



State of Wisconsin
2003 - 2004 LEGISLATURE

LRBs0251/1
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**SENATE SUBSTITUTE AMENDMENT 1,
TO 2003 SENATE BILL 300**

November 4, 2003 - Offered by Senator COWLES.

1 **AN ACT** *to repeal* 196.491 (3) (g) 1m.; *to renumber* 85.02 and 196.491 (3) (h); *to*
2 *renumber and amend* 30.025 (1), 196.491 (3) (g) 1. and 196.491 (4) (c); *to*
3 *amend* 15.795 (1), 16.969 (4), 30.02 (1), 30.02 (2), 30.025 (title), 30.025 (2),
4 30.025 (3) (intro.), 30.025 (4), 66.0119 (1) (a), 79.04 (7) (c) 1m., 91.75 (4), 196.025
5 (2) (intro.), 196.491 (3) (a) 1., 196.491 (3) (a) 3. a., 196.491 (3) (b), 196.491 (3) (d)
6 (intro.), 196.491 (3) (e), 196.491 (3) (gm) and 196.491 (3) (j); and *to create* 1.12
7 (6), 23.09 (22m), 30.025 (1b), 30.025 (1e), 30.025 (1m), 30.025 (1s) (title), 30.025
8 (1s) (b), 30.025 (2g), 30.025 (2s), 30.025 (3m), 30.206 (1m), 32.03 (5) (c), 79.04
9 (6) (c) 3., 79.04 (7) (d), 85.02 (2), 196.02 (5m), 196.025 (1m), 196.025 (2m), 196.20
10 (7), 196.49 (4), 196.491 (3) (d) 8., 196.491 (3b), 196.491 (4) (c) 2., 196.491 (4) (c)
11 3. and 196.491 (6) (title) of the statutes; **relating to:** construction of certain

1 public utility facilities, utility aid payments, utility condemnations, and
2 granting rule-making authority.

Analysis by the Legislative Reference Bureau

This substitute amendment does all of the following: 1) changes requirements for the Public Service Commission (PSC) to approve the construction of certain public utility projects; 2) changes requirements for the Department of Natural Resources (DNR) to issue permits that are required for the construction of certain public utility projects; 3) changes requirements for the PSC and DNR to consider the environmental impacts of such projects; 3) declares a state policy regarding the siting of electric transmission facilities; 4) modifies utility aid payments; and 5) allows electric utilities to negotiate with property owners regarding condemnations.

PSC requirements

Under current law, with certain exceptions, a person may not begin the construction of certain electric generating facilities or high-voltage transmission lines before the PSC has issued a certificate of public convenience and necessity to the person. A “high-voltage transmission line” is defined as a line of more than one mile in length that is designed to operate at 100 or more kilovolts. Current law specifies the procedure that a person must follow to apply for a certificate to construct electric generating facilities or high-voltage transmission lines. In addition, current law specifies the findings that the PSC must make before issuing a certificate.

The substitute amendment changes an exemption under current law that applies to the construction of certain high-voltage transmission lines. Under current law, a certificate is not required if the line operates at 230 or less kilovolts, and if all construction activity takes place entirely within an existing electric transmission right-of-way. The substitute amendment changes the exemption to apply to a line that operates at 345 or less kilovolts. The substitute amendment also provides that construction of a line that qualifies for the exemption may proceed even if it is prohibited by a local ordinance.

The substitute amendment also creates an expedited procedure for obtaining a certificate for constructing a high-voltage transmission line. The procedure applies only if the construction is limited to adding conductors to existing transmission poles or towers and if all construction activity takes place entirely within an existing electric transmission right-of-way. The PSC must promulgate rules for applying for a certificate under the expedited procedure. If the PSC receives an application that complies with the rules, the PSC must, as soon as practicable, notify the applicant that the PSC has received a complete application. After a complete application is received, the applicant is considered to have been issued a certificate, unless the PSC notifies the applicant within 30 days after the PSC receives a complete application that the public interest requires the applicant to obtain the PSC’s approval for the construction. If the PSC makes such a notification, the substitute amendment requires the applicant to obtain a certificate that is

required under current law for certain public utility construction projects, rather than the certificate of public convenience and necessity that is described above.

In addition, the substitute amendment changes requirements under current law that apply to an application for a certificate to construct an electric generating facility or a high-voltage transmission line that is subject to regulatory approval in another state. Under current law, the PSC must complete action on an application within 180 days after the application is complete. (Current law also provides for an extension of this deadline under certain circumstances.) However, current law creates an exemption from the deadline if another state is also taking action on such a facility or line. This substitute amendment eliminates the exemption to the deadline.

The substitute amendment also makes the following changes:

1. The substitute amendment allows the PSC to use a procedure under current law to obtain an inspection warrant for the purpose of inspecting property to gather information related to preparing or reviewing an application for a certificate described above or a certificate required for certain other nontelecommunications utility projects (such as, for example, the construction of a natural gas pipeline). The substitute amendment specifies that the information that may be gathered includes any information necessary to evaluate environmental features or effects that are relevant to such an application.

2. The substitute amendment allows a county, town, village, or city that receives certain distributions that are funded with fees paid by persons that construct high-voltage transmission lines to use the distributions for any purpose, if the PSC finds that the purpose is in the public interest. Under current law, such distributions may be used only for park, conservancy, wetland, or other similar environmental programs.

3. The substitute amendment requires the PSC to consider whether, to the extent practicable, brownfields are used when a person applies for a certificate to construct electric generating facilities. "Brownfields" are defined as abandoned, idle, or underused industrial or commercial facilities or sites, the expansion or redevelopment of which is adversely affected by actual or perceived environmental contamination.

4. The substitute amendment requires a person who applies for a certificate to construct a high-voltage line to submit a detailed project plan to DNR. Under current law, the type of plan that a person must submit to DNR for such a line is called an engineering plan, instead of a project plan.

5. The substitute amendment requires a person who applies for a certificate of public convenience and necessity for certain electric generating facilities or high-voltage transmission lines to provide a brief description of the anticipated effects of the facility or line on air and water quality, wetlands, solid waste disposal capacity, and other natural resources. Current law limits the description to effects on air and water quality.

DNR requirements

Generally, under current law, a person proposing to construct a utility facility in a manner that requires the placement of a structure in navigable waters or that

involves the construction or maintenance of a dam is required to obtain one or more permits from DNR. Current law requires DNR to hold a public hearing before granting certain of these permits. Current law also prohibits a person from discharging dredged or fill material into a nonfederal wetland unless the person is issued a water quality certification by DNR.

Under current law, electric utilities that propose to construct an electric generating facility or high-voltage transmission line adjacent to a waterway may use an optional permit procedure to obtain certain DNR permits. Under that optional procedure, if the utility must obtain more than one permit from DNR relating to the placement of structures in navigable waters or the construction or maintenance of a dam, the utility may, instead of submitting separate applications for the permits, submit an engineering plan to DNR. If the utility submits an engineering plan instead of separate applications for permits, DNR is required to schedule the entire matter for a public hearing, rather than scheduling separate hearings for each permit application. After the hearing, DNR must grant all of the necessary permits if certain conditions are met.

This substitute amendment provides that any utility facility, other than a telecommunications facility, that is required to obtain a certificate from the PSC and that is also required to obtain one or more permits from DNR for the placement of a structure in navigable waters, or for the construction or maintenance of a dam, or to obtain a water quality certification for discharging material in a nonfederal wetland, must use a procedure that requires the utility facility to submit only one application for all of those permits. Under that procedure, a person proposing to construct a utility facility must first notify DNR of its intention to file an application. After DNR receives the notice, DNR must confer with that person and, in cooperation with the PSC, make certain assessments and analyses concerning the project. The substitute amendment provides that once the application is completed, DNR may schedule the matter for a public hearing. The hearing may not be conducted as a contested case hearing. In a contested case, all parties must be given an opportunity for a hearing and must be given the opportunity to present evidence.

Under the substitute amendment, DNR must grant the permits for the utility facility if DNR makes certain findings, including that the proposal complies with certain environmental statutes and that it does not unduly affect public rights and interests in navigable waterways. The substitute amendment requires DNR to grant or deny the application within 30 days of the date on which the PSC issues its decision on the utility's application for a certificate.

The substitute amendment also specifies that as a part of this permit procedure DNR must review the proposed utility facility to assess whether the location, site, or route is capable of meeting the criteria for obtaining the required permits from DNR and must provide this information to the PSC. DNR must also participate in PSC investigations or proceedings relating to the application for a certificate of public convenience and necessity for the utility facility. The substitute amendment provides that if the PSC issues the certificate for that utility facility, after considering DNR's participation in the PSC's proceedings and after considering certain other factors, DNR may not require the applicant to make any further analysis of utility

facility alternatives, except that DNR may identify adjustments that may be required to address permitting issues within the location, site, or route for which the certificate is issued.

Under current law, for certain activities affecting navigable waters that are undertaken by riparian owners, or for activities relating to the construction, dredging, or enlarging of certain waterways, DNR may issue general permits authorizing a class of activities. This substitute amendment requires DNR to issue a general permit for the construction of those high-voltage transmission line projects to which the expedited procedure created in this substitute amendment for obtaining a certificate from the PSC applies.

Environmental impacts

Current law requires state agencies, including the PSC and DNR, to consider the environmental impacts of proposed actions, including proposals to issue the certificates, permits, and approvals described above. These requirements were created by the Wisconsin Environmental Policy Act (WEPA). The PSC and DNR have promulgated rules for complying with WEPA. Under these rules, the PSC or DNR must prepare an environmental impact statement (EIS) for major actions that significantly affect the quality of the human environment and an environmental assessment (EA) for actions that have the potential to significantly affect the quality of the human environment. Based on the results of an EA, the PSC or DNR may also prepare an EIS.

The substitute amendment requires the PSC and DNR to coordinate their compliance with WEPA when the PSC and DNR receive applications for certificates, permits, and approvals that are required from both the PSC and DNR for the construction of electric generating facilities and high-voltage transmission lines and certain other nontelecommunications utility projects (such as, for example, construction of a natural gas pipeline). The substitute amendment also requires such coordination when public utilities that are not telecommunications utilities apply to the PSC for certificates authorizing other types of construction projects. Such coordination is also required when a natural gas utility applies to the PSC for a certificate authorizing a project involving switching sources of natural gas supplies.

Under the substitute amendment, if the rules of either the PSC or DNR require the preparation of an EIS for an application for a certificate, permit, or approval described above, the PSC and DNR must cooperatively prepare an EIS. If neither agency's rules require an EIS, but either agency's rules require an EA, the PSC and DNR must cooperatively prepare an EA. The joint EIS or EA that is required under the substitute amendment must include all of the information necessary for both the PSC and DNR to comply with WEPA. In addition, the substitute amendment does not waive the duty of the PSC or DNR to comply with WEPA, except that the PSC and DNR are only required to consider the project that is the subject of the application and one alternative to the project. Under current law, the PSC and DNR must consider more than one alternative under WEPA. In addition, the substitute amendment does not waive any duty of the PSC or DNR to take any other action required by law regarding the project.

The substitute amendment also specifies that the PSC is not required to prepare an EIS for construction of a high-voltage line that does not require a certificate from the PSC. As discussed above, this exemption is changed by the substitute amendment to apply to certain construction activities related to high-voltage transmission lines that operate at 345 or less kilovolts. Although an EIS is not required, the substitute amendment requires the PSC to prepare an EA for construction that is subject to the exemption, but only if the PSC's rules require an EA for the construction.

State policy on siting of electric transmission facilities

Current law makes certain declarations of state energy policy, including goals for conserving energy and meeting energy demands. This substitute amendment declares a new policy regarding the siting of new electric transmission facilities, including high-voltage transmission lines. The substitute amendment provides that, in the siting of such facilities, it is state policy to utilize the following corridors in the following order of priority: 1) existing utility corridors; 2) highway and railroad corridors; 3) recreational trails; and 4) new corridors. The corridors must be utilized in such a manner to the greatest extent feasible that is consistent with economic and engineering considerations, reliability of the electric system, and protection of the environment. Also, recreational trails must be utilized to the extent that facilities may be constructed below ground and do not significantly impact environmentally sensitive areas.

The substitute amendment also directs the PSC, DNR, and Department of Transportation to implement the policy described above in making all decisions, rules, and orders affecting the siting of new electric transmission facilities.

Utility aid payment

Under current law, generally, each municipality and county in which a power production plant is located annually receives utility aid payments based on the net value of the production plant. Beginning with utility aid payments in 2005, each municipality and county in which a production plant is located will receive a payment based on the megawatt capacity of the production plant, if the plant began operating after December 31, 2003. If a plant is located in more than one municipality, the payment is divided among the municipalities in which the plant is located based on the net value of that portion of the plant located in each municipality. Under this substitute amendment, if a plant is located in more than one county, the payment is divided among the counties in which the plant is located based on the net value of that portion of the plant located in each county.

Under current law, for production plants that begin operating after December 31, 2003, each municipality and county in which such a production plant is located may receive an additional utility aid payment based on the production plant's megawatt capacity if the plant is built on the site of an existing or decommissioned production plant or on brownfields or if the plant is a baseload electric generating facility, derives energy from an alternative energy resource, or is a cogeneration production plant. Under this substitute amendment, if such a production plant is located in more than one municipality or county, the payment is divided among the

municipalities or counties in which the plant is located based on the net value of that portion of the plant located in each municipality or county.

Under current law, a county or municipality that receives a utility aid payment based on a cogeneration production plant located in the county or municipality may not receive a payment based on a production plant that derives energy from an alternative energy resource and that is located in the county or municipality. Under this substitute amendment, a county or municipality that receives a utility aid payment based on a cogeneration production plant located in the county or municipality may also receive a payment based on a production plant that derives energy from an alternative energy resource, if the production plant that derives energy from an alternative energy resource is not the cogeneration production plant.

Under this substitute amendment, generally, an electric public utility may not recover in rates the cost of any payments paid to a local unit of government to mitigate the impact of an electric generating facility on the local unit of government, unless the agreement providing for the payments is received by the PSC before June 10, 2003, and the PSC finds the agreement to be reasonable.

Under current law, electric utilities (and other public utilities) are allowed, under certain circumstances, to acquire property by condemnation. For construction by an electric utility that requires a certificate of public convenience and necessity from the PSC, current law provides that the utility's authority to condemn property for the construction does not exist until the certificate is issued.

This substitute amendment allows an electric utility to negotiate with a property owner before a certificate is issued. However, the electric utility must advise the property owner that the electric utility does not have the right to condemn the property until the certificate is issued.

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

1 **SECTION 1.** 1.12 (6) of the statutes is created to read:

2 1.12 (6) SITING OF ELECTRIC TRANSMISSION FACILITIES. In the siting of new electric
3 transmission facilities, including high-voltage transmission lines, as defined in s.
4 196.491 (1) (f), it is the policy of this state that, to the greatest extent feasible that
5 is consistent with economic and engineering considerations, reliability of the electric
6 system, and protection of the environment, the following corridors should be utilized
7 in the following order of priority:

8 (a) Existing utility corridors.

1 (b) Highway and railroad corridors.

2 (c) Recreational trails, to the extent that the facilities may be constructed below
3 ground and that the facilities do not significantly impact environmentally sensitive
4 areas.

5 (d) New corridors.

6 **SECTION 2.** 15.795 (1) of the statutes is amended to read:

7 15.795 (1) OFFICE OF THE COMMISSIONER OF RAILROADS. There is created an office
8 of the commissioner of railroads which is attached to the public service commission
9 under s. 15.03, provided that s. 85.02 (1) does not apply to the office of the
10 commissioner of railroads. The commissioner of railroads shall have expertise in
11 railroad issues and may not have a financial interest in a railroad, as defined in s.
12 195.02 (1). The commissioner may not serve on or under any committee of a political
13 party. The commissioner shall hold office until a successor is appointed and
14 qualified.

15 **SECTION 3.** 16.969 (4) of the statutes is amended to read:

16 16.969 (4) A county, town, village, or city that receives a distribution under sub.
17 (3) (b) may use the distribution only for park, conservancy, wetland or other similar
18 environmental programs, unless the commission approves a different use under this
19 subsection. A county, town, village, or city that receives a distribution may request
20 in writing at any time that the commission approve a different use. The commission
21 shall make a decision no later than 14 days after receiving such a request. The
22 commission shall approve a request if it finds that the request is in the public
23 interest.

24 **SECTION 4.** 23.09 (22m) of the statutes is created to read:

1 23.09 **(22m)** SITING OF ELECTRIC TRANSMISSION FACILITIES. The department shall
2 implement the policy specified in s. 1.12 (6) in making all decisions, orders, and rules
3 affecting the siting of new electric transmission facilities.

4 **SECTION 5.** 30.02 (1) of the statutes is amended to read:

5 30.02 (1) ~~In Except as provided in s. 30.025, in~~ any proceeding under this
6 chapter where public notice is required, the department shall follow the procedures
7 in subs. (3) and (4).

8 **SECTION 6.** 30.02 (2) of the statutes is amended to read:

9 30.02 (2) ~~In Except as provided in s. 30.025, in~~ any proceeding under this
10 chapter where public notice is not required, the department shall follow the
11 procedures in subs. (3) and (4) if it determines that substantial interests of any party
12 may be adversely affected by the proceeding.

13 **SECTION 7.** 30.025 (title) of the statutes is amended to read:

14 **30.025** (title) ~~**Optional permit**~~ **Permit procedure for certain electric**
15 **generating facilities and high-voltage transmission lines utility facilities.**

16 **SECTION 8.** 30.025 (1) of the statutes is renumbered 30.025 (1s) (a) and
17 amended to read:

18 30.025 (1s) (a) Any electric utility, ~~as defined in s. 196.491 (1) (d), person~~
19 proposing to construct a utility facility, ~~as defined in s. 196.491 (1) (e), which facility~~
20 is to be located adjacent to a waterway in such a manner as to require one or more
21 permits to be issued under this chapter and ch. 31 ~~may to which this section applies~~
22 shall, in lieu of separate application for permits ~~under those chapters~~, submit an
23 ~~engineering plan~~ one application for permits together with any additional
24 information required by the department. ~~Such plan~~ The application shall be filed
25 with the department ~~within 20 days after~~ at the same time that an application for

1 a certificate of ~~public convenience and necessity~~ is filed with the ~~public service~~
2 commission under s. 196.49 or in a manner consistent with s. 196.491 (3) and shall
3 include the detailed information that the department requires to determine whether
4 an application is complete and to carry out its obligations under sub. (4). The
5 department may require supplemental information to be furnished thereafter.

6 **SECTION 9.** 30.025 (1b) of the statutes is created to read:

7 30.025 (1b) DEFINITIONS. In this section:

8 (a) “Commission” means the public service commission.

9 (b) “Permit” means a permit or approval required under this chapter or ch. 31,
10 a storm water discharge permit required under s. 283.33 (1) (a), or a water quality
11 certification required under s. 281.36 or under rules promulgated under subch. II of
12 ch. 281 to implement 33 USC 1341 (a).

13 (c) “Utility facility” means a project, as defined in s. 196.49 (3) (a), or a facility,
14 as defined in s. 196.491 (1) (e).

15 **SECTION 10.** 30.025 (1e) of the statutes is created to read:

16 30.025 (1e) APPLICABILITY. (a) Except as provided in par. (b), this section applies
17 to a proposal to construct a utility facility if the utility facility is required to obtain
18 one or more permits.

19 (b) This section does not apply to a proposal to construct a utility facility if the
20 only permit that the utility facility is required to obtain from the department is a
21 storm water discharge permit under s. 283.33 (1) (a).

22 **SECTION 11.** 30.025 (1m) of the statutes is created to read:

23 30.025 (1m) PREAPPLICATION PROCESS. Before filing an application under this
24 section, a person proposing to construct a utility facility shall notify the department
25 of the intention to file an application. After receiving such notice, the department

1 shall confer with the person, in cooperation with the commission, to make a
2 preliminary assessment of the project's scope, to make an analysis of alternatives,
3 to identify potential interested persons, and to ensure that the person making the
4 proposal is aware of all of the following:

5 (a) The permits that the person may be required to obtain.

6 (b) The information that the person will be required to provide.

7 (c) The timing of information submissions that the person will be required to
8 provide in order to enable the department to participate in commission review
9 procedures and to process the application in a timely manner.

10 **SECTION 12.** 30.025 (1s) (title) of the statutes is created to read:

11 30.025 (1s) (title) APPLICATION FOR PERMITS.

12 **SECTION 13.** 30.025 (1s) (b) of the statutes is created to read:

13 30.025 (1s) (b) A person who applies to the commission for a certificate under
14 s. 196.49 or 196.491 (3) is eligible to apply under par. (a) for any permit that the utility
15 facility may require and to receive such permit.

16 **SECTION 14.** 30.025 (2) of the statutes is amended to read:

17 30.025 (2) HEARING. Once ~~electric utilities have met~~ the applicant meets the
18 requirements of sub. ~~(1)~~ (1s) (a), the department ~~shall~~ may schedule the matter for
19 a public hearing. Notice of the hearing shall be given to the applicant and shall be
20 published as a class 1 notice under ch. 985. The department may give such further
21 notice as it deems proper, and shall give notice to persons requesting same. One copy
22 of the application shall be available for public inspection at the office of the
23 department, at least one copy in the ~~district~~ regional office of the department, and
24 at least one copy at the main public library, of the area affected. Notwithstanding

1 s. 227.42, the hearing shall be an informational hearing and may not be treated as
2 a contested case hearing nor converted to a contested case hearing.

3 **SECTION 15.** 30.025 (2g) of the statutes is created to read:

4 30.025 **(2g)** PARTICIPATION IN COMMISSION PROCEEDINGS. (a) The department
5 shall review every proposed utility facility subject to this section, including each
6 location, site, or route proposed for the utility facility, to assess whether each
7 proposed location, site, or route can meet the criteria for obtaining the required
8 permits, and shall provide that information to the commission.

9 (b) The department shall participate in commission investigations or
10 proceedings under s. 196.49 or 196.491 (3) with regard to any proposed utility facility
11 that is subject to this section. In order to ensure that the commission's decision is
12 consistent with the department's responsibilities, the department shall provide the
13 commission with information that is relevant to only the following:

- 14 1. Environmental issues that concern the proposed utility facility.
- 15 2. Public rights in navigable waters that may be affected by the proposed utility
16 facility.
- 17 3. Location, site, or route issues concerning the proposed utility facility,
18 including alternative locations, sites, or routes.

19 **SECTION 16.** 30.025 (2s) of the statutes is created to read:

20 30.025 **(2s)** CONSIDERATION OF ALTERNATIVES. (a) The department shall treat the
21 commission's decision under s. 196.49 or 196.491 (3) as concluding that there is no
22 practicable alternative for the utility facility if all of the following apply:

- 23 1. The department has participated in the commission's investigations or
24 proceedings under sub. (2g).

1 2. The commission's decision under s. 196.49 or 196.491 (3) is consistent with
2 the department's assessment and information under sub. (2g) considering those
3 factors required to be considered by the commission under s. 196.49 or 196.491 (3).

4 (b) If par. (a) applies, the department may not require the applicant for the
5 proposed utility facility to undertake further analysis of any utility facility
6 alternatives, including an analysis of alternative methods of meeting the need for the
7 project or alternative locations, sites, or routes in order to satisfy the criteria under
8 sub. (3). The department may identify adjustments that may be required to address
9 permitting issues within the location, site, or route approved by the commission
10 under s. 196.49 or 196.491 (3).

11 **SECTION 17.** 30.025 (3) (intro.) of the statutes is amended to read:

12 30.025 (3) PERMIT ISSUANCE. (intro.) The department shall grant the necessary
13 permits if, ~~after hearing,~~ it finds that the applicant has shown that the proposal:

14 **SECTION 18.** 30.025 (3m) of the statutes is created to read:

15 30.025 (3m) ENVIRONMENTAL ASSESSMENTS FOR CERTAIN PROJECTS. The
16 department is not required to prepare an environmental impact statement under s.
17 1.11 (2) (c) for the construction of a project that is specified in s. 196.491 (4) (c) 1. and
18 for which one or more permits are required, but shall prepare an environmental
19 assessment regarding the construction if the department's rules require an
20 environmental assessment.

21 **SECTION 19.** 30.025 (4) of the statutes is amended to read:

22 30.025 (4) PERMIT CONDITIONS. The permit may be issued upon stated
23 conditions deemed necessary to assure compliance with the criteria designated
24 under sub. (3). The department shall grant or deny the application ~~within the time~~
25 ~~limit applicable under s. 196.491 (3) (a) 3. b.~~ for a permit for the utility facility within

1 30 days of the date on which the commission issues its decision under s. 196.49 or
2 196.491 (3).

3 **SECTION 20.** 30.206 (1m) of the statutes is created to read:

4 30.206 **(1m)** The department shall issue a general permit under this section
5 for the construction of projects for which the commission is considered to have issued
6 a certificate under s. 196.491 (3b).

7 **SECTION 21.** 32.03 (5) (c) of the statutes is created to read:

8 32.03 **(5)** (c) This subsection does not prohibit an electric utility from
9 negotiating with the owner, or one of the owners, of a property, or the representative
10 of an owner, before the issuance of a certificate of public convenience and necessity,
11 if the electric utility advises the owner or representative that the electric utility does
12 not have the authority to acquire the property by condemnation until the issuance
13 of a certificate of public convenience and necessity.

14 **SECTION 22.** 66.0119 (1) (a) of the statutes is amended to read:

15 66.0119 **(1)** (a) “Inspection purposes” include includes such purposes as
16 building, housing, electrical, plumbing, heating, gas, fire, health, safety,
17 environmental pollution, water quality, waterways, use of water, food, zoning,
18 property assessment, meter and obtaining data required to be submitted in an initial
19 site report or feasibility report under subch. III of ch. 289 or s. 291.23, 291.25, 291.29
20 or 291.31 or an environmental impact statement related to one of those reports.
21 “Inspection purposes” also includes purposes for obtaining information specified in
22 s. 196.02 (5m) by or on behalf of the public service commission.

23 **SECTION 23.** 79.04 (6) (c) 3. of the statutes is created to read:

24 79.04 **(6)** (c) 3. For the purpose of determining the amount of the payment
25 under par. (b), if a production plant is located in more than one county, the payment

1 amount under par. (b) shall be divided among the counties in which the plant is
2 located based on the net book value of that portion of the plant located in each county
3 as of December 31, 2004, or as of the date on which the plant is operational,
4 whichever is later.

5 **SECTION 24.** 79.04 (7) (c) 1m. of the statutes, as created by 2003 Wisconsin Act
6 31, is amended to read:

7 79.04 (7) (c) 1m. Beginning with payments in 2005, if a cogeneration production
8 plant, as described in sub. (6) (a), is built and completed after December 31, 2003, and
9 has a name-plate capacity of at least one megawatt, each municipality and county
10 in which such a cogeneration production plant is located shall receive annually from
11 the public utility account a payment in an amount that is equal to the number of
12 megawatts that represents the cogeneration production plant's name-plate capacity,
13 multiplied by \$1,000. Any municipality or county that receives a payment under this
14 subdivision in any year may not receive a payment under subd. 1. in that year, if the
15 payment under subd. 1. is based on the same production plant as the payment under
16 this subdivision.

17 **SECTION 25.** 79.04 (7) (d) of the statutes is created to read:

18 79.04 (7) (d) For the purpose of determining the amount of any payment under
19 this subsection, if a production plant is located in more than one municipality or
20 county, the payment amount shall be divided among the municipalities or counties
21 in which the plant is located based on the net book value of that portion of the plant
22 located in each municipality or county as of December 31, 2004, or as of the date on
23 which the plant is operational, whichever is later.

24 **SECTION 26.** 85.02 of the statutes is renumbered 85.02 (1).

25 **SECTION 27.** 85.02 (2) of the statutes is created to read:

1 85.02 (2) The department shall implement the policy specified in s. 1.12 (6) in
2 making all decisions, orders, and rules affecting the siting of new electric
3 transmission facilities.

4 **SECTION 28.** 91.75 (4) of the statutes is amended to read:

5 91.75 (4) Such ordinances shall be considered local ordinances for purposes of
6 s. 196.491 (3) (i) and (4) (c) 3. and shall provide that gas and electric utility uses not
7 requiring authorization under s. 196.491 (3) are special exceptions or permitted or
8 conditional uses and are uses that are consistent with agricultural use.

9 **SECTION 29.** 196.02 (5m) of the statutes is created to read:

10 196.02 (5m) PROPERTY INSPECTIONS. The commission may inspect property for
11 the purpose of obtaining any information related to the preparation or review of an
12 application for a certificate under s. 196.49 or 196.491 (3), including any information
13 necessary to evaluate any environmental features or effects that are relevant to such
14 an application.

15 **SECTION 30.** 196.025 (1m) of the statutes is created to read:

16 196.025 (1m) The commission shall implement the policy specified in s. 1.12
17 (6) in making all decisions, orders, and rules affecting the siting of new electric
18 transmission facilities.

19 **SECTION 31.** 196.025 (2) (intro.) of the statutes is amended to read:

20 196.025 (2) (intro.) The commission shall promulgate rules establishing
21 requirements and procedures for the commission to carry out the duties under s.
22 1.11. Rules promulgated under this subsection shall include requirements and
23 procedures for the commission to comply with sub. (2m) and for each of the following:

24 **SECTION 32.** 196.025 (2m) of the statutes is created to read:

25 196.025 (2m) (a) In this subsection:

1 1. “Department” means the department of natural resources.

2 2. “Project” means a project or construction requiring a certificate under s.
3 196.49 or 196.491 (3) and requiring a permit or approval from the department.

4 (b) The commission and the department shall coordinate the execution of their
5 respective duties under s. 1.11 for any action of the commission or department
6 regarding a project as follows:

7 1. If the rules of either the commission or the department require the
8 commission or the department to prepare an environmental impact statement on the
9 project, the commission and the department shall cooperatively prepare an
10 environmental impact statement.

11 2. If subd. 1. does not apply and the rules of either the commission or the
12 department require the commission or the department to prepare an environmental
13 assessment on the project, the commission and the department shall cooperatively
14 prepare an environmental assessment.

15 3. The environmental impact statement or environmental assessment under
16 subd. 1. or 2. shall include all of the information required for both the commission
17 and the department to carry out their respective duties under s. 1.11.

18 (c) Paragraph (b) does not waive any duty of the commission or the department
19 to comply with s. 1.11 or to take any other action required by law regarding a project,
20 except that, notwithstanding s. 1.11 (2) (c) 3. and (e), the commission and the
21 department are required to consider only the project identified in the application for
22 the certificate under s. 196.49 or 196.491 (3) and one alternative to the project.

23 **SECTION 33.** 196.20 (7) of the statutes is created to read:

24 196.20 (7) (a) In this subsection, “mitigation payment” means, as approved by
25 the commission, an unrestricted or recurring monetary payment to a local unit of

1 government in which an electric generating facility is located to mitigate the impact
2 of the electric generating facility on the local unit of government. “Mitigation
3 payment” does not include payments made or in-kind contributions for restricted
4 purposes to directly address health or safety impacts of the electric generating
5 facility on the local unit of government.

6 (b) Except as provided in par. (c), an electric public utility may not recover in
7 rates any of the following:

8 1. The cost of mitigation payments paid by the utility.

9 2. The cost of mitigation payments paid by the owner or operator of an electric
10 generating facility that the owner or operator recovers from the utility by selling
11 electricity to the utility, by leasing the facility to the utility, or by any agreement
12 between the owner or operator of the electric generating facility and the public
13 utility.

14 (c) The commission shall only approve a mitigation payment agreement that
15 is received by the commission before June 10, 2003, and, if the commission finds the
16 agreement to be reasonable, shall not subsequently modify the agreement.

17 **SECTION 34.** 196.49 (4) of the statutes is created to read:

18 196.49 (4) The commission may not issue a certificate under sub. (1), (2), or (3)
19 for the construction of electric generating equipment and associated facilities unless
20 the commission determines that brownfields, as defined in s. 560.13 (1) (a), are used
21 to the extent practicable.

22 **SECTION 35.** 196.491 (3) (a) 1. of the statutes is amended to read:

23 196.491 (3) (a) 1. ~~No Except as provided in sub. (3b), no person may commence~~
24 the construction of a facility unless the person has applied for and received a
25 certificate of public convenience and necessity ~~from the commission as provided in~~

1 ~~this section~~ under this subsection. An application for a certificate issued under this
2 subsection shall be in the form and ~~containing~~ contain the information required by
3 commission rules ~~for such certificate~~ and shall be filed with the commission not less
4 than 6 months prior to the commencement of construction of a facility. Within 10
5 days after filing ~~the an~~ an application under this subdivision, the commission shall send
6 a copy of the application to the clerk of each municipality and town in which the
7 proposed facility is to be located and to the main public library in each such county.

8 **SECTION 36.** 196.491 (3) (a) 3. a. of the statutes is amended to read:

9 196.491 (3) (a) 3. a. At least 60 days before a person files an application under
10 subd. 1., the person shall provide the department with an engineering plan ~~showing~~
11 if the facility is a large electric generating facility or a detailed project plan if the
12 facility is a high-voltage transmission line. The engineering or project plan shall
13 show the location of the facility, a description of the facility, including the major
14 components of the facility that have a significant air, water or solid waste pollution
15 potential, and a brief description of the anticipated effects of the facility on air and
16 quality, water quality, wetlands, solid waste disposal capacity, and other natural
17 resources. Within 30 days after a person provides an engineering or project plan, the
18 department shall provide the person with a listing of each department permit or
19 approval which, on the basis of the information contained in the engineering or
20 project plan, appears to be required for the construction or operation of the facility.

21 **SECTION 37.** 196.491 (3) (b) of the statutes is amended to read:

22 196.491 (3) (b) The commission shall hold a public hearing on an application
23 filed under par. (a) 1. that is determined or considered to be complete in the area
24 affected pursuant to s. 227.44. A class 1 notice, under ch. 985, shall be given at least
25 30 days prior to the hearing.

1 **SECTION 38.** 196.491 (3) (d) (intro.) of the statutes is amended to read:

2 196.491 (3) (d) (intro.) Except as provided under par. (e) and s. 196.493, the
3 commission shall approve an application filed under par. (a) 1. for a certificate of
4 public convenience and necessity only if the commission determines all of the
5 following:

6 **SECTION 39.** 196.491 (3) (d) 8. of the statutes is created to read:

7 196.491 (3) (d) 8. For a large electric generating facility, brownfields, as defined
8 in s. 560.13 (1) (a), are used to the extent practicable.

9 **SECTION 40.** 196.491 (3) (e) of the statutes is amended to read:

10 196.491 (3) (e) If ~~the~~ an application filed under par. (a) 1. does not meet the
11 criteria under par. (d), the commission shall reject the application or approve the
12 application with such modifications as are necessary for an affirmative finding under
13 par. (d). The commission may not issue a certificate of public convenience and
14 necessity under this subsection until the department has issued all permits and
15 approvals identified in the listing specified in par. (a) 3. a. that are required prior to
16 construction.

17 **SECTION 41.** 196.491 (3) (g) 1. of the statutes is renumbered 196.491 (3) (g) and
18 amended to read:

19 196.491 (3) (g) The commission shall take final action on an application filed
20 under par. (a) 1. within 180 days after the application is determined or considered
21 to be complete under par. (a) 2. If the commission fails to take final action within the
22 180-day period, the commission is considered to have issued a certificate of public
23 convenience and necessity with respect to the application, unless the commission,
24 within the 180-day period, petitions the circuit court for Dane County for an
25 extension of time for taking final action on the application and the court grants an

1 extension. Upon a showing of good cause, the court may extend the 180-day period
2 for no more than an additional 180 days . If the commission fails to take final action
3 within the extended period, the commission is considered to have issued a certificate
4 of public convenience and necessity with respect to the application.

5 **SECTION 42.** 196.491 (3) (g) 1m. of the statutes is repealed.

6 **SECTION 43.** 196.491 (3) (gm) of the statutes is amended to read:

7 196.491 (3) (gm) The commission may not approve an application filed after
8 October 29, 1999, under this ~~section~~ subsection for a certificate of public convenience
9 and necessity for a high-voltage transmission line that is designed for operation at
10 a nominal voltage of 345 kilovolts or more unless the approval includes the condition
11 that the applicant shall pay the fees specified in sub. (3g) (a). If the commission has
12 approved an application under this ~~section~~ subsection for a certificate of public
13 convenience and necessity for a high-voltage transmission line that is designed for
14 operation at a nominal voltage of 345 kilovolts or more that was filed after
15 April 1, 1999, and before October 29, 1999, the commission shall require the
16 applicant to pay the fees specified in sub. (3g) (a). For any application subject to this
17 paragraph, the commission shall determine the cost of the high-voltage
18 transmission line, identify the counties, towns, villages and cities through which the
19 high-voltage transmission line is routed and allocate the amount of investment
20 associated with the high-voltage transmission line to each such county, town, village
21 and city.

22 **SECTION 44.** 196.491 (3) (h) of the statutes is renumbered 196.491 (6).

23 **SECTION 45.** 196.491 (3) (j) of the statutes is amended to read:

24 196.491 (3) (j) Any person whose substantial rights may be adversely affected
25 or any county, municipality or town having jurisdiction over land affected by a

1 certificate of public convenience and necessity for which an application is filed under
2 par. (a) 1. may petition for judicial review, under ch. 227, of any decision of the
3 commission regarding the certificate.

4 **SECTION 46.** 196.491 (3b) of the statutes is created to read:

5 196.491 **(3b)** EXPEDITED REVIEW. (a) A person who proposes to construct a
6 high-voltage transmission line may apply for a certificate under this subsection if
7 the construction is limited to adding conductors to existing transmission poles or
8 towers and if all related construction activity takes place entirely within the area of
9 an existing electric transmission line right-of-way.

10 (b) The commission shall promulgate rules specifying the information that
11 must be included in an application under this subsection. If the commission receives
12 an application that complies with rules, the commission shall, as soon as practicable,
13 notify the applicant that the commission has received a complete application.

14 (c) The commission is considered to have issued a certificate of public
15 convenience and necessity under sub. (3) for construction specified in an application
16 under par. (a) unless the commission notifies the applicant, no later than 30 business
17 days after the date on which the commission notifies an applicant under par. (b) that
18 the application is complete, that the commission has determined that the public
19 interest requires the applicant to obtain a certificate under s. 196.49.

20 **SECTION 47.** 196.491 (4) (c) of the statutes is renumbered 196.491 (4) (c) 1. and
21 amended to read:

22 196.491 **(4)** (c) 1. A certificate under sub. (3) is not required for a person to
23 construct a high-voltage transmission line designed for operation at a nominal
24 voltage of less than ~~230~~ 345 kilovolts if all related construction activity takes place
25 entirely within the area of an existing electric transmission line right-of-way.

1 **SECTION 48.** 196.491 (4) (c) 2. of the statutes is created to read:

2 196.491 (4) (c) 2. The commission is not required to prepare an environmental
3 impact statement under under s. 1.11 (2) (c) for construction that is specified in subd.
4 1., but shall prepare an environmental assessment regarding the construction if an
5 environmental assessment is required under the commission's rules.

6 **SECTION 49.** 196.491 (4) (c) 3. of the statutes is created to read:

7 196.491 (4) (c) 3. If construction or utilization of a high-voltage transmission
8 line described in subd. 1. is precluded or inhibited by a local ordinance, the
9 construction and utilization of the line may nevertheless proceed.

10 **SECTION 50.** 196.491 (6) (title) of the statutes is created to read:

11 196.491 (6) (title) WAIVER.

12 **SECTION 51. Initial applicability.**

13 (1) UTILITY AID PAYMENTS. The treatment of section 79.04 (6) (c) 3. and (7) (c) 1m.
14 and (d) of the statutes first applies to distributions made on the 4th Monday of July
15 2005.

16 (2) DEPARTMENT OF NATURAL RESOURCES PROCEDURES. The treatment of sections
17 30.02 (1) and (2), 30.025 (title), (1), (1b), (1e), (1m), (1s) (title) and (b), (2), (2g), (2s),
18 (3) (intro.), (3m), and (4), and 30.206 (1m) of the statutes first applies to applications
19 for permits, as defined in section 30.025 (1b) (b) of the statutes, as created by this act,
20 filed with the department of natural resources on the effective date of this subsection.

21 (3) PUBLIC SERVICE COMMISSION PROCEDURES. The treatment of sections 196.49
22 (4) and 196.491 (3) (a) 1. and 3. a., (b), (d) (intro.) and 8., (e), (g) 1. and 1m., (gm), and
23 (j), (3b), and (4) (c) 2. and 3. of the statutes and the renumbering and amendment of

1 section 196.491 (4) (c) of the statutes first apply to applications submitted on the
2 effective date of this subsection.

3 (END)