committee on Energy and Utilities introduced Assembly Amendment 5 to Assembly Bill 378. This committee adopted these amendments on separate votes of Ayes, 11; Noes, 0, and recommended passage of Assembly Bill 378, as amended, on a vote of Ayes, 9; Noes, 2, on June 10, 2003.

The Joint Committee on Finance introduced and adopted Assembly Substitute Amendment 1 and recommended passage of Assembly Bill 378, as amended by Assembly Substitute Amendment 1, with an emergency statement attached pursuant to s. 16.47 (2), Stats., on separate votes of Ayes, 16; Noes, 0, on June 17, 2003.

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<sup>2</sup> Thus, a payment to a local unit of government that is adjacent to a local unit of government in which an electric generating facility is located is not a “mitigation payment,” and such a payment is not subject to the prohibition in the substitute amendment on an electric public utility recovering in its rates the cost of mitigation payments paid by the utility.