WISCONSIN LEGISLATIVE COUNCIL
AMENDMENT MEMO

2003 Assembly Bill 632	Assembly Substitute Amendment 1, as Amended by Assembly Amendment 1 to Assembly Substitute Amendment 1
Memo published: **November 10, 2003**	*Contact*: **John Stolzenberg, Chief of Research Services (266-2988), or David L. Lovell, Senior Analyst (266-1537)**

2003 Assembly Bill 632 relates to the siting of new energy utility facilities.

Assembly Substitute Amendment 1

Overview

Assembly Substitute Amendment 1 to Assembly Bill 632 (the "substitute amendment") contains provisions which do the following:

- Create a process designed to coordinate, and thereby shorten, the review processes for proposed energy utility facilities by the Department of Natural Resources (DNR) for ch. 30 and other navigable waters permits and by the Public Service Commission (PSC) for Certificates of Approval (CA) and Certificates of Public Convenience and Necessity (CPCN). This coordinated process requires the DNR to consult with a person proposing to construct a utility facility in cooperation with the PSC, prior to the person submitting a single, consolidated application for these DNR permits and at the same time an application to the PSC for a CA or CPCN. The process also incorporates the DNR's practicable alternatives analysis required under water quality certifications into the PSC's proceedings under specified conditions and directs the DNR to issue final permits not more than 30 days after the PSC has issued its decision approving a CA or CPCN.

- Directs the DNR and PSC to coordinate the execution of their respective duties under the Wisconsin Environmental Policy Act (WEPA) for any action of the PSC or DNR regarding a project requiring a CA or CPCN and a DNR navigable waters permit. In considering alternative locations, sites, and routes for a utility facility under WEPA, the substitute

One East Main Street, Suite 401 • P.O. Box 2536 • Madison, WI 53701-2536
(608) 266-1304 • Fax: (608) 266-3830 • Email: leg.council@legis.state.wi.us
http://www.legis.state.wi.us/lc

amendment establishes that the agencies need only consider the location, site, or route in the CA or CPCN application and one alternative location, site, or route.

- Simplifies the PSC's process for reviewing electric transmission line projects that utilize existing transmission corridors.

- Creates a general state policy on the siting of electric transmission facilities as part of the state energy policy in s. 1.12, Stats., and directs the PSC, DOT, and DNR to implement the policy in making all decisions, orders, and rules regarding the siting of these facilities. This policy states the priorities for types of corridors to be used in the siting of these facilities.

- Applies a 180-day deadline (which may be extended to up to 360 days by the Dane County Circuit Court) for final PSC action on a complete CPCN application for an interstate project. Under current law, interstate projects are exempt from an identical deadline that applies to all other complete CPCN applications.

- Authorizes the PSC to inspect property, under a special inspection warranty, to obtain information related to the preparation or review of a CPCN or CA application.

- Authorizes a county or municipality to seek PSC approval to expand the allowable uses of certain funds received under the "Reliability 2000" provisions of 1999 Act 9 to mitigate environmental impacts of high-voltage transmission lines. The PSC may approve the proposed uses if it finds that the uses are in the public interest.

- Modifies the generation incentive aids and related provisions created by 2003 Wisconsin Act 31 by restoring the limitations on mitigation payments, which were partially vetoed by Governor Doyle in signing Act 31, and making various technical changes to the state's base- and incentive-shared revenue payments to local governments for new and repowered electric power plants.

Differences Between the Bill and the Substitute Amendment

The significant differences between the bill and the substitute amendment are that the substitute amendment does all of the following (affected SECTIONS in the substitute amendment are identified in brackets):

- In the cooperative WEPA process between the PSC and the DNR, deletes from the requirements on the alternatives analysis that the second alternative to the project must consist of any alternative location, site, or route for the project that is specified by the person proposing the project. [SEC. 32.]

- Adds to the PSC's approval criteria for a CPCN and a CA for a new electric generating facility (or power plant), that "brownfields," as defined in the Department of Commerce's brownfields grant program law, be used to the extent practicable. [SECS. 34 and 39.]

- Amends eminent domain law to authorize an electric utility to negotiate with a property owner, or the owner's representative, prior to the issuance of a CPCN, if the electric utility

advises the owner or representative that it does not have the authority to acquire the property by condemnation until the CPCN is issued. [SEC. 21.]

- Adds to the state priorities for the siting of electric transmission facilities consideration of the reliability of the electric system. [SEC. 1.]

- Creates an exception to the applicability of the new process for the DNR to review and act on navigable waters permits if the only permit that a utility facility is required to obtain from the DNR is an industrial storm water discharge permit. [SEC. 10.]

- Does not contain the provisions in the bill authorizing the PSC to reconsider a CPCN when action by or information from another state could have influenced the PSC's decision to issue the CPCN. (Note: s. 196.39, Stats., contains general authority for the PSC to rescind, alter, or amend an order.)

- Removes from the DNR's navigable waters permits review process authorization for an applicant for a CPCN or CA to apply for and receive a permit under this process regardless of whether the person is a riparian owner. The effect of this change is to allow these applicants to apply for and receive relevant DNR permits regardless of whether the person is a riparian owner or, as required for an industrial storm water discharge permit, a landowner. [SEC. 13.]

Other differences between the bill and substitute amendment reflect changes in the bill to conform the text of the substitute amendments with preferred drafting style, to reconcile the text of particular provisions in the substitute amendment with other changes in the substitute amendment, and to clarify the text of the substitute amendment, consistent with the lead authors' intent.

Assembly Amendment 1

Assembly Amendment 1 to Assembly Substitute Amendment 1 to Assembly Bill 632 substitutes a new alternatives analysis requirement in the cooperative WEPA process in the substitute amendment. In particular, this amendment:

- Deletes the requirement in the substitute amendment that, notwithstanding specified provisions in WEPA, the PSC and DNR must consider under WEPA and other applicable laws only the project identified in the CA or CPCN application and one alternative to the project.

- Inserts a new requirement that in the consideration of alternative locations, sites, or routes for a project, under WEPA and other applicable laws, the PSC and the DNR must consider only the location, site, or route for the project identified in the CA or CPCN application and one alternative location, site, or route.

Since the requirement in the amendment focuses on alternative locations, sites, and routes, it does not preclude the PSC and DNR from considering alternatives in their WEPA analysis that are not site-specific, such as the use of energy efficiency or a renewable resource as an alternative way to meet part or all of the need for a new coal or natural gas-fired power plant.

Companion Bills and Amendments

Both Assembly and Senate versions of Assembly Bill 632 are being considered concurrently in their respective houses. 2003 Assembly Bill 632 is identical to 2003 Senate Bill 300. Assembly Substitute Amendment 1 to Assembly Bill 632 is identical to Senate Substitute Amendment 1 to Senate Bill 300. Assembly Amendment 1 to Assembly Substitute Amendment 1 to Assembly Bill 632 is identical to Senate Amendment 1 to Senate Substitute Amendment 1 to Senate Bill 300.

LEGISLATIVE HISTORY

Assembly Substitute Amendment 1 to Assembly Bill 632 was introduced by Representative Jensen and others on November 4, 2003. Representative Jensen and others introduced Assembly Amendment 1 to Assembly Substitute Amendment 1 on November 4, 2003.

The Assembly Committee on Energy and Utilities recommended adoption of Assembly Amendment 1 to Assembly Substitute Amendment 1 to Assembly Bill 632 and adoption of Assembly Substitute Amendment 1 to Assembly Bill 632, as amended, on separate votes of Ayes, 11; Noes, 0; and Not Voting, 2, on November 6, 2003. This committee recommended passage of Assembly Bill 632, as amended, on November 6, 2003, on a vote of Ayes, 11; Noes. 0; and Not Voting, 2.

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