

DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-4030/3dn
MDK:wlj:ch

February 10, 2004

Rep. Jensen:

Please note the following regarding the instructions in the e-mail from Brett Healy dated Feb. 9, 2004:

1. See my changes to item 4 of the instructions in the definition of "environmental control activity." Also, is "in connection with" clear enough? In addition, is there any ambiguity over what constitutes an "energy utility plant"?
2. Regarding item 8, I added a reference to "rule," which is how we refer to regulations of state agencies. Also, I'm not sure why the added language is necessary. Costs are defined as costs incurred by utilities in undertaking certain activities. The assessment of a fine, etc., by a federal or state agency or court doesn't logically relate to an activity undertaken by a utility.
3. Regarding item 9, I made slight changes to the grammar.
4. Regarding item 17, I added the phrase "in its sole discretion," but I am not sure why it is necessary. If a statute allows somebody to do something, I think it's generally understood that doing that something is at the person's discretion.
5. Regarding item 18, I created s. 196.027 (2) (e) 3.
6. Regarding item 22, it is not necessary to refer to "successor" because successors are referenced in the definitions of "assignee" and "energy utility."
7. Regarding item 25, I specified that the PSC must apply a formula and make adjustments without holding a hearing, which I think achieves your intent. Note that I did not use the "notwithstanding" language because it is inconsistent with our drafting style.
8. Regarding item 34, I did not include the language because it has significant constitutional problems regarding separation of powers. As a member of the executive branch, the PSC and its actions are subject to law and the courts are the ultimate arbiters of law in this state. For example, if a court finds that the issuance of the bonds violates the public purpose doctrine (which is highly unlikely), the issuance of the bonds is unlawful. Therefore, the suggested language has no legal effect. Please let me know if you are aware of case law to the contrary.

9. Regarding item 36, I included the language as a separate paragraph.
10. Regarding item 38, I used “considered” instead of “deemed,” which is consistent with our drafting style.
11. Regarding item 39, under our drafting style, “including” means the same thing as “including, but not limited to.”
12. Regarding item 40, I did not include the first part pertaining to severability because it is not necessary. Section 990.001 (11), stats., provides: “The provisions of the statutes are severable.... If any provision of the statutes is invalid, or if the application of [a statute] to any person or circumstance is invalid, such invalidity shall not affect other provisions or applications which can be given effect without the invalid provision or application.” As for the second part of item 40, I am not sure what you are trying to achieve. Therefore, please see my revisions to your language.
13. There are other minor changes that I have not pointed out above. Please review this version to make sure that the changes are consistent with your intent.

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