



WISCONSIN LEGISLATIVE COUNCIL AMENDMENT MEMO

2003 Assembly Bill 843

**Assembly Amendment 1 to
Assembly Substitute
Amendment 1**

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Contact: David L. Lovell, Senior Analyst (266-1537)

2003 Assembly Bill 843 (“the bill”) creates a new financing mechanism referred to as “environmental trust financing,” to finance the cost of certain investments intended to reduce environmental pollution from existing energy utility facilities. As proposed by the bill, environmental trust bonds (“bonds”) would be issued under the authority of a financing order of the Public Service Commission (PSC), to be repaid from revenues collected from fees placed on the bills of the utility’s customers. The PSC order would also create a property right to the collection of the fees from the utility’s customers and to the collected revenues. The utility would transfer this right to a third party, which would collect the fees for repayment of the debt. Neither the debt associated with the bonds nor the fee revenues collected for their repayment would be shown on the books of the utility.

The amendment makes the following changes to the substitute amendment:

Item 1 of the amendment deletes language intended to make clear that the acquisition, ownership, or disposition of environmental trust bonds does not affect whether a person has nexus with Wisconsin for tax purposes—in other words, makes that person subject to Wisconsin taxes. This is clear under current law, and so the language deleted by this item of the amendment is unnecessary.

Item 2 adds the revenues from environmental control charges (the charges collected on utility customers’ bills for the repayment of environmental trust bonds) to the definition of “gross receipts” in s. 76.28, Stats., with the result that the utility will pay license fees (sometimes referred to as gross receipts taxes) on those revenues.

Items 3 and 4 make a minor wording change to clarify the scope of the word “animal” in the definition of “environmental pollution.”

One of the criteria that the PSC must consider in determining whether to approve an application for a financing order is whether the proposed structure and pricing of the environmental trust bonds will result in the lowest environmental control charges that are consistent with market conditions and the

terms of the financing order. *Item 5* modifies this criterion to refer to “the proposed structuring and *expected* pricing” of the bonds.

A financing order must include a formula for adjusting environmental control charges to correct for any overcollection or undercollection of revenue. The PSC must annually adjust charges by applying this formula, using reasonable estimates of demand and other mathematical factors. *Items 6 and 7* replace the word “formula” with the term “formula-based mechanism.” *Item 8* deletes the word “reasonable.”

The substitute amendment creates a 30-day comment period for proposed adjustments to environmental control charges but limits the comments to the appropriate amount of overcollections or undercollections and the appropriate amount of an adjustment. *Item 9* further limits comments to only “any error in the application of the formula-based mechanism.”

Item 10 changes the order of two clauses of a sentence but makes no substantive change.

The PSC may not order or otherwise require a utility to utilize environmental trust financing unless the utility has applied for a financing order. *Item 11* modifies this to say that the PSC may not order or otherwise *directly or indirectly* require a utility to utilize environmental trust financing. It also adds a statement that the PSC may not refuse to allow an energy utility to recover the cost of these projects in an otherwise permissible fashion solely because of the potential availability of environmental trust financing.

Legislative History

On February 24, 2004, the Assembly Committee on Energy and Utilities recommended adoption of Assembly Substitute Amendment 1 by a vote of Ayes, 12; Noes, 0, and recommend passage of the bill, as amended, by a vote of Ayes, 11; Noes, 1.

On March 2, 2004, the Assembly adopted Assembly Substitute Amendment 1 on a voice vote and passed the bill, as amended, by a vote of Ayes, 96; Noes, 0.

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