# MIKE KUGLITSCH

STATE REPRESENTATIVE • 84TH ASSEMBLY DISTRICT

DATE: February 3, 2016
RE: **Testimony on 2013 Assembly Bill 804**
TO: The Assembly Committee on Energy and Utilities
FROM: Representative Mike Kuglitsch

Thank you Committee Members for hearing my Testimony on Assembly Bill 804. This bill was drafted and introduced at the request of the Public Service Commission and various stakeholders across the state.

Assembly Bill 804 streamlines and creates a more efficient process within the PSC in a variety of areas. The various modifications are a comprehensive package of technical and common sense changes that have been vetted by industry experts across the state. AB 804 deletes outdated language, streamlines various regulations that are seen as redundant, and creates a fair environment for all electrical rate payers.

Assembly Bill 804 makes the following changes to current law:

- Eliminates an antiquated statute surrounding Commission authority to investigate railroad telecommunications systems.
- Removes obsolete jurisdiction over complaints about Local Access and Transport Area (LATA) boundaries.
- Allows the Commission the authority to more appropriately bill staff time to the utilities causing the expenditure to ensure fairness.
- Repeals the annual $SO_2$ Compliance Report which no longer has a useful purpose because of other enforceable state and federal conditions and regulations.
- Allows the PSC Chair to extend, for good reason, timelines for affiliated interest agreements by 90 days, to properly analyze and take action on these agreements.
- Eliminates a "double-tax" within the Focus on Energy program by clarifying that the investor-owned utilities' portion of the program is based only on retail revenue.
- Establishes enforcement measures surrounding state One Call (Diggers Hotline) statutes in order to enhance public safety, the safety of utility infrastructure, to ensure reliable energy, and to comply with new federal Pipeline and Hazardous Material Safety Administration (PHMSA) rules, effective 2016.
- Saves ratepayers unnecessary relocation or permitting costs for existing utility structures.
- Allows flexibility to give the DNR time to consider permits related to high-voltage transmission lines.

As stated throughout this session, we are working towards a lean and efficient government, doing away with antiquated language and bringing our statutes up to date with current practices. While Assembly Bill 804 deals mostly with technical changes, this bill will ultimately assist utility companies in delivering their products and services to customers across the state in a more efficient and effective manner.

Thank you again for the opportunity to bring Assembly Bill 804 before you today. I will answer any questions you may have, but please note the PSC will further explain the legislation.

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# Public Service Commission of Wisconsin

**Ellen Nowak, Chairperson**
**Phil Montgomery, Commissioner**
**Mike Huebsch, Commissioner**

**610 North Whitney Way**
**P.O. Box 7854**
**Madison, WI 53707-7854**

*Assembly*
**PUBLIC HEARING**
**Assembly Committee on Energy and Utilities**
February 3, 2016

Testimony of Bob Seitz
Executive Assistant to Chairperson Nowak
Public Service Commission of Wisconsin

Chairperson Kuglitsch, and members of the Assembly Committee on Energy and Utilities, good afternoon and thank you for allowing me to testify on behalf of Public Service Commission (PSC) Chair Ellen Nowak in support of AB 804.

I've had the opportunity to meet with almost all of you over the last month, but for those who I have not yet met, my name is Bob Seitz. I serve as Chair Nowak's Executive Assistant at the agency and oversee many of the day-to-day functions of the agency, as well as provide advice to Chair Nowak to aid her in her decision making. I'm here to testify on her behalf today. With me is Attorney Andrew Cardon, who serves in the Office of General Counsel at the PSC and consulted on the drafting of this bill, Andrew should be able to help answer any of the more technical questions on the piece of legislation before you today.

As many of you will recall, Chair Nowak has done what Chair Montgomery did in prior years and has asked staff how we could serve more effectively and operate more efficiently. I am here today with a third round of collaborative proposals -- from both PSC staff and stakeholders -- that seek to streamline our processes while at the same time ensuring that the Commission has the tools to get our job done.

Admittedly, many of the issues we address at the PSC are highly technical, and understanding those issues requires an investment of time. We appreciate legislators on both sides of the aisle being willing to make that investment in developing this bill—especially legislative authors.

Last year, the Commission considered the acquisition of Integrys (parent company of Wisconsin Public Service Corp.) by the parent company of We Energies. This was the largest acquisition by a Wisconsin company in four years, and took a considerable amount of staff time. Alongside the merger application came affiliated interest agreement applications for the resulting subsidiaries across four state jurisdictions—which detailed how the different companies within the newly formed holding company, WEC Energy Group, would interact. But because the Commission currently only has 90 days to review these affiliated interest agreements, and those agreements were dependent on approval of the merger itself, the PSC was required to ask the utilities to withdraw and refile many of these documents. This bill allows the Chair to extend a 90-day deadline for approval of a contract with an affiliated interest by an additional 90-days, allowing the PSC appropriate and thorough review of these agreements and allowing us, in the case of the merger, additional flexibility. The Chair currently has the ability to extend the timeline for review of the agency's applications for costlier and larger projects, the Certificate of Public Convenience and Necessity and the Certificate of Authority, so this change reflects current practice with other applications.

Secondly, the bill eliminates a "double tax" within the current Focus on Energy funding structure.

Focus is funded by 1.2 % of Wisconsin's investor-owned utilities revenues, while municipal utilities and 11 of Wisconsin's 24 electric cooperatives pay in at $8/meter per year. The problem arises when an investor owned utility makes a wholesale transaction by selling to another investor owned utility or to a municipal utility. Both that wholesale transaction AND the eventual retail sale of the same electricity is paid into Focus. It is counted twice. This bill remedies the situation by clarifying that utilities must spend 1.2% of revenues derived from *retail,* not wholesale, sales on Focus on Energy. The result is an approximately $7 million reduction in what is currently a $110 million program. The current four-year Focus contract is a results-based contract requiring a level of return for each dollar spent and including incentives to promote the vendor to exceed their goals. If this legislation is passed, the programs' goals will be adjusted to ensure Focus continues to operate as one of the most cost-effective energy efficiency and renewable programs in the country.

The next two pieces of the bill relate to the siting of transmission lines. The PSC and DNR have a parallel process in which to review applications for construction of these structures, and the bill simply allows DNR, in agreement with the applicant utility, 15 more days to grant its final permits. Since the DNR works concurrently with the PSC, this does not change a great deal about the current process and I've brought with me a memo from DNR communicating the agency has no issues with these changes.

Once a utility structure has received PSC and DNR approval, the utility owner may need to perform maintenance or repair on the facility. This bill clarifies that DNR is prohibited from requiring the relocation of the existing facility as a condition of a general permit to carry out the repair work. Moving an existing facility out of the current right-of-way would open up a new review process, a redundant and wasteful cost to the utility's ratepayers. The transmission structure was originally granted its necessary permits and this reinforces the authority granted and the intent of the PSC and DNR in doing so.

Next, the PSC has the authority to bill each utility for the time spent reviewing its operations and applications. If you ever look at our agendas, you'll find that each case is assigned a specific docket number, which tracks all information tied to that case. This system allows the PSC to bill staff time spent working on each specific case to that docket number so that the corresponding utility can pay for the work related to that utility. Staff time not attributed to a specific utility is assessed, proportionately, to all regulated utilities in what is called the remainder assessment. However, the PSC does not currently have jurisdiction to assess business entities in Wisconsin that transmit oil or related products through pipelines who may need to obtain approval from the Commission for condemnation authority, new authority granted the PSC under Act 55, this session's biennial budget. This bill allows the PSC the ability to assess those entities for the Commission time spent working on these requests, rather than shift those costs to others.

Very similarly, while the PSC does not have jurisdiction over municipally-owned sewer utilities or districts, upon complaint the PSC is charged with adjudicating complaints about the reasonableness of their rates. In cases in which the rates are determined to be reasonable, the PSC currently only has the ability to directly bill the sewer utility for staff time spent working on these complaints. This bill would give the PSC the discretion to bill the complainant in such cases.

Next are a group of reforms that remove duplicative and unnecessary reports or statutory language. Currently, utilities file an annual $SO_2$ Compliance Plan with the PSC and DNR. PSC does not regulate pollutants and emissions, though we do review how utilities pay for ways to curb them. It makes sense that PSC staff no longer review this report anymore. Also, in discussing this issue with the DNR, we found it no longer has a useful purpose there, either. Utilities are *already* required to maintain lower levels of $SO_2$ emissions due to a variety of enforceable state and federal regulations. These include, but are not limited to, Title V operating permits issued by the State of Wisconsin and consent decrees between specific utilities and

the Environmental Protection Agency (EPA). In addition, federal rules such as the Cross-State Air Pollution Rule (CSAPR), the 1-hour $SO_2$ National Ambient Air Quality Standard (NAAQS) and the Mercury and Air Toxics Standards (MATS) also have the potential to further restrict $SO_2$ emissions in the State. Due to these state and federal requirements, the Annual SO2 Compliance Plan has become a duplicative and unnecessary requirement on Wisconsin's utilities and this bill eliminates the requirement that it is filed.

Moving on, the Commission currently has the authority to investigate complaints regarding unavailable, inadequate or unjustly discriminatory telecommunications service with any railroad. But because the agency has not received this type of complaint in decades, and because railroads have consolidated considerably and technological options have greatly increased since this statute's inception, we believe this section has no useful purpose and should be repealed. The Office of the Commissioner of Railroads agrees.

Similarly, current law allows for 150 Wisconsin residents, who reside in the same local access and transport area, or LATA, to petition the PSC if they believe their LATA is unjustly discriminatory or uneconomic. If the Commission determines there is sufficient evidence supporting the claim, it must subsequently, in cooperation with the affected telephone companies, petition the federal court to revise the LATA boundaries.

Let's take a step back. A LATA is a geographical area created during the breakup of the original AT&T into the "Baby Bells." Wisconsin has four such districts that generally align with the geographical quadrants of the state. Phone companies typically provide differing types of long distance service, each with potentially different rates for calls to and from different LATAs.

These boundaries have been around for over 30 years, and the Commission has never been approached to file a petition under this statute, nor is the likelihood of such a complaint apparent, given the modern-day advent of wireless and other forms of communication. There appears no remaining purpose to maintain this provision and the bill repeals this statute.

The last section of this bill makes up the bulk of the actual bill text and establishes Wisconsin's "One Call" (known most commonly as Diggers Hotline) enforcement process. Not only is this an important safety mechanism, the U.S. Department of Transportation's Pipeline and Hazardous Material Safety Administration (PHMSA) is now requiring states to establish enforcement measures or face enforcement under federal regulation, which I'll explain in a bit.

We've all heard the ads, "Call Before you Dig." Wisconsin's One Call center collects information from excavators and transmits locate requests to over 1,250 facility owners. In 2013, Diggers Hotline processed over 700,000 such requests.

The bill does not change existing law with regard to One Call system membership, notification and marking requirements, or the general responsibilities of the One Call system with regard to the routine administration of the underground utility locate system. Nor does it change the maximum amount of civil forfeitures currently provided for in law.

The bill does, however, establish a no-less-than 7 but not-more-than 9-person panel representing the interests of the public, excavators, facility owners and other stakeholders in the industry. Together, this panel will review and act on One Call complaints or violations. The panel is authorized to respond to complaints by dismissing the complaint, entering into an agreement for attendance at an education course produced by the One Call System, or recommending the imposition of a civil penalty. Any penalty recommendation would be based on specific facts including, but not limited to, the amount of damage to underground utilities, the degree of

threat to the public safety and inconveniences caused by the violation, the respondent's plans and procedures to insure future compliance with state and rules, and any history of prior violations.

The panel extends their recommendation to the Administrative Law Judge at the PSC who reviews the complaint and makes a final determination on sanctions. The respondent may choose to appeal this decision to the full Commission.

A surcharge on all civil forfeitures would help fund a Damage Prevention Fund, administered by the One Call system to produce educational courses, heighten utility damage public awareness and to promote proper use of the One Call system by excavators or underground utility locates prior to digging. This is key: the intent of the law is not focused on the imposition of financial sanctions—the focus is on public safety, education and deterrence.

Each year, the PSC's Pipeline Safety Program receives about 80% of its funding from federal dollars. These costs and our implementation are audited by PHMSA. The establishment of enforcement measures surrounding state One Call statutes is critical to Wisconsin's review and subsequent funding. New PHMSA rules effective January 1, 2016, will initiate evaluations to determine adequate state enforcement with an inadequate determination potentially resulting in PHMSA taking enforcement action against excavators who damage a Wisconsin pipeline. Federal civil penalties are $200,000 per violation for each day the violation continues with a maximum of $2,000,000 for any related series of violations. Additionally, states that fail to establish a One Call enforcement program may be subject to a 4 percent reduction in PHMSA State Base Grant funding, which would result in Wisconsin ratepayers paying more for what a federal program is willing to cover. This aspect of the bill represents a unified stakeholder effort in establishing Wisconsin's own enforcement system while focusing on the production of educational courses, raising utility damage public awareness and the promotion of the proper use of Diggers Hotline.

Again, thank you for your time and your consideration of these suggested reforms. Andrew and I are available to answer any questions you may have.

DATE: February 3, 2016

TO: Assembly Committee on Energy and Utilities

FROM: David Siebert- Director, DNR Bureau of Environmental Analysis and Sustainability
Gail Good- Director, DNR Bureau of Air Management

SUBJECT: DNR comments on aspects of the PSC Legislative package 2015 AB 804

Thank you for the opportunity to provide input on DNR aspects of various bill proposals included in the PSC package of bills. We are speaking as interest may appear.

1. Related to sulfur dioxide plans

   These provisions would eliminate a requirement for utilities to submit an annual sulfur dioxide (SO2) compliance plan related to state acid rain limitations. The limitations have largely been superseded by federal acid rain and other requirements. As a result of these other requirements, emissions from Wisconsin utilities do not approach state acid rain limits, so the related annual compliance plans and emission reports do not result in any additional environmental benefit and therefore are an unnecessary administrative requirement for the department. As such, the department has no concerns with this component.

2. Related to permitting and review process for high voltage transmission lines

   This provision would allow the department and a utility to agree to forego the requirement for a permit decision within 30 days of the PSC decision and agree on a timeline that is consistent for the proposed project final design and construction schedule so that additional refined engineering can occur and the department decision would be made within 45 days of receiving those final details. The department would continue to be an active participant in the PSC process. The department has no concerns with this component.

3. Related to waterway permitting for maintenance and relocation utility projects

   AB 804 prohibits DNR from requiring relocation of a utility facility as a *condition* of a *general permit* to conduct activities in navigable waters or as part of a *modification* granted for an *individual permit* if the activity sought to be permitted is *necessary to maintain or repair the facility*. The department has no concerns with this component.

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John Muir Chapter

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# Statement of the Sierra Club's John Muir Chapter in Opposition to AB 804 Before the Committee on Energy and Utilities February 3, 2016

Representative Kuglitsch and members of the committee, my name is Bill Davis. I would like to thank you for the opportunity to provide comments on Assembly Bill 804 on behalf of the John Muir Chapter of the Sierra Club. The John Muir Chapter represents over 15,000 members and supporters living throughout the state. We work to provide opportunities for Wisconsinites to enjoy nature and advocate for the fair and rational management of our common resources so that all Wisconsin residents have access to the clean air, water, land, flora and fauna they need for their health, safety and well-being as well as to move our economy forward .

The John Muir Chapter opposes the provisions of AB 804 that significantly reduce the funding for the Focus on Energy program and reduce public input on decisions regarding high-voltage transmission lines.

## Focus on Energy, section 37

Focus on Energy is a public program that provides Wisconsin state residents and businesses with resources, incentives and support to implement energy-efficiency projects. This program directly assists almost 200,000 Wisconsin residents and businesses per year. The program saves all Wisconsin bill payers money by reducing the need for costly new energy generation. The Focus on Energy program is an economic engine for the state. It generates $3 in energy savings for each $1 invested, is responsible for creating 24,000 jobs and almost $2 billion in sales for Wisconsin businesses, and helped offset more than 2 gas power plants worth of electricity demand. In 2014 utilities paid approximately $100 million into the Focus program and the program delivered more than $700 million in direct economic benefits and created more than 2,000 jobs.

Current law requires utilities to spend 1.2 percent of their "annual operating revenues" on Focus on Energy. Under AB 804, the utilities will need to spend 1.2 percent of their 'annual operating revenues derived from retail sales...." to fund the Focus program. By excluding wholesale sales, the net result will be a $7 million decrease in funding for the Focus program. Cutting the Focus on Energy program will directly result in higher energy bills for home and business owners who would have otherwise installed energy efficiency measures that save money, and will result in an increase in air pollution that impacts public health.

While businesses and home owners who participate in the Focus program directly benefit from it, ALL bill payers in Wisconsin have lower energy bills as a result of the Focus on Energy program because it reduces the need to build more costly infrastructure such as power plants and transmission lines.

Energy efficiency and renewable energy production create lots of jobs in Wisconsin. Efficiency and renewable electric generation are labor intensive ways to meet energy demand. We spend billions of dollars importing fossil fuels in Wisconsin because we don't have them here. Every dollar we don't spend on importing coal and natural gas stays in Wisconsin's economy.

For all these reasons we ask the committee to remove the provisions that reduce revenue to the Focus on Energy program or amend the provision to increase the percentage of annual operating revenues derived from retail sales in the funding formula so as to maintain the funding level for the Focus on Energy program.

## DNR Permits, sections 2, 3

DNR permitting of high-voltage transmission should not occur until a Certificate of Public Convenience and Necessity is issued by the Public Service Commission because citizen notification and involvement is triggered by the PSC deeming an application complete. Doing otherwise is putting the cart before the horse. Allowing the DNR to issue permits before the PSC has acted will minimizes citizen involvement in the process which is not in Wisconsin's best interest. Therefore we ask that this portion of AB 804 should be removed.

Thank you for the opportunity to speak on these issues.

My name is Seth Nowak. I'm a resident of Madison.

Email: snowak@aceee.org Cell phone 608 354 1329

I am a senior energy efficiency analyst in the Utilities, State and Local Policy research program at the American Council for an Energy Efficient Economy.

AB804

I am here in opposition to the bill as it currently is being proposed because it will have the effect of reducing funding for energy efficiency programs provided by Focus on Energy.

Extensive research has documented that show that for every $1 invested in the Focus program, $3.40 is returned in benefits. Focus on Energy is one of the most cost-effective, leading energy efficiency programs in the nation, creating thousands of jobs and hundreds of millions in economic benefits for our state.

Each year, part of my energy efficiency research supports our annual ACEEE State Scorecard, which extensively quantifies the energy efficiency performance of all the US states. Less than ten years ago, Wisconsin was in the Top Ten for energy efficiency. However, over the last several years states such as Minnesota, Illinois, Michigan and Iowa have been increasing their energy efficiency efforts, while Wisconsin has held steady, leading to Wisconsin falling in the ranking substantially.

Wisconsin should be increasing, not cutting, our investments in cost-effective energy efficiency programs to create jobs and save customers money.

Thank you very much for holding this hearing and considering this input.

Testimony for Public Hearing
Committee on Energy and Utilities
Assembly Bill 804
Wednesday, February 3rd, 2016

Darren P. Muljo, CUSP, CHST
Musson Bros. Inc.
P.O. Box 818
Rhinelander, WI 54501

AB 804-An Act Concerning Changes to Diggers Hotline Enforcment:

Good afternoon Committee on Energy and Utilities members. My name is Darren P. Muljo and I am the current safety director for Musson Bros. Inc. based out of Rhinelander and Brookfield, WI. I've been with Musson Bros. for the last 10 years and hold designations such as Certified Utility Safety Professional and Construction Health & Safety Technician.

Over these last 10 years I have represented the company on the Wisconsin Transportation Builders Association and Wisconsin Underground Contractors Association's safety committees along with being a past Co-Chair with the Wisconsin Common Ground Alliance, which is an alliance of stakeholders whose primary interest is reducing damages to underground utilities that occupy our streets and rights of way.

Having been a part of the initial discussions on enforcement over Section 182.0175 of state statutes, commonly known as the Diggers Hotline Statute, we cannot support the changes proposed at this time. It is our belief that the excavation community's interests have not been truly considered, were included at a minimal level, and the proposed panel/review committee makeup is both unclear and could allow for conflicts of interest to take place. For these reasons, we ask for a delay in acting so that all stakeholders may search for common ground on this very important issue.

In order for enforcement to truly be effective the following changes need to also be considered:



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1. **The adoption of standardized depths for each utilities placement:** The Public Service Commission, National Electric Safety Code and Wisconsin Department of Transportation have differing requirements which if standardized, inspected and shared would result in safer environments in which to excavate in the future.

2. **Inspection over the location of newly placed underground utilities:** Bordering states understand the benefits of subsurface utility exploration (SUE) for the purpose of making improvements to the future safety of highway road construction. At present time, very little is done statewide, and right-of-way owners and utilities alike cannot account for X, Y, & Z coordinates of their underground facilities. Thus making the design of state and municipal projects a guessing game, resulting in excavators being exposed to utilities often above designed sub-grade excavation elevations, resulting in excavator damage, conflicts resulting in production losses, schedules disrupted, along with public safety and our employees placed at risk.

3. **Mandated use of modern technology to help map out X, Y, & Z locations of the underground:** Much has changed in the last decade and unfortunately right-of-way owners, designers and utilities have been slow to adopt the many technologies available (GPS included). The State of Michigan is currently piloting with GUIDE, "Geospatial, Underground Infrastructure Data Exchange", a data repository designed to account for the new placement of underground utilities for future use by highway designers, utilities and excavators. An effort recognizing the benefits of inspection over placement to guarantee accuracy for future generations, so that they do not suffer from the inadequacies of today.

4. **That utility's only occupy the right of way by permit with state and municipal governments:** Improve permitting language, oversight and add enforcement so utility placement is held to the highest of standards. This critical process during design is the first and best opportunity to paint a true picture of where underground utilities are to be placed and what action needs to happen prior to excavation commencing so that damage will not occur.

We have been on the right path for years but changes are slow in the making. This proverbial "can has been kicked down the road" one too many times. Therefore an opportunity is set before us and we owe it to ourselves, future generations of highway construction workers, and the public in general to look closer at the true issues of underground utilities occupying our rights-of way.

As a secondary benefit to our recommended changes, State and Municipal governments will see windfalls of savings as studied by Purdue University. According to a 1999 Purdue University research study, proper utility coordination and the usage of subsurface utility exploration returns a minimum $4.62 for every dollar spent on the front end, based on 71 projects.

In conclusion, the US Department of Transportation-Federal Highway Administration's Strategic Highway Research Program (SHRP2) focuses on developing better solutions that can be used by state departments of transportation and their counterparts to mitigate potential negative effects of underground utilities. As they note, "Because it's not just about saving money by utility relocations. It's about saving lives". They recommend:

1. 3D Utility Location Data Repository
2. Utility Locating Technologies
3. Identifying and Managing Utility Conflicts

We hope you now understand the environment and reality in which excavators and our employees who operate our machinery live in on a daily basis. While our efforts and avoidance of damage to utilities is of the utmost importance, we cannot guarantee that damage will not take place. A labor force does not exist which can hand dig, hydro-excavate and completely expose underground utilities in their entirety and still build the much needed infrastructure of the future. The only way that will happen is by holding utilities and the placement of their facilities to a much higher account than has been past practice.

I would like to thank you for your time and look forward to working with you on these much needed changes in the future.

Sincerely,

Darren P. Muljo, CUSP, CHST
Safety Director/EEO
Musson Bros. Inc.
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715-365-8704

# Testimony Concerning 2015 Assembly Bill 804

Good afternoon. My name is Vincent Mosca. I am a practicing consulting wetland professional with over 26 years' experience in the Upper Midwest, concentrating my work in Wisconsin and Illinois. I received my Bachelor's Degree from Northland College in Ashland, Wisconsin and did my graduate work at UW-Green Bay.

I am here today in front of this Committee to express my concern around certain provisions of AB 804, more specifically about the proposed changes in the procedures for issuing DNR permits for the construction of high-voltage transmission lines in Wisconsin. I have testified in front of the Public Service Commission regarding two different electric transmission line projects in Wisconsin and believe that I have a solid understanding of the regulatory process that PSC and DNR utilize while scrutinizing the validity and routing of utility projects.

This bill proposes to require DNR, and I quote the bill here, "grant or deny the application within 45 days after DNR has received all of the information necessary for it to make that decision ***regardless of whether the PSC has issued its decision.***" Under current procedures, DNR would be required to issues necessary permits within 30 days of PSC making their decision on approved utility routing, but again only after PSC has gone through their standard vetting process.

By allowing an electric utility to go directly to DNR prior to PSC's ruling raises many practical questions, including:

1) What plans would DNR be reviewing if PSC hasn't ruled yet?

2) At what point in route choice does the utility submit to DNR? All routes and all alternatives get permitted although they may not ever get built?

3) What happens when PSC does make a ruling and the routes are modified and are inconsistent from those sent to DNR for permitting?

4) How do PSC rulings get instituted if they are related to such things as revegetation, impact analysis, etc.?

5) How does the Army Corps permitting process come into play here?

By allowing DNR permitting to be parallel to PSC procedures and not tied to PSC decision making does several things. In my opinion, DNR would be asked to prepare a decision on a permit for routes that the utility never intends to build. This would make unnecessary and superfluous work on the DNR's part, and presumably inordinately high amounts of permitted natural resource impacts. The excessively inflated impact to natural resource impacts would be an artifact of a permitting process that is not tied to a final routing and subroutes but all routes and alternatives studied by the utility. I have to question the value to either the citizens of Wisconsin or the DNR to require permits be issued for tens of miles of utility corridor that inevitably will never be built.

These false statistics for natural resource impacts would manifest themselves in all aspects of DNR permitting, including wetland, floodplains and endangered resources. I can only assume that DNR

would have to issue Incidental Take Authorizations for theoretical impacts to rare species and habitats when in reality a large percentage of the permitted routes will never be built.

Also, I question the type of feedback loop to DNR from the utility that would be needed concerning which actual routes and subroutes get constructed in the field. This proposed permitting mechanism would seem to create a bookkeeping nightmare for DNR to have to keep track of which wetland or habitats were in fact disturbed, which ones requires compensatory mitigation, restoration, and the like.

I suggest that this proposed bill will greatly compromise the PSC's procedures for making intelligent and informed routing decisions, in public, and would make for unnecessary confusion on which agency's rulings outplay the other when conflicts appear. Furthermore, if a utility is granted a permit decision prior to the final deliberation of PSC, it would put the Commission in an awkward position of decision making when a sister agency has already approved the project ahead of them. Finally, it calls into question the role of DNR in the PSC process if DNR can simply be compelled by a utility to issue a permit while public hearings are still taking place at PSC about purpose, need and routing.

I urge the committee to reconsider Assembly Bill 804 due to the inevitable circumventing of a robust procedure already in place between PSC and DNR and the unintended consequences of permitting large segments of electric utility projects that will never be built.

Thank you for your time. I am available for questions.

# AEM, Inc.

# Memo

**To:** All Stakeholders
**From:** Associated Earth Movers, Inc.
**CC:**
**Date:** 2-3-16
**Re:** PSC Reform Bill 2016 and Excavation Safety

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**•Comments:**

The PSC Reform Bill currently contemplated is intended to satisfy the USDOT and PHMSA's Pipeline Damage Prevention Program Final Rule (49 FR 43835-43869) as it relates to enforcement against violators of "One Call" statutes. In order for this to have it's intended effect, we believe Wisconsin's One Call statute needs to align with current safe, trainable, time tested industry standards that meets the expectations of the all stakeholders, including and most importantly, the citizens of Wisconsin.

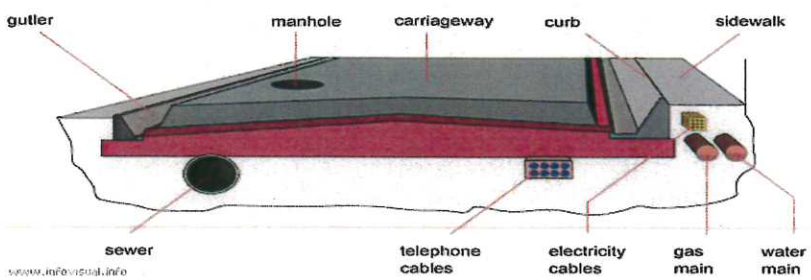
The portion of the Wisconsin statutes that dictates excavation practice around buried utilities is as follows:

> 182.0175 (2) 3. Maintain an estimated minimum clearance of 18 inches between a marking for an unexposed underground transmission facility that is marked under sub. (2m) and the cutting edge or point of any power−operated excavating or earth moving equipment, except as is necessary at the beginning of the excavation process to penetrate and remove the surface layer of pavement. When the underground transmission facility becomes exposed or if the transmission facility is already exposed, the excavator may reduce the clearance to 2 times the known limit of control of the cutting edge or point of the equipment or 12 inches, whichever is greater.

This law says all excavation (after the pavement is removed) within 18" horizontally of the marked utility (no matter how deep) cannot be done with "the cutting edge or point of any power-operated excavating or earthmoving equipment". Common industry practice however does not comply with the law. This noncompliance is seldom the choice of the excavating contractor but rather the result of project demands made by project owners, municipalities, the WisDOT, consulting engineers, and the public.

An example of this scenario can be illustrated by a typical urban road reconstruction project. An average size project of this type has 30,000 cubic yards of common excavation associated with a road width of 55 feet. However, out of the 55 feet, there are 4 buried utilities running parallel with the curb through the project. Adding up the 36" minimum width each utility line adds to the "no bucket zone", we have 12 feet out of 55 feet, or 6,500 cubic yards that can not be excavated with a powered bucket of any kind.

**CROSS SECTION OF A ROAD**



Today's best technology for excavating within the 18" tolerance zone safely and legally is hydrovac excavation. However, 6,500 cubic yards would take one hydrovac truck 520 working days, which is 2 calendar years just to get the excavation done above the utilities. It is easy to understand why common practice does not comply with this law.

However projects like these get done safely and on schedule all the time, which satisfies the, engineer, WisDOT, and the public. In order to meet demanding schedules over the years, the industry has developed it's own safe practices. These practices need to be incorporated into our state law because the public among other stakeholders demand it. Furthermore excavating contractors are unable to train their employees on a safe working practice that is both compliant with a project schedule requirement and state law.

Our proposed amendment is based on the common industry practice of potholing or using any future technology to expose an underground facility allowing safe machine removal of excess cut above the line or for reduced clearance horizontally.

What the "Ten to One Rule" says is if you wish to excavate with a machine within the 18" (each way) tolerance zone, you must:

1. Expose the line in the area of the work.
2. Do a simple calculation: If the line is 4 feet down and you wish to get within 2 feet, you need a pothole within 20 feet of any point on the line.
3. Pothole ahead of machine excavation as follows:
    a. 40 foot spacing of potholes to machine excavate within 2 feet.
    b. 20 foot spacing of potholes to machine excavate within 1 foot.

The proposed new PSC bill intends to take enforcement action on "bad actors" not rare offenders. That's great, but with the current language all excavating contractors, even those of us with the best safety records, are breaking the law and therefore subject to forfeitures on a regular basis.

As a contractor with a good safety program and a good safety record I know how to train my crews to work safe to protect both property and people. What I don't know how to do is train my crews to follow the current law. So if there is someone who knows how to do that I could use their help, if not, I need this revision so I can train my crews to be both safe and legal.

It is our belief that the proposed change shown here must become part of the PSC Reform Bill if enhanced worker and public safety are truly the intended purpose.

WISCONSIN TRANSPORTATION BUILDERS ASSOCIATION

Committee on Energy and Utilities
Assembly Bill 804
Wednesday, February 3, 2016
James Thiel

My name is Jim Thiel and I am here to testify in opposition to a portion of AB 804 on behalf of my client, the Wisconsin Transportation Builders Association (WTBA). Specifically, WTBA opposes the provisions in 2015 Assembly Bill 804 relating to one-call system violations.

There are three reasons for this opposition. First, the proposed changes go far beyond the federal regulations involved. Second, the proposed changes fail to protect underground pipelines from excavation-related damage. Finally, the bill can readily be amended to save lives, money, and time for the public, pipeline operators and the transportation construction industry.

1. **GOES WAY TOO FAR: THE ONE-CALL CHANGES IN AB 804 GO FAR BEYOND WHAT IS REQUIRED BY THE FEDERAL REGULATION. THEY ARE UNFAIR, UNREASONABLE, AND UNACCEPTABLE**. The impetus for the changes to the one-call system is a federal regulation and accompanying federal form letter. 49 CFR Part 196 was promulgated by the federal Pipeline and Hazardous Materials Safety Administration (PHMSA), and a December 22, 2015 form letter was sent to the state. WTBA has carefully reviewed both, as well as the existing Wisconsin one-call statute, 182.0175, and the proposed changes. Here is what is totally unnecessary:

- **Excessive Scope**: The federal regulation applies to underground pipelines carrying gas, carbon dioxide or hazardous liquids. The AB 804 proposed changes apply to all aboveground and underground "transmission facilities" of whatever nature.

  > 182.0175(1)(c) "Transmission facilities" includes all pipes, pipelines, wires, cables, ducts, wirelines and associated facilities, whether underground or aboveground, regardless of the nature of their transmittants or of their in-service application. The term includes but is not restricted to, utility facilities, government –owned facilities, facilities transporting hazardous materials, communications and data facilities, drainage and water facilities and sewer systems. The term does not include culverts/.

  All facilities and all activities of any nature whatsoever are included in the AB 804 changes.

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- **Panel Composition Biased**. The penalty-imposing panel is appointed by the utility members of the one-call system. The utility industry panel has a built in, totally unfair bias that is in no way required by the federal regulations.

- **Procedure Outrageously Unfair**: There is no due process or justice in the AB 804 changes. Short time limits are imposed on respondents to complaints that may be filed by anyone. Whatever the panel rules is presumed to be valid. There is no opportunity for a hearing; everything is on paper without an opportunity to question complainants directly. AB 804 eliminates the existing requirement that only persons who "willfully and knowingly" violate the requirements are subject to forfeitures and penalties. The bill shifts the burden to defendants to prove they have done no wrong; respondents are presumed to be guilty unless they prove themselves innocent. There is built-in incentive to confess guilt to gain access to educational alternatives to punishment, but to do so requires a confession of guilt and responsibility that may be used in any future proceeding. There is a surcharge for exercising basic rights and a complete lack of meaningful opportunity for review. There is no appeal to court, any appeal to the Public Service Commission does not stay the panel's penalty, there is no appeal hearing and if the Commission does not act in 30 days the appeal is denied outright. This is not what we do in America; and is certainly not required by the federal regulations. It is outrageous.

2. **FAILS TO COMPLY WITH FEDERAL PIPELINE OPERATOR SAFETY REGULATIONS**. The proposed changes in AB 804 are so inadequate and inferior with regard to pipeline operators they fail to protect underground pipelines from excavation-related damages, as required by the federal regulations.

- **Inadequate Scope**. The first real step in the one-call **safety** process is for the pipeline operator to accurately and positively locate its underground pipeline and mark it adequately so the excavator knows where it is. The very federal regulation cited in support of this proposal requires pipeline operators to accurately locate and mark their underground pipelines. 49 CFR 196.11.

> 49 CFR **§196.111 What if a pipeline operator fails to respond to a locate request or fails to accurately locate and mark its pipeline?** PHMSA may enforce existing requirements applicable to pipeline operators, including those specified in 49 CFR 192.614 and 195.442 and 49 U.S.C. 60114 if a pipeline

operator fails to properly respond to a locate request or fails to accurately locate and mark its pipeline. The limitation in 49 U.S.C. 60114(f) does not apply to enforcement taken against pipeline operators and excavators working for pipeline operators.

49 USC 60114 (e) Prohibition Applicable to Underground Pipeline Facility Owners and Operators.—Any owner or operator of a pipeline facility who fails to respond to a location request in order to prevent damage to the pipeline facility or who fails to take reasonable steps, in response to such a request, to ensure accurate marking of the location of the pipeline facility in order to prevent damage to the pipeline facility shall be subject to a civil action under section 60120 or assessment of a civil penalty under section 60122

PHMSA Guidance Brief December 2015, Federal Standards for Excavators, December 22, 2105 PHMSA letter:
1. Call 811 before excavating.
2. Wait for pipeline operators to establish and mark the location of underground pipelines before excavating.

AB 804 fails to address this pipeline operator issue. Even if a complaint is filed against a pipeline operator for its failure to accurately locate and mark its underground facility, AB 804 lets the defendant utility panel decide whether to punish one of its own members. The prosecutor is the judge.

- **Inferior Concern for Safety**. There is no burden or standard placed on pipeline operators or others by AB 804 to accurately locate and mark facilities or maintain and share location data bases using available technology. It does not create standards for pipeline operators to positively locate in three dimensions or otherwise the location of pipelines both active and abandoned with the precision needed for safety and parallel to what existing law requires of excavators. The proposal does not meet the requirements of the federal regulations, federal law, or the federal guidance. What is more important: it does not achieve the safety objective sought by all.

3. **THE BILL CAN READILY BE AMENDED TO SAVE LIVES, MONEY, AND TIME FOR THE PUBLIC, PIPELINE OPERATORS AND THE TRANSPORTATION CONSTRUCTION INDUSTRY**.

- **There is Time**. The federal form letter of December 22, 2015 states there will be federal audits of state pipeline one-call procedures starting in 2016. There has been no audit and no federal determination of inadequacy, after notice and opportunity to be heard:

> 49 CFR 196.203 PHMSA will use the existing administrative adjudication process for alleged pipeline safety violations set forth in 49 CFR Part 190, subpart B. This process provides for notification that a probable violation has been committed, a 30-day period to respond including an opportunity to request an administrative hearing, the issuance of a final order, and the opportunity to petition for reconsideration.
>
> **49 CFR 198.57** PHMSA will issue a notice of inadequacy to the State in accordance with 49 CFR 190.5. The notice will state the basis for PHMSA's determination that the State's damage prevention enforcement program appears inadequate for purposes of this subpart and set forth the State's response options.

The federal regulation goes on to provide for a notice of inadequacy, ways to respond to the alleged inadequacy, a final determination, and a way to request reconsideration, including submission of improvements. No enforcement action can be taken without such a determination and after hearing on any alleged violation. Even the December 22, 2015 federal form letter provides: "Additionally, States that fail to establish an adequate one-call enforcement program, within five years from the date of the final PHMSA determination notice, may be subject to a 4 percent reduction in State Base Grant funding." There is no need to rush to approve the changes in AB 804. It is more important to get it right and enact changes that properly protect the public and contractors' employees.

- **The Inadequacies Can be Readily Remedied by Amendment and Pipeline Safety Vastly Improved**. WTBA has identified the inadequacies above. They all can be corrected by amendment, and should require pipeline operators to comply with what is required by the federal regulation; no less and no more. What is more important is that such an amendment can establish the process for the Public Service Commission to cooperatively set the required standards of accuracy for underground pipeline location, marking and data sharing that not only complies with the requirements of the federal regulation and law, but also serves the safety and economic best interests of the public, pipeline operators, and the transportation construction industry. The proof is attached.

I appreciate the opportunity to testify today and would be happy to answer any questions.

cleanwisconsin

Wisconsin's

# FOCUS ON ENERGY

Program

Image courtesy of W.I. Tech. Colleges CC BY-NC-ND 2.0

Focus on Energy is an energy efficiency and clean energy program funded through energy utilities and administered statewide in Wisconsin.

Each year, it succeeds in:

## Providing more than $3-for-$1 return on investment

For every dollar invested in Focus on Energy in 2014, $3.33 in direct benefits were generated for everyone who pays an energy bill – businesses and homeowners alike.

And the full return is even higher; if you count all of the economic benefits to the state, the value since 2011 has averaged about 6.5-to-1.

## Saving money for families and businesses

The measures installed through Focus on Energy in 2014 will save Wisconsin families and businesses *more than $900 million* over their lives.

## Saving energy

Those measures saved electricity equivalent to 66,000 average Wisconsin homes in 2014 – about as many as all the houses in Kenosha and Eau Claire combined.

## Keeping rates down

Money invested by families and businesses in energy efficiency helps avoid the need for expensive power plants. Since 2011, Focus on Energy has offset more than 403 MW, or 2 gas power plants worth of demand – keeping rates lower for everyone.

## Creating Jobs

Overall, Focus on Energy contributed nearly 2,000 jobs to the Wisconsin economy in 2014, and measures installed since 2011 will contribute over 13,000 job-years through their useful lives.

## 2014 by the Numbers

**991,944**
Program participants

**$756 million**
direct net
economic benefits

**8.2 billion**
kWh of energy saved
(over lifespan of measures)

**358 million**
Therms of natural gas saved
(over lifespan of measures)

[over]

# FOCUS CAN ACCOMPLISH EVEN MORE

## Why increase our investment in energy efficiency?

***95% of Wisconsin voters***

*support more energy efficiency in the state.*

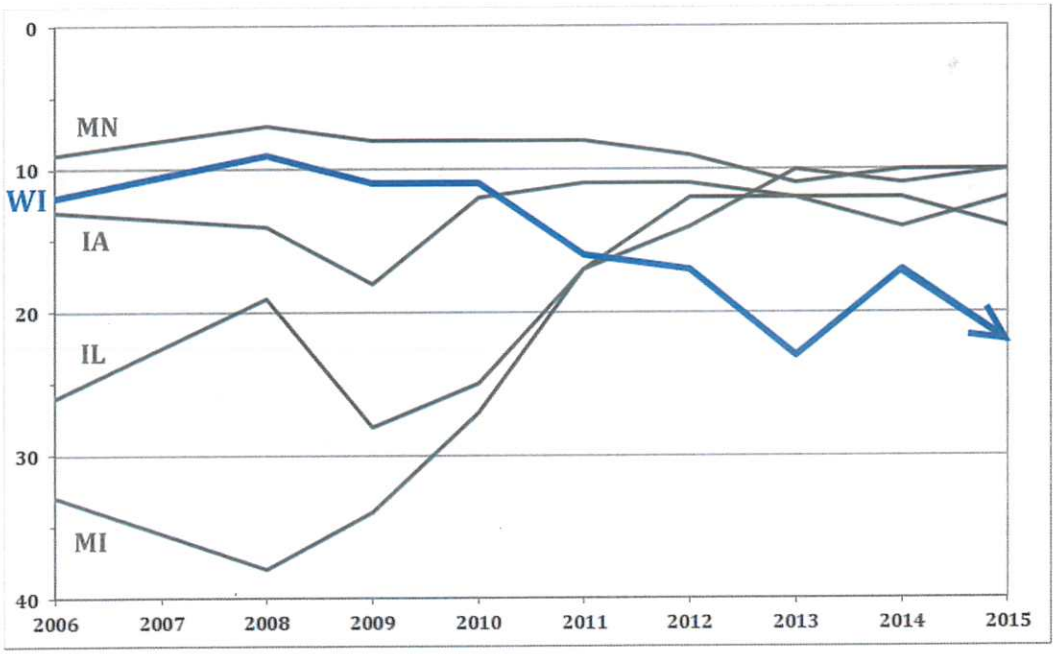
***74%** believe it will create more jobs*

**Money is draining out of the state.**

We spend billions of dollars annually to import fossil fuels. Reducing our energy demand helps keep that money flowing in Wisconsin instead, and adds to our economy.

**We're missing out on opportunities.**

We once ranked in the top 10 states for energy efficiency nationally, but we've fallen to 22nd now. At the same time, our neighbors keep improving: on average, they're investing twice as much as us in energy efficiency each year.




*Our neighbors have made improvements, and all rank near the top 10 for energy efficiency nationally.*

***Wisconsin is going the wrong way - sliding down the rankings, and missing out on opportunities.***

**Utilities are proposing new power plants again.**

New power plants are the reason that our rates have risen more than our neighbors – increasing over 80% since 2000. Now two utilities are proposing new power plants again, saying that electrical demand will outstrip supply in the next five years.

Efficiency could meet these future capacity needs at far lower cost than building new plants (over 40% cheaper on average), while creating jobs, keeping more money in the state, and cutting bills for businesses and homeowners.

**Contact:**
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*Factsheet data from:*
*Focus on Energy Calendar Year 2015 Evaluation Report,*
*Focus on Energy 2011-2014 Economic Impacts Rpt.*
*ACEEE State Energy Efficiency Scorecard*

**PROOF**

ATTACHMENT TO WTBA'S TESTIMONY IN OPPOSITION TO AB 804

SUE (Subsurface Utility Engineering) Requirements in Utility Agreements and Permits -- FHWA & Other States, Studies, Savings and Safety.

**FHWA Guidance & Purdue Study**. "Purdue University's study, *Cost Savings on Highway Projects Utilizing Subsurface Utility Engineering*, was published and distributed in 2000. A total of 71 projects from Virginia, North Carolina, Texas, and Ohio had been studied. These projects involved a mix of interstate, arterial, and collector roads in urban, suburban, and rural settings. Two broad categories of savings emerged: quantifiable savings and qualitative savings. **A total of $4.62 in avoided costs for every $1.00 spent on SUE was quantified**. It was concluded that SUE was a viable technologic practice that reduced project costs related to the risks associated with existing subsurface utilities and should be used in a systemic manner." http://www.fhwa.dot.gov/programadmin/pus.cfm

**ASCE Standard**. "ASCE's standard entitled, *Standard Guideline for the Collection and Depiction of Existing Subsurface Utility Data* was published and distributed in 2003. The intent of this standard was to present a system of classifying the quality of existing subsurface utility data. Such a classification would allow project owners, engineers, and constructors to develop strategies to reduce risks, or at minimum, to allocate risks due to existing subsurface utilities in a defined manner. This document, as a handout or as part of a specification, assists engineers, owners, and contractors in understanding utility quality level classifications and their allocations of risk. The standard closely follows concepts already in place in the SUE profession. Many State DOTs are therefore already in "compliance" with this standard through their use of SUE, or through their inclusion of SUE specifications in their engineering contracts." Source for both quotes: FHWA: http://www.fhwa.dot.gov/programadmin/asce.cfm
http://www.fhwa.dot.gov/programadmin/history.cfm
http://www.fhwa.dot.gov/programadmin/sueindex.cfm

**California Department of Transportation: Agreement for the positive location of underground utilities**. To ensure the safety of the public, California DOT has implemented a utility agreement that allows it to specify the level of quality required in underground utility work plans, permits, and as built underground utility facilities whenever occupying highway right of way or in the path of public highway and transportation improvements. The horizontal and vertical location are specified for underground facilities using a number of positive location technologies. The information is needed for planning, design and construction for safety and cost savings. http://dot.ca.gov/hq/row/utility/docs/posloc_agreement_inergy_west_coast.pdf

**USDOT/ FHWA/AASHTO/SHRP2: Improving Coordination with Utilities**. Solving Utility Issues in Transportation Projects to Save Lives, Money, and Time. http://shrp2.transportation.org/documents/renewal/SHRP2_IAP_Utilities_Brochure_17x11_3-panel_VIEW.pdf

WISCONSIN TRANSPORTATION BUILDERS ASSOCIATION

Testimony for Public Hearing
Committee on Energy and Utilities
Assembly Bill 804
Wednesday, February 3, 2016

Matthew J. Grove, P.E.
Director of Construction Policy and Engineering
Wisconsin Transportation Builders Assn.

My name is Matt Grove, I am the Director of Construction Policy and Engineering at the Wisconsin Transportation Builders Association. My job is to help highway contractors mitigate risk and resolve concerns related to highway contracting. I thank you for the opportunity to provide information and express concern to the committee today, regarding the proposed Diggers Hotline changes in Assembly Bill 804.

The risks associated with utilities located within the excavation limits of projects has been an Industry concern for many years. WTBA has worked closely with WisDOT and utility owners in an attempt to collaboratively eliminate underground utility conflicts on projects. These type of utility conflicts result in safety risks for contractor's employees and the general public. The risk associated with the unknown location of underground utilities also results in project delays and additional project costs for the taxpayers.

While WTBA strives to improve project safety by working with other stakeholders, we cannot support Assembly Bill 804 as proposed. As written, the Bill does not improve or enhance the existing safety standards. It simple creates a bureaucratic process to punish contractors for perceived violations of a law—a law that currently places all burdens for underground utility strikes on contractors.

The Bill does not provide a fair process for contractors. In fact, the Bill would allow for forfeitures and other penalties without basic due process such as a hearing in which contractors could provide testimony or appeal to the Public Service Commission. Under this proposal, a quality contractor that is performing work with reasonable care and consistent with Industry best practices, within the project boundaries set by the state or a local government, will most likely be found to have violated the law for incidents over which they had little or no control to avoid.

This is because the Bill does not attempt to address the real issue, which is the unknown vertical location of underground utilities. Existing law only requires underground utilities to be located with a horizontal marking, which means the location below ground is unknown to contractors. Emerging Technology exists to accurately determine the horizontal AND vertical location of underground utilities. If the vertical location of underground utilities were known, the potential for underground utility strikes would be very low and industry concern regarding this proposed change would be significantly decreased.

In closing, while I am very passionate about the need to improve underground utility conflicts in our work zones, the proposed Bill goes well beyond what is required by the Federal Government for State law compliance with Federal safety standards. The Bill creates a one-sided process that deprives contractors of basic due process protections generally afforded someone accused of violating the law and does not fairly evaluate who is the responsible party in the event of a violation. This will result in increased contractor risk and costs to the taxpayers of the State of Wisconsin without any increase in safety.

Thank you for the opportunity today. I hope the information provided helps the committee understand that the current version of the Bill is not fair and equitable and not right for the State of Wisconsin.

WISCONSIN
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**February 3, 2016**

## WUCA Objection to AB 804

**My name is Robert Bartel. I am the Executive Director and General Counsel for the Wisconsin Underground Contractors Association, Inc. The Association was started in Milwaukee in 1937. Its 120 members are involved in the construction of sewer and water systems and other underground utilities including natural gas pipelines. The Association has a long history of promoting safety and education of employees working in this industry.**

**Our concerns are with the one-call system provisions of AB 804.**

- **Anyone can file a complaint---shouldn't the individual who files the complaint have been directly impacted by the alleged violation?**

- **A peer review panel is created for the first time. This is not required by Federal Regulation 49 CFR 196. What is required is that the State have damage investigation practices that are adequate to determine the at-fault party when damage occurs.**

- **Several issues arise:**
  - **Who will be on the panel? What qualifications and expertise will they have? What will constitute a quorum? Conflicts of interest? Will individuals on the panel have personal liability for their actions—what if they get sued? What standard will be used? Why change the "willful and knowing" current standard? What will be the burden of proof?**

**At no time does the accused have the ability to confront the accuser. No provision for a hearing. No due process. No oral testimony. All by writing. How does a written only process qualify as an adequate investigation practice under Federal Regulations?**
**PSC is already understaffed and this creates more work.**

**Thank you for your consideration.**

*We dig Wisconsin*