



State of Wisconsin
2015 - 2016 LEGISLATURE

LRB-3703/1
MDK&EHS:all

2015 ASSEMBLY BILL 804

January 25, 2016 - Introduced by Representatives KUGLITSCH, STEFFEN, KULP, BALLWEG, PETERSEN, MACCO, PETRYK, KNODL, A. OTT, TAUCHEN and RIPP, cosponsored by Senators ROTH, OLSEN, GUDEX and MARKLEIN. Referred to Committee on Energy and Utilities.

1 **AN ACT** *to repeal* 196.372, 196.975, 285.41 (3) and 285.45 (3); *to renumber*
2 182.0175 (1) (bt); *to renumber and amend* 30.025 (4), 182.0175 (3) (a) (title),
3 182.0175 (3) (a) and 182.0175 (3) (b); *to amend* 20.155 (1) (g), 30.206 (1) (ag)
4 2., 30.208 (3) (e), 66.0821 (5) (a), 66.0821 (5) (e) (intro.), 66.0821 (5) (e) 2.,
5 66.0821 (5) (e) 3., 66.0821 (5) (e) 4., 182.0175 (2) (am) (title), 182.0175 (2) (am)
6 7., 182.0175 (2) (bm) (title), 182.0175 (4), 182.0175 (5), 196.374 (3) (b) 2., 196.52
7 (3) (d) 2., 200.59 (5) (d), 285.41 (4) (a), 285.41 (4) (a) 4., 285.41 (4) (c) and 285.41
8 (4) (d); *to repeal and recreate* 182.0175 (3) (title); and *to create* 30.025 (4) (c),
9 66.0821 (5) (f), 182.0175 (1) (ab), 182.0175 (1) (ac), 182.0175 (1) (ad), 182.0175
10 (1) (ag), 182.0175 (1) (bq), 182.0175 (1) (br), 182.0175 (1) (bx), 182.0175 (1m) (d)
11 8. to 12., 182.0175 (3) (am), 182.0175 (3) (c), 182.0175 (3) (d) 2., 182.0175 (3) (e),
12 182.0175 (3) (f), 182.0175 (3) (g), 196.85 (1m) (e) and 196.85 (1m) (f) of the
13 statutes; **relating to:** one-call system violations; sulfur dioxide compliance
14 plans; assessment authority of the Public Service Commission; funding for

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1 statewide energy efficiency and renewable resource programs; public utility
2 contracts with affiliated interests; local access and transport areas for
3 telephone service; railroad telecommunications service; Department of
4 Natural Resources permit application procedures related to the construction of
5 a high-voltage transmission line; navigable water general permits and
6 individual permits related to utility facilities; granting rule-making authority;
7 and making an appropriation.

Analysis by the Legislative Reference Bureau

This bill makes changes to certain Department of Natural Resources (DNR) procedures used on applications for permits related to certain utility facilities. The bill also makes changes to the enforcement of digger's hotline requirements, including allowing the Public Service Commission (PSC) to directly assess forfeitures. The bill also eliminates the PSC's role regarding sulfur dioxide compliance plans, and makes changes regarding the PSC's assessment authority, funding for Focus on Energy programs, public utility contracts with affiliated interests, telecommunications local access and transport area boundaries, and railroad telecommunications.

DNR permits

This bill allows for an extended deadline for DNR action on an application for a permit relating to the construction of a high-voltage transmission line. Currently, a utility that wishes to construct a high-voltage transmission line must submit a single application to DNR requesting all of the DNR permits that the utility is required to obtain for the project. DNR must grant or deny the application within 30 days of the date on which the PSC issues a decision on the project. Under this bill, upon agreement between DNR and the utility, DNR must 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.

This bill prohibits DNR from requiring the relocation of a utility facility as a condition of a general permit to conduct an activity in navigable waters or as part of a modification granted for an individual permit if the activity sought to be permitted is necessary in order to maintain or repair the facility. General permits apply statewide and authorize certain activities to be conducted in navigable waters as long as a person notifies DNR of the proposed activity and DNR does not, within 30 days, request additional information or notify the person that an individual permit will be required.

ASSEMBLY BILL 804***Digger's hotline enforcement***

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

The bill creates a procedure for handling complaints regarding violations of digger's hotline requirements and allowing the PSC to directly assess forfeitures for violations, instead of a court. The bill requires the one-call system to appoint a panel of seven to nine members to receive complaints filed by a person (complainant) that another person (respondent) has violated or aided in the violation of the digger's hotline requirements. A complaint may not be dismissed solely due to absence of direct damage to the complainant. However, a complaint may not be filed after 120 days after a person discovers an alleged violation, except that the panel may, for good cause, allow filing no later than one year after discovery. Upon receiving a complaint, the panel must provide a notice by certified mail to the respondent that requires the respondent to file a response within 20 days, except that the panel may extend that deadline upon request. In the response, the respondent must admit or deny the alleged violation or advise the panel that the complainant has agreed to dismiss the complaint based on the respondent's satisfaction of the complaint.

Within 20 days after a respondent files a response, the panel must determine by majority vote whether there is probable cause to believe that the respondent committed the violation or whether to dismiss the complaint. The bill specifies other deadlines for the panel's determination if a respondent fails to file a timely response. If the panel determines there is probable cause, the panel must provide notice to the PSC, unless the one-call system allows the respondent to attend an educational course that is produced and administered as provided by the one-call system. If the respondent agrees to attend the educational course, the respondent must pay a fee to the one-call system before completing the course. The fee must recover a portion of the cost of producing the course, as well as the direct cost of administering the course for the respondent. The notice described above that the panel provides to a respondent must advise the respondent of the amount of the fee.

If the one-call system does not allow the respondent to attend the educational course, the panel must provide notice of probable violation to the PSC. The notice must include the panel's recommendation, by majority vote, regarding the amount

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of the forfeiture the PSC should directly assess against the respondent for the violation. The bill specifies factors for the panel to consider in making the recommendation. Upon receiving the notice from the panel, the PSC must provide its own notice of probable violation to the respondent. The bill allows the PSC to include certain items in the notice, including any forfeiture amount recommended by the panel, as well as a statement that the PSC may require the respondent to attend the educational course described above in lieu of, or in addition to, paying a forfeiture.

Within 30 days after the respondent receives the PSC's notice, the respondent must respond by either submitting written explanations, a statement of general denial, or other materials contesting the alleged violation, or by submitting a signed admission that the respondent committed the violation. The bill also allows a respondent to execute a consent agreement with the PSC for dismissing the complaint. The consent agreement may assess a forfeiture, require attendance at the educational course described above, or do both. If the respondent does not execute a consent agreement with the PSC, the bill allows the PSC to issue an order assessing a forfeiture, requiring attendance at the educational course, or doing both. However, the PSC may issue the order no sooner than 30 days after the PSC serves its notice of probable violation on the respondent. Also, if the respondent does not enter into a consent agreement with the PSC, and fails to respond within 30 days after receiving the PSC's notice of probable violation, the bill provides that, unless good cause is shown, the failure to respond constitutes an admission that the respondent committed the violation that is the subject of the notice. The bill allows the admission to be used against the respondent in any future proceeding.

As noted above, the bill allows the PSC to directly assess a forfeiture against a respondent in a consent agreement or, if a consent agreement is not executed, an order. The bill allows the PSC to assess a forfeiture of no more than \$2,000 for each violation of the digger's hotline requirements, with each day of continued violation constituting a separate violation. The bill provides that no other forfeiture may be imposed for violating the digger's hotline requirements. As a result, unlike current law, a court may not impose a forfeiture. Like other forfeitures under current law, the forfeitures are deposited in the school fund. If the PSC assesses a forfeiture, the PSC must also require the respondent to pay a surcharge equal to 10 percent of the forfeiture to the one-call system. If the forfeiture is reduced on appeal, the surcharge must be proportionately reduced.

The bill gives various powers and duties to the one-call system. The bill requires the one-call system to deposit educational course fees and surcharges in a fund called the damage prevention fund that is established and maintained by the one-call system. The bill allows the one-call system to use the damage prevention fund at its discretion to pay for the costs of the educational course or provide for public outreach and underground utility damage prevention awareness programs. Also, the bill allows the one-call system to establish policies, procedures, and forms for complaints made to the panel.

The bill makes other changes, including the following:

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1. If the PSC delegates its powers and duties under the bill to an employee, the bill allows for PSC review of the employee's orders.

2. The bill provides that any recommendation, order, or other action of the panel, one-call system, or PSC is presumed valid and provides that a person claiming invalidity has the burden to plead and prove facts establishing invalidity.

3. If the PSC executes a consent agreement or issues an order against a respondent, the bill allows the PSC to assess the respondent for the PSC's expenses.

4. The bill requires excavators to promptly make a report to the 911 emergency telephone number upon discovering that flammable, toxic, or corrosive gas or liquid that may endanger life, cause bodily harm, or result in damage to property has escaped from damaged transmission facilities.

Sulfur dioxide compliance plans

The bill eliminates the requirement that major energy utilities submit an annual plan for complying with sulfur dioxide emission rates to the PSC and the Department of Natural Resources (DNR) and the requirement for DNR to review and approve or disapprove those plans.

In addition, this bill eliminates the requirement that DNR make certain determinations and recommendations regarding the goals for sulfur dioxide emissions from major utilities and other large sources. Under current law, if DNR determines that the total annual sulfur dioxide emissions from major utilities and other large sources exceeded the state's emission goals for the previous year, or if DNR projects that emissions will exceed those goals in any of the three succeeding years, and if DNR determines that the excess emissions are attributable to major utilities or other large sources, DNR must, after consulting with the PSC and holding a public hearing, prepare a recommendation to the legislature as to whether the emission goals should be replaced with enforceable limits.

This bill also eliminates the requirement that a major utility submit a request for a variance from sulfur dioxide emission rates to PSC and for PSC to determine whether a condition exists for granting a variance. Under the bill, a variance request must be submitted to DNR, as required under current law. The bill also requires DNR to determine whether a variance condition exists.

PSC assessments

The bill makes changes to the PSC's authority to assess its regulatory expenses against persons who are subject to the PSC's jurisdiction.

Current law allows the PSC to directly assess a public utility, power district, or sewerage system for the expenses the PSC incurs in proceedings involving those entities. For other types of entities, current law allows the PSC to directly assess an entity only for proceedings that are specified under current law. Although the PSC conducts proceedings to determine whether certain oil pipeline companies have condemnation authority, current law does not allow the PSC to directly assess those companies for its expenses for those proceedings. This bill allows the PSC to directly assess those companies for those proceedings.

In addition, current law allows septage disposers licensed by DNR to complain to the PSC that the septage disposal fees of a municipal sewerage and storm system (system) are unreasonable. If the PSC finds that the fees are unreasonable and that

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reasonable fees are 15 percent or more lower, current law requires the system to pay all of the PSC's expenses related to the complaint. If the PSC finds that the fees are reasonable, or finds they are unreasonable but that reasonable fees are less than 15 percent lower, current law requires the licensed septage disposer to pay the PSC's expenses. If the PSC terminates the proceeding before determining reasonableness, current law requires the system and licensed septage disposer to each pay 50 percent of the PSC's expenses, unless the parties agree to a different allocation. The bill gives the PSC the discretion to require a licensed septage disposer to pay the PSC's expenses under the foregoing circumstances. Under current law, licensed septage disposers must pay the PSC's expenses under those circumstances. The bill does not affect the duty of a system to pay the PSC's expenses if the PSC finds that fees are unreasonable and that reasonable fees are 15 percent or more lower.

Finally, current law allows other users of a system to complain to the PSC that the system's rates, rules, or practices are unreasonable or unjustly discriminatory, and allows revenue bond and debt holders to complain that the system's rates are inadequate. Current law requires the PSC to assess a system to pay the PSC's expenses in those proceedings. This bill also allows the PSC to assess the complainant. Under the bill, if the PSC determines that the rates, rules, or practices that are the subject of a complaint are not unreasonable, unjustly discriminatory, or inadequate, the PSC has the discretion to require the complainant to pay all or a portion of the expenses. If the PSC terminates the proceeding before making a final determination, the PSC has the discretion to require the system and complainant to each pay 50 percent of the expenses or a different allocation agreed to by the parties. A complainant who is billed for expenses must pay the bill within 30 days after the PSC mails the bill to the complainant.

Focus on Energy funding

This bill makes changes to the funding of statewide energy efficiency and renewable resources programs that current law requires investor-owned electric and natural gas utilities to collectively establish and fund. The programs are commonly referred to as the Focus on Energy programs. Current law requires the PSC to require those utilities to spend 1.2 percent of their annual operating revenues to fund the Focus on Energy and related programs. This bill changes that requirement so that the utilities must spend 1.2 percent of their annual operating revenues derived from retail sales on the programs.

Affiliated interest contracts

The bill allows the PSC to extend a deadline for considering certain applications for approval of public utility contracts with affiliated interests. Under current law, with certain exceptions, a public utility may not enter into a contract with an affiliated interest without the PSC's approval. Current law defines an "affiliated interest" of a public utility to include the following: 1) any person who has 5 percent or more of the voting securities of the public utility; 2) any officer or director of the public utility; 3) any subsidiary; and 4) any person that the PSC finds has substantial influence over the public utility. If the PSC holds a hearing on an application for approval, current law requires the PSC to take final action within 180 days after opening a docket on the application, except that the PSC chairperson may extend the

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deadline for an additional 180 days for good cause. If the PSC does not hold a hearing on an application, current law imposes a 90-day deadline on the PSC, but does not allow for an extension. If the PSC fails to meet a deadline, the PSC is considered to have approved the application.

This bill allows the chairperson of the PSC to extend the above 90-day deadline for an additional 90 days for good cause. If the PSC fails to meet the extended deadline, the bill provides that the PSC is considered to have approved the application.

Local access and transport areas

The bill eliminates statutory authority for filing a petition with the PSC requesting that the PSC petition a federal court to make changes to local access and transport areas (LATAs) for telephone service. LATAs were formed in 1984 upon the breakup of the Bell System pursuant to a federal antitrust action. At present, LATAs are used to define local toll calling areas.

Current law allows 150 or more consumers who reside in the same local exchange area to petition the PSC to petition the appropriate federal court to include their local exchange area in a different LATA. The consumers' petition must explain why the LATA that includes their local exchange area does not adequately reflect common social, economic, and other concerns. If a petition is filed, the PSC must hold a public hearing. After the hearing, if the PSC determines there is sufficient evidence supporting the consumers' petition, the PSC must, in cooperation with the affected telephone companies, petition the federal court to revise the LATA boundaries. This bill eliminates the authority for consumers to file the petition and the related requirements that apply to the PSC.

Railroad telecommunications

The bill eliminates the authority of the PSC regarding complaints about railroad telecommunications service. Current law authorizes the PSC to investigate complaints about telecommunications service with railroads and, upon making certain findings, make appropriate orders regarding the complaints. The bill eliminates that authority.

For further information see the ***state and local*** fiscal estimate, which will be printed as an appendix to this bill.

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

- 1 **SECTION 1.** 20.155 (1) (g) of the statutes is amended to read:
- 2 20.155 (1) (g) *Utility regulation.* The amounts in the schedule for the
- 3 regulation of utilities. Ninety percent of all moneys received by the commission
- 4 under s. 66.0821 (5) (f) 3., 196.85, 196.855, or 201.10 (3) shall be credited to this

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1 appropriation. Ninety percent of all receipts from the sale of miscellaneous printed
2 reports and other copied material, the cost of which was originally paid under this
3 paragraph, shall be credited to this appropriation.

4 **SECTION 2.** 30.025 (4) of the statutes is renumbered 30.025 (4) (a) and amended
5 to read:

6 30.025 (4) (a) The permit may be issued, or the authority to proceed under a
7 permit may be granted, upon stated conditions deemed necessary to assure
8 compliance with the criteria designated under sub. (3). The

9 (b) Except as provided in par. (c), the department shall grant or deny the
10 application for a permit for the utility facility within 30 days of the date on which the
11 commission issues its decision under s. 196.49 or 196.491 (3).

12 **SECTION 3.** 30.025 (4) (c) of the statutes is created to read:

13 30.025 (4) (c) Notwithstanding the deadline in par. (b), upon agreement
14 between the department and a person who submits an application under s. 196.491
15 (3) for a permit to construct a high-voltage transmission line, the department shall
16 grant or deny the application within 45 days after the department receives all of the
17 information necessary for it to carry out its obligations under this subsection, as
18 determined by the department.

19 **SECTION 4.** 30.206 (1) (ag) 2. of the statutes is amended to read:

20 30.206 (1) (ag) 2. Location requirements that ensure that the activity will not
21 materially interfere with navigation or have an adverse impact on the riparian
22 property rights of adjacent riparian owners, except that if the activity is necessary
23 in order to maintain or repair a utility facility that is owned or operated by a public
24 utility, as defined in s. 196.01 (5), or a cooperative association organized under ch.
25 185 for the purpose of producing or furnishing heat, light, water, or power to its

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1 members only, the department may not impose a condition on the permit that
2 requires the relocation of the facility.

3 **SECTION 5.** 30.208 (3) (e) of the statutes is amended to read:

4 30.208 (3) (e) Within 20 days after the period for public comment under sub.
5 (4) (b) has ended or, if no public hearing is held, within 30 days of the 30-day
6 comment period under sub. (4) (a), the department shall render a decision issuing,
7 denying, or modifying the permit or approving or disapproving the contract that is
8 the subject of the application submitted under sub. (1). If the application is to modify
9 a permit to allow an activity necessary to maintain or repair a utility facility that is
10 owned or operated by a public utility, as defined in s. 196.01 (5), or a cooperative
11 association organized under ch. 185 for the purpose of producing or furnishing heat,
12 light, water, or power to its members only, the department may not modify the permit
13 to require the relocation of the facility.

14 **SECTION 6.** 66.0821 (5) (a) of the statutes is amended to read:

15 66.0821 (5) (a) If a user of a service complains to the public service commission
16 that rates, rules and practices are unreasonable or unjustly discriminatory, or if a
17 holder of a mortgage or revenue bond or mortgage certificate or other evidence of
18 debt, secured by a mortgage on the sewerage system or any part of the system or
19 pledge of the income of sewerage service charges, complains that rates are
20 inadequate, the public service commission shall investigate the complaint. If there
21 appears to be sufficient cause for the complaint, the commission shall set the matter
22 for a public hearing upon 10 days' notice to the complainant and the town, village or
23 city. After the hearing, if the public service commission determines that the rates,
24 rules or practices complained of are unreasonable or unjustly discriminatory, it shall
25 determine and by order fix reasonable rates, rules and practices and may make any

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1 other order respecting the complaint that is just and reasonable, including, in the
2 case of standby charges imposed under sub. (4) (c), an order that a municipality
3 refund to the user any amount of the standby charges that have been collected if the
4 user has filed a complaint with the public service commission not later than 60 days
5 after receiving the original notice of charge or after receiving a notice of charge that
6 relates to an increased standby charge. The proceedings under this paragraph are
7 governed, to the extent applicable, by ss. 196.26 to 196.40. The Except as provided
8 in pars. (e) and (f), the commission shall bill any expense of the commission
9 attributable to a proceeding under this paragraph to the town, village or city under
10 s. 196.85 (1).

11 **SECTION 7.** 66.0821 (5) (e) (intro.) of the statutes is amended to read:

12 66.0821 (5) (e) (intro.) ~~Notwithstanding par. (a), the public service commission~~
13 ~~shall bill under s. 196.85 (1) any~~ Any expense of the commission attributable to a
14 proceeding under par. (a) that is initiated under s. 281.49 (11) (d) ~~as follows~~ is subject
15 to the following:

16 **SECTION 8.** 66.0821 (5) (e) 2. of the statutes is amended to read:

17 66.0821 (5) (e) 2. If the commission determines in the proceeding that one or
18 more of the septage disposal fees are unreasonable and determines and fixes by order
19 reasonable fees that, when combined with any other applicable septage disposal fees,
20 total an amount that is not at least 15 percent lower than the total amount of septage
21 disposal fees established by the municipal sewage system for the quantity and type
22 of septage specified in s. 281.49 (11) (b), the commission may require the licensed
23 disposer that is a party to the dispute ~~shall to~~ pay the entire amount of the
24 assessment.

25 **SECTION 9.** 66.0821 (5) (e) 3. of the statutes is amended to read:

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1 66.0821 (5) (e) 3. If the commission determines in the proceeding that the
2 septage disposal fees are reasonable, the commission may require the licensed
3 disposer that is a party to the dispute shall to pay the entire amount of the
4 assessment.

5 **SECTION 10.** 66.0821 (5) (e) 4. of the statutes is amended to read:

6 66.0821 (5) (e) 4. If the commission terminates the proceeding before making
7 a final determination on the reasonableness of the septage disposal fees, the
8 commission may require the municipal sewage system and the licensed disposer that
9 are parties to the dispute shall to each pay 50 percent of the assessment, ~~unless the~~
10 ~~municipal sewage system and the licensed disposer agree to~~ or a different allocation
11 of the assessment agreed to by the parties.

12 **SECTION 11.** 66.0821 (5) (f) of the statutes is created to read:

13 66.0821 (5) (f) 1. In this paragraph, “complainant” means a person who makes
14 a complaint under par. (a) that is not initiated under s. 281.49 (11) (d).

15 2. The public service commission may bill a complainant for any expense of the
16 commission attributable to a proceeding under par. (a) as follows:

17 a. If the commission determines in the proceeding that the rates, rules, or
18 practices that are the subject of the complaint are not unreasonable, unjustly
19 discriminatory, or inadequate, the commission may require the complainant to pay
20 all or a portion, as determined by the commission, of the expenses.

21 b. If the commission terminates the proceeding before making a final
22 determination, the commission may require the municipality and complainant to
23 each pay 50 percent of the expenses or a different allocation of the expenses agreed
24 to by the municipality and complainant.

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1 3. The public service commission shall mail a complainant a bill for any expense
2 the commission requires the complainant to pay under subd. 2. The bill constitutes
3 demand for payment. Within 30 days after the mailing of the bill, the complainant
4 shall pay to the commission the amount billed. Ninety percent of the payment shall
5 be credited to the appropriation account under s. 20.155 (1) (g).

6 **SECTION 12.** 182.0175 (1) (ab) of the statutes is created to read:

7 182.0175 (1) (ab) "Commission" means the public service commission.

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

9 182.0175 (1) (ac) "Complainant" means a person who files a complaint under
10 sub. (3) (am) 1.

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

12 182.0175 (1) (ad) "Complaint" means a complaint filed under sub. (3) (am) 1.

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

14 182.0175 (1) (ag) "Damage prevention fund" means the fund established under
15 sub. (1m) (d) 11.

16 **SECTION 16.** 182.0175 (1) (bq) of the statutes is created to read:

17 182.0175 (1) (bq) "One-call system" means the system established under sub.
18 (1m) (a).

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

20 182.0175 (1) (br) "Panel" means the panel appointed under sub. (1m) (d) 8.

21 **SECTION 18.** 182.0175 (1) (bt) of the statutes is renumbered 182.0175 (1) (bo).

22 **SECTION 19.** 182.0175 (1) (bx) of the statutes is created to read:

23 182.0175 (1) (bx) "Respondent" means a person who is alleged in a complaint
24 to have violated this section.

25 **SECTION 20.** 182.0175 (1m) (d) 8. to 12. of the statutes are created to read:

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1 182.0175 **(1m)** (d) 8. Appoint a panel consisting of not less than 7 and not more
2 than 9 members to carry out the duties specified in sub. (3) (am).

3 9. Establish policies, procedures, and forms as necessary to implement the
4 requirements under sub. (3) (am).

5 10. Provide for the production and administration of the educational course
6 under sub. (3) (am) 6.

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

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

13 **SECTION 21.** 182.0175 (2) (am) (title) of the statutes is amended to read:

14 182.0175 **(2)** (am) (title) *Excavation notice and other duties.*

15 **SECTION 22.** 182.0175 (2) (am) 7. of the statutes is amended to read:

16 182.0175 **(2)** (am) 7. Immediately notify the owner of a transmission facility if
17 an inspection reveals that the transmission facility has been or may have been
18 struck, damaged, dislocated or disrupted and, if flammable, toxic, or corrosive gas or
19 liquid has escaped that may endanger life, cause bodily harm, or result in damage
20 to property, promptly make a report to the 911 emergency telephone number.

21 **SECTION 23.** 182.0175 (2) (bm) (title) of the statutes is amended to read:

22 182.0175 **(2)** (bm) (title) *Notice contents.*

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

25 182.0175 **(3)** (title) ENFORCEMENT.

ASSEMBLY BILL 804**SECTION 25**

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

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

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

6 182.0175 (3) (d) 1. Any In a consent agreement executed under par. (c) 4. or
7 order issued under par. (c) 6., the commission may directly assess a forfeiture against
8 a person who willfully and knowingly violates this section may be required to forfeit
9 of no more than \$2,000 for each offense violation. Each day of continued violation
10 constitutes a separate offense violation. The commission shall remit the forfeitures
11 to the secretary of administration for deposit in the school fund. No other forfeiture
12 may be imposed for a violation of this section.

13 **SECTION 27.** 182.0175 (3) (am) of the statutes is created to read:

14 182.0175 (3) (am) *Complaint.* 1. Any person may file a complaint with the
15 panel pursuant to procedures established by the one-call system that alleges that
16 another person has violated or aided in the violation of this section. No complaint
17 may be dismissed solely because of the absence of direct damage to the complainant.

18 2. No complaint may be filed under subd. 1. after 120 days after a person
19 discovers an alleged violation of this section, except that the panel may, for good
20 cause shown, allow filing no later than one year after the discovery of an alleged
21 violation.

22 3. Upon receipt of a complaint filed under subd. 1., the panel shall provide the
23 respondent, by certified mail, a statement of the complaint and a notice requiring the
24 respondent to file a response with the panel within 20 days after the date of service
25 of the notice. The notice shall also advise the respondent of the amount of the fee

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1 required for completion of the educational course under subd. 6. Upon request of the
2 respondent, the panel may extend the period for filing the response. In the response,
3 the respondent shall admit or deny the violation alleged in the complaint or advise
4 the panel that, based on the respondent's satisfaction of the complaint, the
5 complainant has agreed to dismiss the complaint.

6 4. Within the period specified in subd. 5., the panel shall determine by majority
7 vote whether there is probable cause to believe that the respondent has violated this
8 section or whether to dismiss the complaint. The panel shall dismiss a complaint for
9 lack of probable cause or at the request of the complainant. Except as provided in
10 subd. 6., if the panel determines there is probable cause to believe that a respondent
11 violated this section, the panel shall provide a notice of probable violation to the
12 commission that includes the amount the panel by majority vote recommends the
13 commission assess as a forfeiture under par. (d) 1. The panel shall consider the
14 following factors in determining the amount of a recommended forfeiture:

15 a. The amount of damage, degree of threat to the public safety, and
16 inconvenience caused by the respondent's alleged violation of this section.

17 b. The respondent's plans and procedures to ensure future compliance with this
18 section.

19 c. Any history of previous violations of this section by the respondent.

20 d. Any other matter as justice requires.

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

23 a. If a respondent files a response within the period specified or extended under
24 subd. 3., within 20 days after the respondent files the response.

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1 b. If a respondent fails to file a response within the period specified in subd. 3.
2 and the panel has not extended the period under subd. 3., within 40 days after the
3 panel's service of the notice under subd. 3.

4 c. If the panel has extended the period under subd. 3. and the respondent fails
5 to file a response within the extended period, within 20 days after expiration of the
6 extended period.

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

15 **SECTION 28.** 182.0175 (3) (b) of the statutes is renumbered 182.0175 (3m) and
16 amended to read:

17 182.0175 (3m) MISDEMEANOR. Whoever intentionally removes, moves or
18 obliterates a transmission facilities marking placed by the transmission facilities
19 owner may be fined not more than \$500 or imprisoned for not more than 30 days or
20 both. This ~~paragraph~~ subsection does not apply to an excavator who removes or
21 obliterates markings during an excavation.

22 **SECTION 29.** 182.0175 (3) (c) of the statutes is created to read:

23 182.0175 (3) (c) *Commission duties.* 1. Upon receipt of a notice of probable
24 violation under par. (am) 4., the commission shall serve a notice of the probable
25 violation on the respondent. The commission shall serve the notice using personal

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1 delivery, mail, electronic mail, or any other reasonable method to provide notice. The
2 notice may include any of the following:

3 a. A statement of the provisions of the statutes, rules, or commission orders
4 that the person or persons are alleged to have violated.

5 b. A copy of this section and any other provisions of the statutes or rules upon
6 which the commission is relying in the enforcement action for the violation.

7 c. Any forfeiture amount recommended by the panel.

8 d. A statement that the commission may require the respondent to attend and
9 pay for the educational course under par. (am) 6. in lieu of or in addition to assessing
10 a forfeiture.

11 2. Within 30 days of receipt of a notice of probable violation under subd. 1., the
12 respondent shall respond by the method specified by the commission in at least one
13 of the following ways:

14 a. Submitting written explanations, a statement of general denial, or other
15 materials contesting the alleged violation.

16 b. Submitting a signed admission that the respondent committed the violation
17 that is the subject of the notice.

18 3. Unless good cause is shown or a consent agreement is executed under subd.
19 4. before expiration of the period under subd. 2., the failure of a respondent to
20 respond within that period shall constitute an admission that the respondent
21 committed the violation that is the subject of the notice. The admission may be used
22 against the respondent in any future proceeding.

23 4. At any time before the commission issues an order under subd. 6., the
24 commission and the respondent may agree to dismiss the complaint by joint

ASSEMBLY BILL 804**SECTION 29**

1 execution of a consent agreement. A consent agreement shall become effective when
2 the commission issues an order approving the consent agreement.

3 5. A consent agreement under subd. 4. may assess against the respondent a
4 forfeiture under par. (d) 1., require the respondent to attend the educational course
5 under par. (am) 6., or do both. Each consent agreement under subd. 4. shall include
6 all of the following:

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

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

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

13 6. If a complaint is not dismissed under a consent agreement under subd. 4.,
14 the commission may, no sooner than 30 days after the commission serves the
15 respondent the notice under subd. 1., issue an order assessing a forfeiture under par.
16 (d) 1., require the respondent to attend the educational course under par. (am) 6., or
17 do both.

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

23 **SECTION 30.** 182.0175 (3) (d) 2. of the statutes is created to read:

24 182.0175 (3) (d) 2. For each forfeiture assessed under subd. 1., the commission
25 shall require the person assessed to pay a surcharge equal to 10 percent of the

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1 amount of the forfeiture to the one-call system, which the one-call system shall
2 deposit in the damage prevention fund. If the amount of a forfeiture is reduced on
3 appeal, the amount of the surcharge shall be proportionately reduced.

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

5 182.0175 (3) (e) *Review of delegated order.* Upon the receipt of a written
6 petition of a complainant or respondent requesting review of an order issued by an
7 employee of the commission who was delegated the powers and duties under pars.
8 (c) and (d) by the commission, the commission may review that order. The filing of
9 a written petition for review shall not suspend or delay the effective date of the order,
10 and the order shall continue in effect unless the petition is granted or until the order
11 is superseded, modified, or set aside as provided by law. The complainant or
12 respondent may request review by the commission no later than 20 days after the
13 order by the employee is issued. If the commission does not issue an order with
14 respect to a request for review under this paragraph within 30 days after the request
15 is filed, the request is considered denied.

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

17 182.0175 (3) (f) *Presumption of validity.* Any recommendation, order, or other
18 action of the panel, one-call system, or commission under this subsection is
19 presumed valid. The burden is upon the person claiming the recommendation, order,
20 or other action to be invalid to plead and prove the facts establishing the invalidity.

21 **SECTION 33.** 182.0175 (3) (g) of the statutes is created to read:

22 182.0175 (3) (g) *Rules.* The commission may promulgate rules implementing
23 the requirements under pars. (c) to (f).

24 **SECTION 34.** 182.0175 (4) of the statutes is amended to read:

ASSEMBLY BILL 804**SECTION 34**

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

4 **SECTION 35.** 182.0175 (5) of the statutes is amended to read:

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

15 **SECTION 36.** 196.372 of the statutes is repealed.

16 **SECTION 37.** 196.374 (3) (b) 2. of the statutes is amended to read:

17 196.374 (3) (b) 2. The commission shall require each energy utility to spend 1.2
18 percent of its annual operating revenues derived from retail sales to fund the utility's
19 programs under sub. (2) (b) 1., the utility's ordered programs, the utility's share of
20 the statewide energy efficiency and renewable resource programs under sub. (2) (a)
21 1., and the utility's share, as determined by the commission under subd. 4., of the
22 costs incurred by the commission in administering this section.

23 **SECTION 38.** 196.52 (3) (d) 2. of the statutes is amended to read:

24 196.52 (3) (d) 2. If a hearing is not held on an application under this subsection,
25 the commission shall take final action on the application within 90 days after the

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1 commission issues a notice opening a docket on the application. The chairperson of
2 the commission may extend the time period for an additional 90 days for good cause.
3 If the commission fails to take final action within the initial 90-day period, or the
4 extended 90-day time period, the commission is considered to have approved the
5 application.

6 **SECTION 39.** 196.85 (1m) (e) of the statutes is created to read:

7 196.85 (1m) (e) For the purpose of direct assessment under sub. (1) of expenses
8 incurred by the commission in connection with its activities under s. 182.0175 (3),
9 the term “public utility” includes a person with whom the commission executes a
10 consent agreement under s. 182.0175 (3) (c) 4. or against whom the commission
11 issues an order under s. 182.0175 (3) (c) 6.

12 **SECTION 40.** 196.85 (1m) (f) of the statutes is created to read:

13 196.85 (1m) (f) For the purpose of direct assessment under sub. (1) of expenses
14 incurred by the commission in proceedings under s. 32.02 (13), the term “public
15 utility” includes a business entity specified in s. 32.02 (13).

16 **SECTION 41.** 196.975 of the statutes is repealed.

17 **SECTION 42.** 200.59 (5) (d) of the statutes is amended to read:

18 200.59 (5) (d) Notwithstanding the statutes referenced in par. (a) governing a
19 proceeding under par. (a), s. 66.0821 (5) (e) applies to the public service commission
20 shall allocate commission’s allocation of its assessment under s. 196.85 (1) for any
21 expense of the public service commission for a proceeding under par. (a) that is
22 initiated under s. 281.49 (11) (d) as specified in s. 66.0821 (5) (e).

23 **SECTION 43.** 285.41 (3) of the statutes is repealed.

24 **SECTION 44.** 285.41 (4) (a) of the statutes is amended to read:

ASSEMBLY BILL 804**SECTION 44**

1 285.41 (4) (a) *Request; variance conditions.* A major utility may request a
2 variance from the emission rate under sub. (2) (a) by submitting the request to the
3 ~~commission and the~~ department. No request for a variance may be submitted if the
4 department has served the major utility with written notice under s. 285.83 that the
5 major utility has violated sub. (2) (a). Upon receipt of a request, the ~~commission~~
6 department shall, within 45 days, determine if any of the following variance
7 conditions exists ~~and shall report its determination to the department:~~

8 **SECTION 45.** 285.41 (4) (a) 4. of the statutes is amended to read:

9 285.41 (4) (a) 4. The occurrence of an uncontrollable event ~~not anticipated in~~
10 ~~the plan submitted under sub. (3).~~

11 **SECTION 46.** 285.41 (4) (c) of the statutes is amended to read:

12 285.41 (4) (c) *Grant of variance.* The department shall grant a request for a
13 variance if the ~~commission~~ department determines that a variance condition exists
14 and ~~the department determines that~~ the major utility's compliance plan is adequate.

15 **SECTION 47.** 285.41 (4) (d) of the statutes is amended to read:

16 285.41 (4) (d) *Denial of variance.* The department shall deny a request for a
17 variance if the ~~commission~~ department determines that no variance condition exists
18 or ~~if the department determines that~~ the major utility's compliance plan is not
19 adequate.

20 **SECTION 48.** 285.45 (3) of the statutes is repealed.

21 **SECTION 49. Initial applicability.**

22 (1) ASSESSMENTS. The treatment of sections 66.0821 (5) (a), (e) (intro.), 2., 3.,
23 and 4., and (f) and 196.85 (1m) (f) of the statutes first applies to proceedings initiated
24 on the effective date of this subsection.

