



State of Wisconsin
2017 - 2018 LEGISLATURE

LRB-4225/1
MDK&EHS:emw&ahe

2017 ASSEMBLY BILL 532

October 11, 2017 - Introduced by Representative KUGLITSCH, cosponsored by Senator LEMAHIEU, by request of Public Service Commission. Referred to Committee on Energy and Utilities.

1 **AN ACT to repeal** 196.025 (4), 196.025 (5), 196.192 (2) (am) and 201.10 (1); **to**
2 **renumber** 16.95 (12), 182.0175 (1) (bt), 182.0175 (1) (bv) and 182.0175 (3) (b);
3 **to renumber and amend** 16.955, 182.0175 (2) (am) 3., 182.0175 (3) (a) (title),
4 182.0175 (3) (a) and 196.192 (2) (bm); **to amend** 26.03 (1v) (b), 101.80 (1g),
5 182.0175 (2) (am) (title), 182.0175 (2) (am) 7., 182.0175 (2) (bm) (title), 182.0175
6 (2m) (b) (intro.), 182.0175 (4), 182.0175 (5), 196.192 (2) (c), 196.192 (3m),
7 196.193 (3), 196.49 (5g) (ag), 196.49 (5g) (ar) 2m. b., 196.49 (5g) (ar) 2m. c.,
8 196.491 (4) (c) 1m. (intro.), 196.491 (4) (c) 1m. a., 196.491 (4) (c) 1m. b., 196.595
9 (1) (c), 201.10 (2), 348.17 (3) and 348.17 (4); **to repeal and recreate** 182.0175
10 (3) (title); and **to create** 59.693 (11), 182.0175 (1) (ab), 182.0175 (1) (ac),
11 182.0175 (1) (ag), 182.0175 (1) (bq), 182.0175 (1) (br), 182.0175 (1) (bw),
12 182.0175 (1) (by), 182.0175 (1) (bz), 182.0175 (1m) (d) 8. to 12., 182.0175 (2) (as)
13 (title), 182.0175 (2) (as) 3., 182.0175 (3) (bg), (br) and (c), 182.0175 (3) (d) 2.,
14 182.0175 (3) (e), 182.0175 (3) (f), 182.0175 (3) (g), 196.025 (7), 196.026 and

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1 196.192 (2) (bm) 1. and 2. of the statutes; **relating to:** one-call system
2 enforcement and other requirements, Public Service Commission authority
3 regarding state energy policy, settlements between parties in Public Service
4 Commission dockets, various public utility regulatory requirements, the
5 regulation of utility facilities under a county construction site erosion control
6 and storm water management zoning ordinance, granting rule-making
7 authority, and providing a penalty.

Analysis by the Legislative Reference Bureau

This bill creates procedures for handling complaints about violations of requirements under current law regarding excavations, which are commonly referred to as “digger’s hotline” requirements. The bill also makes other changes to those requirements. In addition, the bill imposes duties on the Public Service Commission regarding state energy policy and makes various other changes to the PSC’s regulation of public utilities. Also, the bill creates settlement requirements in PSC dockets. Finally, the bill affects the treatment of certain utility facilities under county construction site erosion control and storm water management zoning ordinances.

DIGGER’S HOTLINE REQUIREMENTS

Current law generally requires owners of transmission facilities, which include pipes, pipelines, wires, cables, ducts, and associated facilities, to establish or designate a nonprofit organization to operate a statewide communication system for receiving excavation notices and transmitting information to transmission facility owners affected by the notices. Current law requires excavators to provide advance notice to the system and comply with other requirements. Transmission facility owners must take certain actions in response to the notices, including marking their facilities. The statewide communication system is called the “one-call system,” and current law generally requires transmission facility owners to be members of the system and pay membership fees. Current law exempts from the requirements transmission facilities on private property that do not cross public rights-of-way. Current law allows a court to require a person who willfully and knowingly violates the digger’s hotline requirements to pay a forfeiture of \$2,000 for each violation.

The bill creates procedures for handling complaints regarding violations of digger’s hotline requirements. The bill allows the one-call system to file a complaint, as well as a city, village, town, or county (political subdivision) or the Department of Transportation, but only if the political subdivision or DOT has property affected by an alleged violation. In addition, a transmission facility owner, excavator, or underground line locator may file a complaint if its property or activities are affected by an alleged violation. If a complaint alleges that a person who is not a state agency

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has violated or aided in a violation, the complaint must be filed with a panel appointed by the one-call system. The panel has the following seven members: two transmission facility owners; two excavators; one employee of the one-call system's operational center; one member representing a political subdivision; and one person employed as an underground line locator. If the complaint alleges that a state agency has violated or aided in a violation, the complaint must be filed with the PSC.

A person who is allowed to file a complaint with the panel or the PSC must do so no later than 120 days after the person discovers an alleged violation. However, the bill allows the panel and the PSC for good cause to extend the filing deadline to no more than one year after the discovery. Neither the panel nor the PSC may dismiss a complaint solely due to absence of direct damage to the person filing the complaint, whom the bill refers to as the complainant.

For a complaint filed with the panel, the bill requires the panel to provide notice by certified mail to a person or a person's agent who is alleged to have violated or aided in the violation of digger's hotline requirements. The bill refers to that person or agent as the respondent. The bill also allows the panel to consolidate complaints. The bill requires the respondent to file a response to the complaint within 20 days after service of the notice, unless the panel extends the deadline upon request. In the response, the respondent must admit or deny the alleged violation or advise the panel that the complainant has agreed to dismiss the complaint based on the respondent's satisfaction of the complaint. Within a specified deadline, the panel must determine by majority vote whether there is probable cause that the respondent violated or aided in the violation of digger's hotline requirements. If the respondent files a timely response, the panel must make that determination within 20 days after the response is filed. The bill specifies different deadlines if the respondent fails to file a timely response. The panel must dismiss a complaint for lack of probable cause or at the request of the complainant. If the panel determines that there is probable cause, the panel must either 1) refer the complaint to the PSC or 2) allow the respondent to attend an educational course administered by the one-call system.

If a person files a complaint with the PSC regarding a state agency, or the panel refers a complaint to the PSC, the bill allows the PSC, with or without notice, to investigate the complaint. If the PSC determines there is sufficient cause to warrant a hearing, the PSC must set the matter for public hearing upon ten days' notice and treat the complaint as a contested case under the state's administrative procedure law. The PSC must also treat the complaint as contested case if the PSC determines there is not sufficient cause to warrant a hearing, but the complainant or respondent contests that determination. If the PSC holds a hearing and determines that probable cause exists to believe that the respondent violated or aided in the violation of digger's hotline requirements, the bill allows the PSC to issue an order that directly assesses a forfeiture against the respondent, requires the respondent to attend an educational course administered by the one-call system, or does both. The bill also allows the PSC to dismiss the complaint by executing a consent agreement with the respondent. Like an order, a consent agreement may directly assess a forfeiture, require educational course attendance, or do both.

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Regarding forfeitures, the bill allows a PSC order or consent agreement to directly assess against the respondent a forfeiture of no more than \$25,000 for each violation, with each day of violation constituting a separate violation. The foregoing replaces the \$2,000 forfeiture under current law for willful and knowing violations of digger's hotline requirements. The forfeitures must be deposited in the school fund. The bill provides that no other forfeiture may be imposed for violating or aiding in the violation of digger's hotline requirements. If the PSC assesses a forfeiture in an order or consent agreement, the PSC must also require the respondent to pay a surcharge to the one-call system that is equal to 10 percent of the forfeiture. If the amount of a forfeiture is reduced on appeal, the surcharge must be proportionately reduced.

If the panel allows a respondent to attend the one-call system's educational course, or a PSC order or consent agreement requires attendance, the respondent must pay a fee for the course to the one-call system. The bill requires the one-call system to establish a damage prevention fund and deposit the fees in the fund. The one-call system must also deposit in the fund the surcharges described above. The bill requires the one-call system to use the fund to pay for the cost of producing and administering the educational course or for providing public outreach and underground utility damage prevention awareness programs.

The bill makes other changes, including the following:

1. Requires excavators to promptly make a report to the 911 emergency telephone number upon discovering that flammable, toxic, or corrosive gas or liquid that may endanger life, cause bodily harm, or result in damage to property has escaped from damaged transmission facilities.
2. Imposes requirements for parallel-type excavations and for using power-operated excavating or earthmoving equipment on certain excavations.
3. Specifies that an owner has marked its transmission facilities in a reasonable manner as required under current law if the owner has located and marked the facilities to a level of accuracy and precision consistent with national standards.
4. Creates a presumption of validity for determinations and orders of the PSC under the bill.
5. Allows the one-call system to establish policies, procedures, and forms for complaints made to the panel and allows the PSC to promulgate rules regarding its duties under the bill.

STATE ENERGY POLICY AND OTHER PSC CHANGES

The bill transfers from the Department of Administration to the PSC powers regarding energy alert orders that are issued by the governor. Current law allows the governor to issue such an order upon determining that a disruption of energy supplies poses a serious risk to economic well-being or public health or welfare. If the governor issues such an order, current law authorizes DOA to issue orders and promulgate rules requiring producers, importers, and sellers of coal and other specified fuels to disclose information pertaining to fuel supply and demand. The bill transfers that authority from DOA to the PSC.

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The bill also allows the PSC to exercise the following powers and duties: 1) maintaining data for state agency energy planning; 2) administering federal energy grants when designated to do so by the governor; 3) preparing and maintaining contingency plans for critical energy shortages; 4) providing technical assistance to local governments regarding energy efficiency and renewable resources; and 5) requiring public utilities to provide energy billing and use data about public schools. The bill also requires the Department of Transportation to consult with the PSC, instead of DOA, when DOT waives motor vehicle weight limits during energy emergencies.

The bill eliminates two outdated PSC reporting requirements. First, current law required the PSC to study the establishment of an incentive program for developing small-scale electric generating facilities. Second, current law required the PSC to contract for a study on the impact of horizontal market power on creating a competitive retail electricity market. Current law required the PSC to submit reports to the legislature on those studies by January 1, 2001. The bill eliminates those requirements.

The bill also does the following:

1. Requires the PSC to approve market-based rates for investor-owned electric utilities if the rates satisfy specified criteria.
2. Repeals an outdated filing requirement for such utilities regarding such rates.
3. Requires the PSC to consider interest rates for state and local bonds when setting the overall rate of return for municipal water and sewer utilities. This requirement replaces a requirement under current law for the PSC to apply an interest rate formula based on a federal reserve board publication.
4. Allows the PSC to regulate advertising by water public utilities to the same extent that the PSC regulates advertising by other public utilities under current law.
5. Eliminates a requirement for an investor-owned public utility to pay a fee when applying to the PSC to issue securities.
6. Makes changes to the criteria that must be satisfied to qualify for exemptions from the PSC certifications required for constructing or rebuilding certain electric transmission lines.

SETTLEMENTS IN PSC DOCKETS

The bill creates requirements regarding settlements in PSC “dockets,” which the bill defines as investigations, proceedings, or other matters opened by a vote of the PSC, except for rule making. The bill allows parties to a docket to agree upon some or all of the facts, which must be evidenced by a written stipulation and filed with the PSC or entered upon the record. The bill also allows the parties to agree upon a resolution of some or all of the issues. If some of the parties propose a written settlement agreement, those parties must submit the agreement and relevant documents to the PSC and serve a copy of the agreement on all parties to the docket. If not all parties support the proposed settlement agreement, the settling parties must convene at least one conference for all parties to discuss the proposed settlement agreement, except that a nonsettling party may waive its right to the conference. Within 30 days of service of a proposed settlement agreement, each party

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must make a written response that consists of the party's agreement, objection, or nonobjection to the settlement agreement. A party must serve its response on all parties. If a party objects to a settlement agreement, the party must state its objections with particularity and specify how the party would be adversely affected by the agreement. If a party fails to respond within the 30-day deadline, the failure is considered a nonobjection, unless the PSC for good cause sets a different time for response.

The bill allows the PSC to approve a settlement agreement if all of the following conditions are met. First, each party that responded with an objection or nonobjection to the agreement or that failed to respond must have been given a reasonable opportunity to present evidence and arguments in opposition to the settlement agreement. Second, the PSC must find that the public interest is adequately represented by the parties who entered into the agreement. Finally, the PSC must find that the settlement agreement represents a fair and reasonable resolution to the docket, is supported by substantial evidence on the record as a whole, and complies with applicable law, including that any rates resulting from the settlement agreement are just and reasonable. The bill also allows the PSC to approve a settlement agreement in whole or in part and with conditions deemed necessary by the PSC. If a settlement agreement does not resolve all of the issues in the docket, the bill requires the PSC to decide the remaining issues in accordance with applicable law and procedure.

**CONSTRUCTION SITE EROSION CONTROL AND STORM WATER
MANAGEMENT**

The bill affects the treatment under a county construction site erosion control and storm water management zoning ordinance of the construction or maintenance of a facility, defined in the bill as property or equipment used for the transmission, delivery, or furnishing of natural gas, heat, light, or power and owned by a public utility or cooperative association organized for the purpose of producing or furnishing heat, light, or power to its members only. Under the bill, the construction and maintenance of a facility is considered to satisfy such a zoning ordinance if the Department of Natural Resources has issued all required navigable water, water and sewage, and pollution discharge permits or approvals authorizing the construction or maintenance or, if no such permits or approvals are required, if the construction and maintenance is conducted in a manner that employs best management practices to infiltrate or otherwise control storm water runoff from that infrastructure. Under current law, the construction and maintenance of a facility with these permits or approvals is considered to satisfy a county's shoreland zoning ordinance.

For further information see the *state and local* 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:

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1 **SECTION 1.** 16.95 (12) of the statutes is renumbered 196.025 (7) (a) 3.

2 **SECTION 2.** 16.955 of the statutes is renumbered 196.029, and 196.029 (1), (3)
3 (a), (b) and (c) and (4) (a), (b) and (d), as renumbered, are amended to read:

4 196.029 (1) INFORMATION. If the governor determines that a disruption of
5 energy supplies poses a serious risk to the economic well-being, health or welfare of
6 the citizens of this state, the governor may issue an order declaring an energy alert.
7 Upon declaration of an energy alert by the governor, the ~~department~~ commission
8 may issue general or special orders, as defined in s. 101.01 (7), or promulgate
9 emergency rules under ch. 227 to compel disclosure of information required for
10 purposes of this section. Any person, or agent of the person, who produces, imports
11 or sells, coal or other forms of fuel, other than electricity, natural gas or wood, who
12 is subject to an emergency rule or general or special order of the department
13 commission within reasonable time limits specified in the order shall file or furnish
14 such reports, information, data, copies of extracts of originals as the department
15 commission deems necessary relating to existing and future energy supplies,
16 including but not limited to record of sales in years for 1970 and thereafter, storage
17 capacity, supplies on hand and anticipated supplies, and anticipated demand. To the
18 extent that the reports and data requested by the department commission are
19 presently available from other state or federal agencies, the department commission
20 shall coordinate its data reporting requirements with the agencies to avoid
21 duplication of reporting.

22 **(3)** (a) Any person, or agent of a person, who produces, imports or sells, coal or
23 other forms of fuel, other than electricity, natural gas or wood, who fails to provide
24 information requested by the ~~department~~ commission at the time and in the manner
25 specified by the ~~department~~ commission shall forfeit an amount not to exceed \$1,000.

ASSEMBLY BILL 532**SECTION 2**

1 Each day the violation of this section continues from the day notice has been received
2 constitutes a separate offense.

3 (b) Upon request of the ~~department~~ commission, the attorney general or the
4 district attorney of the proper county may aid in any investigation, enforce any
5 request of the ~~department~~ commission for information under this section or seek
6 forfeitures for violations of this section.

7 (c) Upon request of the ~~department~~ commission, the attorney general or the
8 district attorney of the proper county may apply to any court of competent
9 jurisdiction for a temporary or permanent injunction restraining any person from
10 violating this section.

11 (4) (a) The ~~department~~ commission or any of its authorized agents may, in
12 relation to any matter arising under this section, conduct hearings, administer
13 oaths, issue subpoenas and take testimony.

14 (b) The witnesses subpoenaed by the ~~department~~ commission or its agent and
15 officers who serve subpoenas shall be entitled to the fees allowed in courts of record.
16 The fees shall be audited and paid by the state in the same manner as other expenses
17 of the ~~department~~ commission are audited and paid. No witness subpoenaed at the
18 instance of any party other than the ~~department~~ commission is entitled to payment
19 of fees by the state, unless the ~~department~~ commission certifies that the testimony
20 of the witness was material.

21 (d) A record of all hearings shall be kept by the ~~department~~ commission. All
22 hearings shall be public.

23 **SECTION 3.** 26.03 (1v) (b) of the statutes is amended to read:

24 26.03 (1v) (b) An electric cooperative, as defined in s. 196.025 (5) (ag) 101.80
25 (1g).

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1 **SECTION 4.** 59.693 (11) of the statutes is created to read:

2 59.693 **(11)** UTILITY FACILITIES. (a) In this subsection, “facility” means any
3 property or equipment of a public utility, as defined in s. 196.01 (5), or a cooperative
4 association organized under ch. 185 for the purpose of producing or furnishing heat,
5 light, or power to its members only, that is used for the transmission, delivery, or
6 furnishing of natural gas, heat, light, or power.

7 (b) The construction and maintenance of a facility is considered to satisfy the
8 requirements of this section and any county ordinance enacted under this section if
9 any of the following applies:

10 1. The department has issued all required permits or approvals authorizing the
11 construction or maintenance under ch. 30, 31, 281, or 283.

12 2. No department permit or approval under subd. 1. is required for the
13 construction or maintenance and the construction or maintenance is conducted in a
14 manner that employs best management practices to infiltrate or otherwise control
15 storm water runoff from the facility.

16 **SECTION 5.** 101.80 (1g) of the statutes is amended to read:

17 101.80 **(1g)** “Electric cooperative” ~~has the meaning given in s. 196.025 (5) (ag)~~
18 means a cooperative association organized under ch. 185 for the purpose of
19 generating, distributing, or furnishing electric energy at retail or wholesale to its
20 members only.

21 **SECTION 6.** 182.0175 (1) (ab) of the statutes is created to read:

22 182.0175 **(1)** (ab) “Commission” means the public service commission.

23 **SECTION 7.** 182.0175 (1) (ac) of the statutes is created to read:

24 182.0175 **(1)** (ac) “Complainant” means a person who files a complaint under
25 sub. (3) (bg) 1. or 2.

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1 **SECTION 8.** 182.0175 (1) (ag) of the statutes is created to read:

2 182.0175 (1) (ag) “Damage prevention fund” means the fund established under
3 sub. (1m) (d) 11.

4 **SECTION 9.** 182.0175 (1) (bq) of the statutes is created to read:

5 182.0175 (1) (bq) “One-call system” means the system established under sub.
6 (1m) (a).

7 **SECTION 10.** 182.0175 (1) (br) of the statutes is created to read:

8 182.0175 (1) (br) “Panel” means the panel appointed under sub. (1m) (d) 8.

9 **SECTION 11.** 182.0175 (1) (bt) of the statutes is renumbered 182.0175 (1) (bo).

10 **SECTION 12.** 182.0175 (1) (bv) of the statutes is renumbered 182.0175 (1) (bx).

11 **SECTION 13.** 182.0175 (1) (bw) of the statutes is created to read:

12 182.0175 (1) (bw) “Political subdivision” means a city, village, town, or county.

13 **SECTION 14.** 182.0175 (1) (by) of the statutes is created to read:

14 182.0175 (1) (by) “Respondent” means a person or a person’s agent who is
15 alleged in a complaint filed under sub. (3) (bg) 1. or 2. to have violated or aided in the
16 violation of this section.

17 **SECTION 15.** 182.0175 (1) (bz) of the statutes is created to read:

18 182.0175 (1) (bz) “State agency” has the meaning given in s. 16.004 (12) (a).

19 **SECTION 16.** 182.0175 (1m) (d) 8. to 12. of the statutes are created to read:

20 182.0175 (1m) (d) 8. Appoint a panel consisting of the following 7 members to
21 carry out the duties specified in sub. (3) (bg) and (br):

22 a. Two transmission facility owners.

23 b. Two excavators.

24 c. One employee of the operational center established under par. (a).

25 d. One member who represents the interests of a political subdivision.

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1 e. One person employed as an underground line locator.

2 9. Establish policies, procedures, and forms as necessary to implement the
3 requirements under sub. (3) (bg) and (br).

4 10. Provide for the production and administration of the educational course
5 under sub. (3) (br) 4.

6 11. Establish and maintain a damage prevention fund consisting of fees under
7 sub. (3) (br) 4. and (c) 5. and surcharges under sub. (3) (d) 2.

8 12. Use the damage prevention fund at the one-call system's discretion to pay
9 the cost of producing and administering the educational course under sub. (3) (br) 4.
10 or providing for public outreach and underground utility damage prevention
11 awareness programs.

12 **SECTION 17.** 182.0175 (2) (am) (title) of the statutes is amended to read:

13 182.0175 (2) (am) (title) *Excavation notice and other duties.*

14 **SECTION 18.** 182.0175 (2) (am) 3. of the statutes is renumbered 182.0175 (2) (as)

15 1. and amended to read:

16 182.0175 (2) (as) 1. ~~Maintain~~ An excavator shall maintain an estimated
17 minimum clearance of 18 inches between a marking for an unexposed underground
18 transmission facility that is marked under sub. (2m) and the cutting edge or point
19 of any power-operated excavating or ~~earth-moving~~ earthmoving equipment, except
20 as is necessary at the beginning of the excavation process to penetrate and remove
21 the surface layer of pavement.

22 2. When the an underground transmission facility becomes exposed or if the
23 a transmission facility is already exposed, the excavator may reduce the clearance
24 to 2 times the known limit of control of the cutting edge or point of the equipment or
25 12 inches, whichever is greater.

ASSEMBLY BILL 532**SECTION 19**

1 **SECTION 19.** 182.0175 (2) (am) 7. of the statutes is amended to read:

2 182.0175 (2) (am) 7. Immediately notify the owner of a transmission facility if
3 an inspection reveals that the transmission facility has been or may have been
4 struck, damaged, dislocated, or disrupted and, if flammable, toxic, or corrosive gas
5 or liquid has escaped that may endanger life, cause bodily harm, or result in damage
6 to property, promptly make a report to the 911 emergency telephone number.

7 **SECTION 20.** 182.0175 (2) (as) (title) of the statutes is created to read:

8 182.0175 (2) (as) (title) *Minimum clearance.*

9 **SECTION 21.** 182.0175 (2) (as) 3. of the statutes is created to read:

10 182.0175 (2) (as) 3. For parallel-type excavations within 18 inches of an
11 underground transmission facility marked under sub. (2m), an excavator shall
12 comply with generally accepted excavation practices, including the requirements
13 under subd. 1., and shall visually identify the underground transmission facility by
14 digging test holes at intervals not to exceed 50 feet along the line of excavation to
15 avoid damages. An excavator shall exercise due care at all times to protect
16 underground transmission facilities when exposing those facilities.

17 **SECTION 22.** 182.0175 (2) (bm) (title) of the statutes is amended to read:

18 182.0175 (2) (bm) (title) *Notice contents.*

19 **SECTION 23.** 182.0175 (2m) (b) (intro.) of the statutes is amended to read:

20 182.0175 (2m) (b) *Facilities marking.* (intro.) A person owning transmission
21 facilities, upon receipt of an excavation notice, shall mark in a reasonable manner
22 the locations of transmission facilities at the area described in the notice to enable
23 the excavator to locate the transmission facilities without endangering the security
24 of the facilities or the public. For purposes of this paragraph, transmission facilities
25 are marked in a reasonable manner if the owner of the transmission facilities locates

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1 and marks the transmission facilities to a level of accuracy and precision consistent
2 with national standards. Except as provided in par. (bm), if the person is a local
3 governmental unit and if the excavation notice relates to sewer or water facilities
4 owned by the local governmental unit, the local governmental unit shall also mark
5 the locations within the public right-of-way of all laterals connected to the sewer or
6 water facilities at the area described in the notice. The marking of facilities shall be
7 completed within 3 working days after receipt of the notice, or if notice is given more
8 than 10 days before excavation is scheduled to begin, marking shall be completed at
9 least 3 working days before excavation is scheduled to begin. If the approximate
10 location of a transmission facility is marked with paint, flags, stakes or other
11 physical means, the following color coding of lines, cables or conduits shall comply
12 with the uniform color code adopted by the American National Standards Institute:

13 **SECTION 24.** 182.0175 (3) (title) of the statutes is repealed and recreated to
14 read:

15 182.0175 (3) (title) ENFORCEMENT.

16 **SECTION 25.** 182.0175 (3) (a) (title) of the statutes is renumbered 182.0175 (3)
17 (d) (title) and amended to read:

18 182.0175 (3) (d) (title) *Forfeitures; surcharges.*

19 **SECTION 26.** 182.0175 (3) (a) of the statutes is renumbered 182.0175 (3) (d) 1.
20 and amended to read:

21 182.0175 (3) (d) 1. Any In a consent agreement under par. (c) 2. or order issued
22 under par. (c) 4., the commission may directly assess a forfeiture against a person
23 who willfully and knowingly violates or aids in a violation of this section may be
24 required to forfeit \$2,000 of no more than \$25,000 for each offense violation. Each
25 day of continued violation constitutes a separate offense violation. The commission

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1 shall remit the forfeitures to the secretary of administration for deposit in the school
2 fund. No other forfeiture may be imposed for violating or aiding in a violation of this
3 section.

4 **SECTION 27.** 182.0175 (3) (b) of the statutes is renumbered 182.0175 (3) (h).

5 **SECTION 28.** 182.0175 (3) (bg), (br) and (c) of the statutes are created to read:

6 182.0175 (3) (bg) *Complaints.* 1. Except as provided in subd. 4., any of the
7 following may file a written complaint with the panel that a person other than a state
8 agency has violated or aided in the violation of this section:

9 a. The one-call system.

10 b. The department of transportation or a political subdivision, if property under
11 the jurisdiction of the department or political subdivision is affected by an alleged
12 violation of this section.

13 c. A transmission facility owner, excavator, or underground line locator whose
14 property or activities are affected by an alleged violation of this section.

15 2. Except as provide in subd. 4., a person specified in subd. 1. a. to c. may file
16 a written complaint with the commission that a state agency has violated or aided
17 in the violation of this section. If the complaint also involves a respondent that is not
18 a state agency, the commission may consider and determine the complaint against
19 each respondent separately and at such times as the commission prescribes.

20 3. A written complaint under subd. 1. or 2. shall include all of the following

21 a. A short plain statement of the complaint that identifies the transaction or
22 occurrence or series of transactions or occurrences for which the complaint arises and
23 that shows that the person or state agency has violated or aided in the violation of
24 this section.

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1 b. A statement of the provisions of statutes, rules, or commission orders that
2 the person or state agency is alleged to have violated or aided in violation.

3 c. Copies of all records and papers on which the complaint is founded.

4 4. No person may file a complaint under subd. 1. or 2. more than 120 days after
5 the person discovers an alleged violation of this section, except that the panel or
6 commission may for good cause shown allow filing no later than one year after the
7 discovery of the alleged violation.

8 5. No complaint filed under subd. 1. or 2. may be dismissed solely because of
9 the absence of direct damage to the complainant.

10 (br) *Panel duties.* 1. Upon receipt of a complaint filed under par. (bg) 1., the
11 panel shall provide the respondent, by certified mail, a statement of the complaint
12 and a notice requiring the respondent to file a response with the panel within 20 days
13 after the date of service of the notice. The notice shall also advise the respondent of
14 the amount of the fee required for completion of the educational course under subd.
15 4. Upon request of the respondent, the panel may extend the period for filing the
16 response. The panel may consolidate complaints where appropriate. In the
17 response, the respondent shall admit or deny the violation or aiding in a violation
18 that is alleged in the complaint or advise the panel that, based on the respondent's
19 satisfaction of the complaint, the complainant has agreed to dismiss the complaint.

20 2. Within the period specified in subd. 3., the panel shall determine by majority
21 vote whether there is probable cause to believe that the respondent has violated or
22 aided in the violation of this section or whether to dismiss the complaint. The panel
23 shall dismiss a complaint for lack of probable cause or at the request of the
24 complainant. Except as provided in subd. 4., if the panel determines there is
25 probable cause to believe that a respondent violated or aided in the violation of this

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1 section, the panel shall refer the complaint to the commission and include the
2 complaint and the response of the respondent.

3 3. The panel shall make a determination regarding probable cause under subd.
4 2. within one of the following periods:

5 a. If a respondent files a response within the period specified or extended under
6 subd. 1., within 20 days after the respondent files the response.

7 b. If a respondent fails to file a response within the period specified in subd. 1.
8 and the panel has not extended the period under subd. 1., within 40 days after the
9 panel's service of the notice under subd. 1.

10 c. If the panel has extended the period under subd. 1. and the respondent fails
11 to file a response within the extended period, within 20 days after expiration of the
12 extended period.

13 4. If the panel determines there is probable cause to believe that a respondent
14 violated or aided in the violation of this section, the panel may allow the respondent
15 to attend an educational course in lieu of providing notice of probable violation to the
16 commission under subd. 2. The one-call system shall require a respondent who
17 agrees to attend the educational course to pay a fee before completion of the course
18 for recovering a portion of the cost of producing the educational course and the direct
19 cost of administering the educational course for the respondent. The one-call system
20 shall deposit any fees collected in the damage prevention fund.

21 (c) *Commission duties.* 1. Upon the filing of a complaint under par. (bg) 2. or
22 receipt of a referral under par. (br) 2., the commission may, with or without notice,
23 investigate the complaint as it considers necessary to determine if sufficient cause
24 exists to warrant a hearing on the complaint. If the commission determines that
25 sufficient cause exists to warrant a hearing on the complaint, the commission shall

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1 set the matter for a public hearing upon 10 days' notice and treat the complaint as
2 a contested case. If the commission determines that sufficient cause does not exist
3 to warrant a hearing on the complaint, and within 30 days of that determination the
4 complainant or respondent disputes that determination, the commission shall treat
5 the complaint as a contested case.

6 2. At any time before the commission issues an order under subd. 4., the
7 commission and the respondent may agree to dismiss the complaint by joint
8 execution of a consent agreement. A consent agreement shall become effective when
9 the commission issues an order approving the consent agreement.

10 3. A consent agreement under subd. 2. may assess against the respondent a
11 forfeiture under par. (d) 1., require the respondent to attend the educational course
12 under par. (br) 4., or do both. Each consent agreement under subd. 2. shall include
13 all of the following:

14 a. An admission by the respondent of all jurisdictional facts.

15 b. An express waiver of any further procedural steps and of the right to seek
16 judicial review or otherwise challenge or contest the validity of the commission's
17 order approving the consent agreement.

18 c. A statement of the actions required of the respondent and the time by which
19 the actions shall be completed.

20 4. If a complaint is treated as a contested case under subd. 1. and not dismissed
21 under a consent agreement under subd. 2., the commission shall determine whether
22 probable cause exists to believe the respondent has violated or aided in the violation
23 of this section. If the commission determines that probable cause exists to believe
24 the respondent has violated or aided in the violation of this section, the commission
25 may issue an order that assesses a forfeiture under par. (d) 1., requires the

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1 respondent to attend the educational course under par. (br) 4., or does both. The
2 commission may not issue an order under this subdivision without a hearing.

3 5. If a consent agreement under subd. 2. or order under subd. 4. requires a
4 respondent to attend the educational course under par. (br) 4., the consent
5 agreement or order shall also require the respondent to pay the one-call system a fee
6 determined by the one-call system for the educational course, which the one-call
7 system shall deposit in the damage prevention fund.

8 **SECTION 29.** 182.0175 (3) (d) 2. of the statutes is created to read:

9 182.0175 (3) (d) 2. For each forfeiture assessed under subd. 1., the commission
10 shall require the person assessed to pay a surcharge equal to 10 percent of the
11 amount of the forfeiture to the one-call system, which the one-call system shall
12 deposit in the damage prevention fund. If the amount of a forfeiture is reduced on
13 appeal, the amount of the surcharge shall be proportionately reduced.

14 **SECTION 30.** 182.0175 (3) (e) of the statutes is created to read:

15 182.0175 (3) (e) *Presumption of validity.* Any order or determination of the
16 commission under this section is presumed valid. The burden is upon the person
17 claiming the order or determination to be invalid to plead and prove the facts
18 establishing the invalidity.

19 **SECTION 31.** 182.0175 (3) (f) of the statutes is created to read:

20 182.0175 (3) (f) *Judicial review.* Judicial review of an order of the commission
21 under par. (c) 4. may be had by any person aggrieved in the manner prescribed in ch.
22 227.

23 **SECTION 32.** 182.0175 (3) (g) of the statutes is created to read:

24 182.0175 (3) (g) *Rules.* The commission may promulgate rules implementing
25 the requirements under pars. (c) to (e).

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1 **SECTION 33.** 182.0175 (4) of the statutes is amended to read:

2 182.0175 (4) RIGHT OF ACTION. ~~This~~ Except as provided in sub. (3) (d) 1. and (e),
3 this section shall not affect any right of action or penalty which this state or any
4 person may have.

5 **SECTION 34.** 182.0175 (5) of the statutes is amended to read:

6 182.0175 (5) RIGHT TO INJUNCTION. If any person engages in or is likely to
7 engage in excavation inconsistent with this section and which results or is likely to
8 result in damage to transmission facilities, the person who owns or operates the
9 facilities may seek injunctive relief in the circuit court for the county in which the
10 transmission facilities are located. If the transmission facilities are owned or
11 operated by a public utility as defined in s. 196.01 (5), including a
12 telecommunications carrier, as defined in s. 196.01 (8m), and the public utility does
13 not seek injunctive relief, the attorney general, upon request of the ~~public service~~
14 commission, shall seek injunctive relief in the circuit court for the county in which
15 the transmission facilities are located.

16 **SECTION 35.** 196.025 (4) of the statutes is repealed.

17 **SECTION 36.** 196.025 (5) of the statutes is repealed.

18 **SECTION 37.** 196.025 (7) of the statutes is created to read:

19 196.025 (7) STATE ENERGY OFFICE. (a) The commission shall do all of the
20 following:

21 1. In cooperation with the other state agencies, collect, analyze, interpret, and
22 maintain the comprehensive data needed for effective state agency energy planning
23 and effective review of those plans by the governor and the legislature.

24 2. Administer federal energy grants, when so designated by the governor
25 pursuant to s. 16.54.

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1 (b) The commission may provide technical assistance to units of government
2 other than the state to assist in the planning and implementation of energy efficiency
3 and renewable resources and may charge for those services. The commission may
4 request technical and staff assistance from other state agencies in providing
5 technical assistance to those units of government.

6 (c) The commission may require a public utility to provide energy billing and
7 use data regarding public schools, if the commission determines that the data is
8 necessary to provide technical assistance in the planning and implementation of
9 energy efficiency and renewable resources in public schools, including those with the
10 highest energy costs.

11 **SECTION 38.** 196.026 of the statutes is created to read:

12 **196.026 Settlements.** (1) All parties to dockets before the commission are
13 encouraged to enter into settlements when possible.

14 (2) In this section, "docket" means an investigation, proceeding, or other matter
15 opened by a vote of the commission, except for rule making.

16 (3) Parties to a docket may agree upon some or all of the facts. The agreement
17 shall be evidenced by a written stipulation filed with the commission or entered upon
18 the record. The stipulation shall be regarded and used as evidence in the docket.

19 (4) Parties to a docket may agree upon a resolution of some or all of the issues.
20 When a written settlement agreement is proposed by some of the parties, those
21 parties shall submit to the commission the settlement agreement and any
22 documents, testimony, or exhibits, including record citations if there is a record, and
23 any other matters those parties consider relevant to the proposed settlement and
24 serve a copy of the settlement agreement upon all parties to the docket.

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1 (5) If a proposed settlement agreement is not supported by all parties, the
2 settling parties shall convene at least one conference with notice and opportunity to
3 participate provided to all parties for the purpose of discussing the proposed
4 settlement agreement. A nonsettling party may waive its right to the conference
5 provided in this subsection.

6 (6) Within 30 days of service of a settlement agreement under sub. (4), each
7 party to the docket shall respond in writing by filing and serving on all parties the
8 party's agreement, objection, or nonobjection to the settlement agreement. Failure
9 to respond in writing within 30 days of service, unless a different time is set by the
10 commission for good cause, shall constitute nonobjection to the settlement
11 agreement. A party objecting to a settlement agreement shall state all objections
12 with particularity and shall specify how the party would be adversely affected by
13 each provision of the settlement agreement to which the party objects.

14 (7) The commission may approve a settlement agreement under sub. (4) if all
15 of following conditions are met:

16 (a) All of the following have been given a reasonable opportunity to present
17 evidence and arguments in opposition to the settlement agreement:

18 1. Each party that has filed an objection or nonobjection to the settlement
19 agreement under sub. (6).

20 2. Each party whose failure to respond in writing constitutes a nonobjection to
21 the settlement agreement under sub. (6).

22 (b) The commission finds that the public interest is adequately represented by
23 the parties who entered into the settlement agreement.

24 (c) The commission finds that the settlement agreement represents a fair and
25 reasonable resolution to the docket, is supported by substantial evidence on the

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1 record as a whole, and complies with applicable law, including that any rates
2 resulting from the settlement agreement are just and reasonable.

3 (8) The commission may approve a settlement agreement under sub. (4) in
4 whole or in part and with conditions deemed necessary by the commission. If the
5 settlement agreement does not resolve all of the issues in the docket, the commission
6 shall decide the remaining issues in accordance with applicable law and procedure.

7 **SECTION 39.** 196.192 (2) (am) of the statutes, as affected by 2017 Wisconsin Act
8 58, is repealed.

9 **SECTION 40.** 196.192 (2) (bm) of the statutes, as affected by 2017 Wisconsin Act
10 58, is renumbered 196.192 (2) (bm) (intro.) and amended to read:

11 196.192 (2) (bm) (intro.) The Except as provided in par. (br), the commission
12 shall approve market-based rates ~~that are consistent with the options specified in~~
13 ~~par. (am), except that the~~ for each investor-owned electric public utility that satisfy
14 all of the following:

15 (br) The commission may not approve a market-based rate under par. (bm)
16 unless the commission determines that the rate will not harm shareholders of the
17 investor-owned electric public utility or customers who are not subject to the rate.

18 **SECTION 41.** 196.192 (2) (bm) 1. and 2. of the statutes are created to read:

19 196.192 (2) (bm) 1. The rates result in customers receiving market-based
20 compensation for voluntary interruptions of firm load during peak periods of electric
21 use.

22 2. The rates include market-based pricing options and options for individual
23 contracts that allow a retail customer, through service from its existing public utility,
24 to receive market benefits and take market risks for the customer's purchases of
25 capacity or energy.

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1 **SECTION 42.** 196.192 (2) (c) of the statutes, as affected by 2017 Wisconsin Act
2 58, is amended to read:

3 196.192 **(2)** (c) Subject to any approval of the commission that is necessary, an
4 electric public utility that is not an investor-owned electric public utility may
5 implement market-based rates approved under par. (bm) ~~or implement the options~~
6 ~~in filings under par. (am) that are approved by the commission.~~

7 **SECTION 43.** 196.192 (3m) of the statutes, as affected by 2017 Wisconsin Act 58,
8 is amended to read:

9 196.192 **(3m)** Nothing in s. 196.20, 196.22, 196.37, 196.60 or 196.604 prohibits
10 the commission from approving a filing under sub. ~~(2) (am) or (2m) (a)~~ or approving
11 market-based rates under sub. (2) (bm) or (2m) (b).

12 **SECTION 44.** 196.193 (3) of the statutes is amended to read:

13 196.193 **(3)** DETERMINATION OF AN OVERALL RATE OF RETURN. Not later than
14 March 1 annually, the commission shall set the overall rate of return to be applicable
15 to municipally owned water public utilities or municipally owned combined water
16 and sewer public utilities for rate increases under this section. ~~The overall rate of~~
17 ~~return shall be equal to the simple average, rounded to the nearest tenth of 1 percent,~~
18 ~~of commission shall consider the interest rates listed for state and local bonds in the~~
19 ~~Federal Reserve Statistical Release H.15 (519) published by the federal reserve~~
20 ~~board, for the last quarter of the prior year, plus 2 percent setting the overall rate of~~
21 ~~return.~~ The overall rate of return need not be defined by rule.

22 **SECTION 45.** 196.49 (5g) (ag) of the statutes is amended to read:

23 196.49 **(5g)** (ag) In this subsection, “rebuild” means the replacement of all or
24 part of an existing electric transmission line and associated facilities ~~to increase the~~

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1 ~~line's capacity to carry current at the same voltage, including conductors, insulators,~~
2 ~~transformers, or structures, for operation at the same voltage.~~

3 **SECTION 46.** 196.49 (5g) (ar) 2m. b. of the statutes is amended to read:

4 196.49 (5g) (ar) 2m. b. ~~The~~ Not more than one-half mile of the centerline of the
5 rebuilt electric transmission line is located ~~within~~ more than 60 feet on either side
6 of the centerline of an existing electric transmission line operating at a nominal
7 voltage of 69 kilovolts or more. In this subd. 2m. b., "centerline" has the meaning
8 given in s. 196.491 (4) (c) 1e.

9 **SECTION 47.** 196.49 (5g) (ar) 2m. c. of the statutes is amended to read:

10 196.49 (5g) (ar) 2m. c. The project requires the acquisition in total of one-half
11 mile or less of rights-of-way from landowners from which rights-of-way ~~were~~ would
12 ~~not be~~ required to be acquired for the existing electric transmission line specified in
13 subd. 2m. b.

14 **SECTION 48.** 196.491 (4) (c) 1m. (intro.) of the statutes is amended to read:

15 196.491 (4) (c) 1m. (intro.) Except as provided in subd. 1s., a certificate under
16 sub. (3) is not required for a person to construct a high-voltage transmission line
17 designed for operation at a nominal voltage of less than 345 kilovolts if not more than
18 one-half mile of the centerline of the new high-voltage transmission line is located
19 ~~within~~ more than 60 feet on either side of the centerline of an existing electric
20 transmission line operating at a nominal voltage of 69 kilovolts or more and the
21 applicant demonstrates all of the following apply:

22 **SECTION 49.** 196.491 (4) (c) 1m. a. of the statutes is amended to read:

23 196.491 (4) (c) 1m. a. ~~That the~~ The project will not have undue adverse
24 environmental impacts.

25 **SECTION 50.** 196.491 (4) (c) 1m. b. of the statutes is amended to read:

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1 196.491 (4) (c) 1m. b. ~~That the~~ The new high-voltage transmission line requires
2 the acquisition in total of one-half mile or less of rights-of-way from landowners
3 from which rights-of-way were would not be required to be acquired for the existing
4 electric transmission line.

5 **SECTION 51.** 196.595 (1) (c) of the statutes is amended to read:

6 196.595 (1) (c) “Public utility” in this section means any public utility, as
7 defined in s. 196.01, engaged in the transmission, delivery, or furnishing of natural
8 gas by means of pipes or mains, heat, light, water, or power. “Public utility” does not
9 include any cooperative association organized under ch. 185.

10 **SECTION 52.** 201.10 (1) of the statutes is repealed.

11 **SECTION 53.** 201.10 (2) of the statutes is amended to read:

12 201.10 (2) ~~The fee provisions of sub. (1) shall not apply, but the provisions of~~
13 sub. (3) shall apply, to the issuance, renewal or assumption by a public service
14 corporation which is a public utility as defined in the federal power act, of evidences
15 of indebtedness maturing not more than one year after the date of issue, renewal or
16 assumption thereof.

17 **SECTION 54.** 348.17 (3) of the statutes is amended to read:

18 348.17 (3) During an energy emergency, after consultation with the
19 ~~department of administration~~ public service commission, the department may waive
20 the divisible load limitation of s. 348.25 (4) and authorize for a period not to exceed
21 30 days the operation of overweight vehicles having a registered gross weight of
22 50,000 pounds or more and carrying energy resources or fuel or milk commodities
23 designated by the governor or a designee, regardless of the highways involved, to
24 conserve energy. Such authorization may only allow weights not more than 10
25 percent greater than the gross axle and axle combination weight limitations, and not

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1 more than 15 percent greater than the gross vehicle weight limitations under ss.
2 348.15 and 348.16. Nothing in this subsection shall be construed to permit the
3 department to waive the requirements of ss. 348.05 to 348.07. This subsection does
4 not apply to vehicles on highways designated as parts of the national system of
5 interstate and defense highways, except for the I 39 corridor and the I 41 corridor.

6 **SECTION 55.** 348.17 (4) of the statutes is amended to read:

7 348.17 (4) During an energy emergency, after consultation with the
8 ~~department of administration~~ public service commission, the department may
9 authorize motor vehicles that have a gross weight of 26,000 pounds or less and that
10 are transporting propane or heating oil for delivery to residences, businesses, or
11 other end users to exceed any special weight limitation imposed under ss. 348.17 (1)
12 and 349.16 (1) (a) and (2) in connection with the thawing of frozen highways. Any
13 person operating a motor vehicle as authorized under this subsection shall, to the
14 extent practicable, deliver propane or heating oil at times of the day when the
15 highways used are the least vulnerable.

16 **SECTION 56. Initial applicability.**

17 (1) SETTLEMENTS. The treatment of section 196.026 of the statutes first applies
18 to dockets, as defined in section 196.026 (2) of the statutes, that are first opened on
19 the effective date of this subsection.

20 (END)