



## WISCONSIN LEGISLATIVE COUNCIL AMENDMENT MEMO

**2007 Assembly Bill 728**

**Assembly Substitute  
Amendment 1**

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*Contact:* Pam Shannon, Senior Staff Attorney (266-2680)

With certain exceptions, the Open Records Law requires a state or local governmental entity (an “authority”) to permit a requester to inspect records created or kept by the entity.

*Assembly Bill 728* creates an open records exception that would permit withholding access to certain records relating to utility security. [“Utility” is defined as a person that generates, transmits, or distributes electricity, transports or distributes natural gas, operates a public water system, or provides telecommunications or sewer service.] As introduced, the bill allows a state or local governmental entity to withhold public access to any record containing a “security system plan” (as defined in the bill) or documents related to the plan, in specified circumstances.

*Assembly Substitute Amendment 1* eliminates the bill language tying the open records exception to security system plans, due to concern that the language does not capture sensitive utility records that are not part of a security plan. The substitute amendment instead provides that an authority may withhold access to any portion of a record that contains information regarding the plant, equipment, or operations of a utility that is so vital to the state that the incapacity or destruction of the plant or equipment, or the disruption of the operations, would have a debilitating impact on the physical or economic security of the state or on public health safety, or welfare. The reference to withholding access to “any portion of” a record means that the authority may withhold only that portion of a record that is subject to withholding and must release any portion of the record that is subject to release. In contrast, the bill permits withholding the entire record of which a security plan is a part.

The substitute amendment also creates a process by which an authority’s decision to deny access to a utility record may be reviewed. If a state or local governmental entity other than the Public Service Commission (PSC) determines that access to a utility record (or portion of a record) should be withheld, the requester may, no later than five business days after the request is denied, ask the PSC in writing to review the decision to deny access to the record. The requester must include with the request, a copy of any written statement provided by the authority explaining the reasons for the denial.

No later than 10 business days after receiving a written request, the PSC must complete its review and notify both the authority and the requester, in writing, of the PSC's determination whether access to the record may be withheld. If the PSC determines that access may *not* be withheld, the authority must allow the requester access to the record no later than five business days after receiving notification of the PSC's determination.

The substitute amendment also modifies a current provision that gives incarcerated and committed persons 90 days, after the date on which their request for access to a record is denied, to file a mandamus action asking a court to order release of the record. To accommodate the possible intermediate PSC review of that denial, the mandamus provision is amended to provide that the person has 90 days to file the mandamus action from the date on which the person receives a determination from the PSC that the record may be withheld.

### **Legislative History**

Assembly Substitute Amendment 1 was introduced by the Assembly Committee on Homeland Security and State Preparedness on February 26, 2008. The committee then adopted the substitute amendment and recommended passage of the bill, as amended, both on votes of Ayes, 9; Noes, 0.

PS:ksm