

2001 ASSEMBLY BILL 832

February 20, 2002 - Introduced by Representatives GUNDERSON, HINES, OLSEN, STARZYK, MUSSER, BIES, MILLER and McCORMICK, cosponsored by Senator LAZICH. Referred to Committee on Energy and Utilities.

1 **AN ACT** *to renumber and amend* 196.491 (3) (e); *to amend* 196.491 (3) (a) 3.
2 a. and 196.491 (3) (a) 3. b.; and *to create* 196.491 (3) (e) 2. of the statutes;
3 **relating to:** construction of electric generating facilities that affect residential
4 wells.

Analysis by the Legislative Reference Bureau

Under current law, with certain exceptions, a person may not begin construction of an electric generating facility with a capacity of 100 megawatts or more unless the public service commission (PSC) issues a certificate of public convenience and necessity (CPCN) to the person. At least 60 days before applying for a CPCN under current law, the person must provide the department of natural resources (DNR) with an engineering plan that includes a description of the anticipated effects of the electric generating facility on air and water quality. This bill also requires the engineering plan to include a description of the anticipated effects of the electric generating facility on residential wells.

Also under current law, the following deadlines apply after a person provides DNR with an engineering plan: 1) within 30 days after receiving the engineering plan, DNR must provide the person with a list of the permits or approvals required for the electric generating facility; 2) within 20 days after DNR provides the list, the person must apply for the permits and approvals; 3) within 30 days after the person applies for the permits and approvals, DNR must determine whether the application is complete and, if DNR fails to make this determination, the application is

ASSEMBLY BILL 832

considered to be complete; and 4) within 120 days after an application is determined or considered to be complete, DNR must complete action on the application.

This bill makes a change to the last deadline described above. Under this bill, within 120 days after an application is determined or considered to be complete, DNR must also determine whether the electric generating facility will reduce the availability of water to a residential well. In addition, DNR must determine whether the facility will cause a preventive action limit (PAL) to be exceeded in water produced by a residential well. Under current law, DNR establishes PALs for different substances in groundwater that have public welfare or health concerns. If a PAL is exceeded under current law, regulatory agencies are required to commence efforts to control contamination.

Current law also prohibits the PSC from issuing a CPCN unless DNR issues all permits and approvals that are required prior to construction. This bill provides that the PSC may also not issue a CPCN unless DNR determines that the electric generating facility will not reduce the availability of water to a residential well and will not cause a PAL to be exceeded in water produced by a residential well.

Finally, the bill requires a person who applied for a CPCN before the effective date of the bill to file a supplemental engineering plan with DNR that describes the anticipated effects of the electric generating facility on residential wells. The supplemental plan must be filed within 30 days after the bill's effective date. The PSC may not issue a CPCN if DNR determines that the electric generating facility will reduce the availability of water to a residential well or cause a PAL to be exceeded in water produced by a residential well. DNR has 60 days after receiving a supplemental plan to make these determinations.

For further information see the *state* fiscal estimate, which will be printed as an appendix to this bill.

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

1 **SECTION 1.** 196.491 (3) (a) 3. a. of the statutes is amended to read:
2 196.491 **(3)** (a) 3. a. At least 60 days before a person files an application under
3 subd. 1., the person shall provide the department with an engineering plan showing
4 the location of the facility, a description of the facility, including the major
5 components of the facility that have a significant air, water, or solid waste pollution
6 potential, and a description of the anticipated effects of the facility on air and water
7 quality and on residential wells. Within 30 days after a person provides an
8 engineering plan, the department shall provide the person with a listing of each

ASSEMBLY BILL 832

1 department permit or approval which, on the basis of the information contained in
2 the engineering plan, appears to be required for the construction or operation of the
3 facility.

4 **SECTION 2.** 196.491 (3) (a) 3. b. of the statutes is amended to read:

5 196.491 (3) (a) 3. b. Within 20 days after the department provides a listing
6 specified in subd. 3. a. to a person, the person shall apply for the permits and
7 approvals identified in the listing. The department shall determine whether an
8 application under this subd. 3. b. is complete and, no later than 30 days after the
9 application is filed, notify the applicant about the determination. If the department
10 determines that the application is incomplete, the notice shall state the reason for
11 the determination. An applicant may supplement and refile an application that the
12 department has determined to be incomplete. There is no limit on the number of
13 times that an applicant may refile an application under this subd. 3. b. If the
14 department fails to determine whether an application is complete within 30 days
15 after the application is filed, the application shall be considered to be complete. The
16 ~~department shall complete action on an application under this subd. 3. b. for any~~
17 ~~permit or approval that is required prior to construction of a facility within~~ Within
18 120 days after the date on which the application is determined or considered to be
19 complete, the department shall complete action on the application for any permit or
20 approval that is required prior to construction of the facility and shall determine
21 whether the facility will reduce the availability of water to a residential well or cause
22 a preventive action limit established under s. 160.15 to be exceeded in water
23 produced by a residential well.

24 **SECTION 3.** 196.491 (3) (e) of the statutes is renumbered 196.491 (3) (e) (intro.)

25 and amended to read:

ASSEMBLY BILL 832

1 196.491 (3) (e) (intro.) If the application does not meet the criteria under par.
2 (d), the commission shall reject the application or approve the application with such
3 modifications as are necessary for an affirmative finding under par. (d). The
4 commission may not issue a certificate of public convenience and necessity ~~until the~~
5 unless each of the following is satisfied:

6 1. The department has issued all permits and approvals identified in the listing
7 specified in par. (a) 3. a. that are required prior to construction.

8 **SECTION 4.** 196.491 (3) (e) 2. of the statutes is created to read:

9 196.491 (3) (e) 2. The department has determined under par. (a) 3. b. that the
10 facility will not reduce the availability of water to a residential well and will not cause
11 a preventive action limit established under s. 160.15 to be exceeded in water
12 produced by a residential well.

13 **SECTION 5. Nonstatutory provisions.**

14 (1) ENGINEERING PLANS. Notwithstanding section 196.491 (3) (a) 3. a. and b. of
15 the statutes, as affected by this act, a person who has filed an application under
16 section 196.491 (3) (a) 1. of the statutes before the effective date of this subsection
17 shall, no later than 30 days after the effective date of this subsection, provide the
18 department of natural resources with a supplemental engineering plan that includes
19 a description of the anticipated effects of the facility on residential wells. No later
20 than 60 days after the department of natural resources receives a supplemental plan
21 under this subsection, the department shall determine whether the facility will
22 reduce the availability of water to a residential well or cause a preventive action limit
23 established under section 160.15 of the statutes to be exceeded in water produced by
24 a residential well. Notwithstanding section 196.491 (3) of the statutes, the public
25 service commission may not issue a certificate of public convenience and necessity

ASSEMBLY BILL 832

1 for a facility if the department of natural resources determines under this subsection
2 that the facility will reduce the availability of water to a residential well or cause a
3 preventive action limit established under section 160.15 of the statutes to be
4 exceeded in water produced by a residential well.

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(END)