



## WISCONSIN LEGISLATIVE COUNCIL

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TO: REPRESENTATIVE MICHAEL HUEBSCH

FROM: John Stolzenberg, Chief of Research Services and David L. Lovell, Senior Analyst

RE: Overview of Major Differences Between Current Law and Assembly Substitute Amendment 1 to 2009 Assembly Bill 649

DATE: April 15, 2010

This memorandum provides an overview of the major differences between current law and Assembly Substitute Amendment 1 to Assembly Bill 649 (the “substitute amendment”). Assembly Bill 649 implements elements of the recommendations in the final report of the Governor’s Task Force on Global Warming, dated July 2008.

The memorandum is divided into the following parts:

- Provisions in current law that are *amended* by the substitute amendment.
- New initiatives that are *created* by the substitute amendment and that are not in current law.

The provisions in Assembly Bill 649 are described in detail in the Legislative Council report titled *Description of Legislation*, dated February 24, 2010. The major differences between the bill and the substitute amendment are described in the Legislative Council report titled *Overview of Major Changes to the Legislation*, dated April 14, 2010. These reports are posted at: <http://www.legis.state.wi.us/lc>.

### **PROVISIONS IN CURRENT LAW THAT ARE AMENDED BY THE SUBSTITUTE AMENDMENT**

#### **Enhanced Energy Efficiency and Renewable Resource Programs**

Under *current law*, a number of programs provide a broad range of energy efficiency and renewable resource services, the best known being the program called Focus on Energy. Among other revisions to these programs, the *substitute amendment*:

- Expands the programs to address energy conservation in the use of liquid petroleum (LP) gas and heating oil, in addition to electricity and natural gas.

- Replaces the fixed funding of the current programs (1.2% of the annual operating revenues of investor-owned electric and gas public utilities) with a system that sets funding based on current statutory criteria and a determination of the energy savings that could potentially be achieved cost-effectively by the programs and the budgets necessary to achieve those savings, as determined by the Public Service commission (PSC). As under current law, the PSC must submit any proposal to set funding above 1.2% of the utilities' revenues to the Joint Committee on Finance for review.
- For four years, requires energy utilities to collect from their customers an amount equal to 0.2% of their annual operating revenues, which is in addition to the amounts determined above, to fund grants and loans for the installation of small-scale, distributed facilities for the generation of electricity from renewable resources.
- Requires greater accountability of programs administered by utilities, retail electric cooperatives, and large customers, and requires the imposition of remedies in cases where a program has failed to meet its goals because the administrator has not made a good faith effort or has not adequately controlled conditions under its control.
- Authorizes the PSC to allow an investor-owned utility to earn a return on capital invested in energy conservation or efficiency equipment installed on a customer's premises if the PSC determines that the investment is prudent and "a cost-effective means of advancing energy conservation or efficiency."

### **Enhanced Renewable Portfolio Standard**

A renewable portfolio standard (RPS) is a policy that requires electric suppliers (utilities and cooperatives) to ensure that specified percentages of the electricity they sell is derived from renewable resources. The *substitute amendment* revises the current Wisconsin RPS in three ways, requiring that:

- Certain standards be met earlier than under current law.
- Higher standards be met in subsequent years than under current law.
- In the later years, a portion of the standard be met with electricity derived from renewable resources located in Wisconsin. The substitute amendment also creates legislative findings that lay out the policy basis for this in-state portion of the RPS.

Under *current law*, compliance with the RPS is based on the sale of electricity generated from renewable resources (termed "renewable energy"), plus renewable resource credits created when an electric provider has sold more renewable energy in a year than required under the RPS. Under the *substitute amendment*, rather than being based on energy sales plus renewable resource credits, compliance is based on three types of credits or certificates: renewable resource credits; nonelectric energy credits; and conservation certificates.

Renewable resource credits under the *substitute amendment* differ from those under current law in that they are created when electricity is generated from a renewable resource. They may be separated

from the energy for trading, banking, or use in compliance with the RPS, and they do not expire. They are based on the same sources of energy as under current law plus all of the following:

- Hydroelectric power from certain large facilities (with a capacity of 60 megawatts or more) located out of state, with certain restrictions applicable to hydroelectric power generated in Manitoba, Canada. (Under current law, no power from large hydroelectric facilities qualifies.)
- Electricity derived from the burning of solid waste if the solid waste: (1) has recyclable and noncombustible materials removed; and (2) is burned in a facility that is owned by a county in this state and that was in service before January 1, 1998.
- Electricity derived from the burning of synthetic fuel produced by the pyrolysis, plasma gasification, or pelletization of organic or waste materials.

Nonelectric energy credits are derived from renewable resources, such as biogas, the thermal output from various sources, or usable light delivered by a solar light pipe. Conservation certificates are derived from energy savings attributable to certain investments made in energy conservation. Nonelectric energy credits and conservation certificates are also bankable and tradable.

### **New Nuclear Power Plants**

The *substitute amendment* makes a number of changes to the regulation of nuclear power plants by PSC, including the review and approval by the PSC to construct a new nuclear power plant under the certificate of public convenience and necessity (CPCN) and “nuclear moratorium” laws. These laws currently apply to electric generating plants with a design capacity of at least 100 megawatts. Elements of the CPCN law do not apply to “merchant power plants” (plants generally not owned by a public utility).

Among other revisions, the *substitute amendment*:

- Applies the CPCN and nuclear moratorium laws to all sizes of new nuclear power plants, irrespective of plant ownership.
- Modifies the findings PSC must make under the nuclear moratorium law to approve a new nuclear power plant, including:
  - Replacing the finding requiring a federally licensed high-level nuclear waste disposal facility with a finding on the plan for managing these wastes.
  - Requiring consideration of the air pollution from the proposed plant and from feasible alternatives.
  - Adding findings on the reasonableness of the cost of the plant, and on the plant satisfying the reasonable needs of the public for an adequate supply of electric energy (i.e., the same “needs test” applicable to other large electric generation facilities under the current CPCN statute).

- Specifies a set of legislative findings as part of the nuclear moratorium law.
- Adds requirements for funding the decommissioning of new nuclear power plants.
- Applies current PSC regulations regarding modification, operation, and sale of utility-owned power plants to new nuclear power plants not owned by a utility.
- Delays the effective date of all of these changes until after PSC has initially implemented the enhanced energy efficiency and renewable resource programs and the enhanced RPS, described above.

### **Other Provisions Affecting PSC**

The *substitute amendment* includes a number of other provisions affecting PSC's current powers and duties, including that it:

- Expedites PSC's review of proposals for construction of renewable energy facilities.
- Reinforces prohibitions on the PSC requiring utilities to conduct energy efficiency and renewable resource programs beyond those programs discussed above.
- Makes extensive technical changes to current statutes, including reorganization, changes in terminology, and repeal of obsolete statutes.

### **Local Government Planning Grant Program**

Under *current law*, the Department of Administration (DOA) administers a program to provide grants to local governmental units to fund the costs of local planning activities and related computer hardware, software, and data. Under this law, DOA must give preference to grant applications that contain six specified elements.

The *substitute amendment* amends this grant program to require the DOA to also give preference to grant applicants that have comprehensive plans in effect that achieve the statutory goals in the current program, have adopted ordinances for traditional neighborhood development or conservation subdivisions, and have submitted a grant application that includes planning efforts to increase overall residential densities.

The *substitute amendment* also creates a new DOA-administered grant program for local government planning, funded by the same appropriations as for the current grant program, to finance: (1) the development or implementation of ordinances for traditional neighborhood development or conservation subdivisions; or (2) planning efforts to increase overall residential densities.

### **Growth Accommodation Incentives**

The *substitute amendment* authorizes the agencies administering five state economic development grant or loan programs\* to give greater weight in determining whether to award a grant or make a loan under the program to an application from a municipality or county if the application is for a project that will result in a reduction of travel, energy use, or greenhouse gas (GHG) emissions, or is located in an area designated for a qualifying traditional neighborhood development or subject to the voluntary commercial green building code, identified below, or to a qualifying “Green Tier” project.

The *substitute amendment* also changes, where applicable, the required match by the recipient, amount of assistance, or other grant conditions in these programs to further encourage the implementation of qualifying projects.

### **Mandatory Buildings Codes**

*Current law* requires the Department of Commerce (Commerce) to establish and maintain a commercial building code and a one-and two-family dwelling code. Both of these codes include requirements related to energy conservation.

The *substitute amendment* directs Commerce to create energy codes for commercial buildings and for one-and two-family dwellings. It requires that the code for commercial buildings conform to the corresponding standards in the International Energy Conservation Code or its equivalent (a “generally accepted code”). It requires that Commerce design the code for one- and two-family dwellings in a manner appropriate to specific conditions in this state, and that it consider incorporating into the code provisions contained in a generally accepted code. It also establishes guidelines for Commerce to deviate from a generally accepted code.

### **Municipal Energy Efficiency Improvement Loan Programs**

The *substitute amendment* expands the municipal energy efficiency improvement loan programs, authorized by 2009 Wisconsin Act 11, to apply to improvements not only in residences but also in commercial and industrial premises and to fund water efficiency improvements.

### **Private Forest Landowner Grant Program**

*Current law* requires the Department of Natural Resources (DNR) to establish a forest grant program that awards grants: (1) for developing and implementing stewardship management plans by owners of nonindustrial private forest land; and (2) to groups of interested parties for projects to control invasive plants in weed management areas.

The *substitute amendment* adds to DNR’s required rule-making under this program that the DNR must prescribe, by rule, the forest stewardship management plan practices that are eligible for

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\* These programs, and their administering agency, are the Transportation Facilities Economic Assistance and Development Program (DOT), Brownfields Site Assessment Grants (DNR), Main Street Program (Commerce), Brownfields Grant Program (Commerce), and Forward Innovation Fund (Commerce).

funding under the program and specifies certain eligible practices that must be included, including establishing and maintaining trees. The *substitute amendment* also specifies a statutory cap on a grant recipient's matching contribution of not more than 25% of the portion of a grant that is used for the cost of planting and maintaining trees.

### **Air Permitting Streamlining**

*Current law* directs the DNR to continually assess state air pollution permit obligations and streamline their implementation to allow for the timely installation and operation of equipment and processes and the pursuit of related economic activity. The *substitute amendment* directs the DNR, as part of this assessment and streamlining, to develop and implement measures to lessen these obligations for projects that would significantly reduce GHG emissions while not requiring a major source construction permit.

### **Industrial Development Revenue Bond Allocation**

*Current law* directs Commerce to establish and administer a system for allocating the federal volume cap on the issuance of federally tax exempt "private activity bonds." The *substitute amendment* requires Commerce to annually dedicate 25% of the portion of this cap allocated to municipalities and corporations formed on their behalf for industrial development revenue bonds that are issued to finance a specified "clean energy manufacturing facility" or a "renewable power generating facility."

### **NEW INITIATIVES THAT ARE CREATED BY THE SUBSTITUTE AMENDMENT AND THAT ARE NOT IN CURRENT LAW**

#### **Goals; Program Coordination and Evaluation; Public Education**

The *substitute amendment*:

- Declares statewide goals for the state for GHG emission reductions, energy conservation, generation of electricity from renewable resources, including from small-scale facilities, and new building energy use; and goals for state agencies for GHG emission reductions, energy conservation, and energy derived from biomass.
- Creates the Climate Change Coordinating Council, modeled on the Groundwater Coordinating Council, for the purpose of coordinating state programs and actions related to climate change and advising policymakers on related matters.
- Establishes a multi-step process for the creation of a quadrennial report to the Legislature and Governor by the Climate Change Coordinating Council that evaluates whether the state is achieving its statewide GHG emission reduction goals and whether any state or local climate change related programs should be modified or created. This process includes the DNR:
  - Periodically collecting or estimating GHG emissions data from man-made and natural sources.

- Preparing a state GHG emissions inventory and analysis of information in the inventory.
- Preparing an assessment for the council of changes in net GHG emissions and whether current and future statewide GHG emission reduction goals are being, or will be, met.
- Directs the Climate Change Coordinating Council to promote and coordinate state educational and training programs related to climate change, and directs DNR to establish and maintain the central state Internet site on climate change.

### **Engine Idling Reduction**

The *substitute amendment* establishes engine idling restrictions for freight trucks and other types of on- and off-highway commercial motor vehicles, including buses and construction equipment. It exempts farm tractors, “implements of husbandry,” and vehicles subject to air pollution operation permits from these restrictions and specifies a number of exceptions to the restrictions.

The *substitute amendment* also directs loading dock operators to minimize idling by trucks using the docks and creates more stringent idling restrictions near facilities containing sensitive populations, such as schools and hospitals, and establishes the responsibility of owners of construction sites to identify the location of these facilities on their construction plans.

### **Transportation-Related GHG Emissions**

The *substitute amendment* directs the DOT and DNR to estimate annual amounts of GHG emissions generated by transportation use in this state, by mode of transportation, and predict future amounts of these emissions and to report these estimates and projections for use in the state’s periodic evaluation of its GHG emissions reduction programs.

### **Model Parking Ordinances**

The *substitute amendment* directs the University of Wisconsin-Extension to develop at least two model market-pricing parking ordinances, at least one for urban areas and one for nonurban areas, and requires that the model ordinances address on-street parking, parking structures, and fee lots.

### **Voluntary Commercial Green Building Code**

The *substitute amendment* directs Commerce to establish a voluntary green building code that provides greater energy conservation benefits than the mandatory codes.

The *substitute amendment* also requires the DOA to ensure that major state building projects conform to the new code and that other state building projects conform to the code to the extent technically feasible and cost-effective.

### **Agricultural Energy Conservation Code**

The *substitute amendment* directs Commerce to establish energy conservation standards for agricultural facilities, including barns and milking parlors.

### **GHG Emissions by State Agencies**

The *substitute amendment* directs nine state agencies (those with operations that produce significant GHG emissions), with the guidance of the DOA, to assess their GHG emissions; set goals for reducing those emissions; and develop and implement plans to achieve those goals.

### **Municipal Levy Limit**

The *substitute amendment* excludes moneys levied by municipalities for energy efficiency measures or renewable energy products from their levy limits.

### **Public School Districts**

The *substitute amendment* directs the Office of Energy Independence to work with interested school districts to engage voluntarily in assessing their GHG emissions; setting goals for reducing those emissions; and developing and implementing plans to achieve those goals. (As described above, nine state agencies with significant energy consumption are required by the substitute amendment to engage in these activities.)

### **Energy Crop Reserve Program**

The *substitute amendment* creates an Energy Crop Reserve Program, under which the Department of Agriculture, Trade and Consumer Protection (DATCP) makes payments to land owners to subsidize the establishment and production of biomass crops. It does not provide funding for the program.

### **GHG Emission Reduction Credits for Forestry Activities**

The *substitute amendment* directs the DNR to specify standards and practices for monitoring and measuring carbon sequestration on forest lands of the state, including private and urban forest lands, and to provide technical assistance on these practices.

### **Bioenergy Feedstock Studies**

The *substitute amendment* directs the DATCP, with DNR, to study the adequacy of current incentives, in the market and in government programs, to prompt producers to sustainably produce enough biomass for use as a bioenergy feedstock, and entities to engage in sustainable forestry, carbon sequestration, and biomass and agricultural production practices, that will significantly contribute to achievement of the state's GHG emission reduction goals.

The *substitute amendment* also directs the DNR to convene a committee composed of state agency representatives and other interested persons to study the availability of biomass in this state and



the impact that the use of biomass for energy production has on prices for biomass and to evaluate the highest and best uses for biomass.

**Cap and Trade Program Report**

If a federal cap and trade program is established or a regional cap and trade program is recommended by Midwestern governors, including the Governor of Wisconsin, the *substitute amendment* directs the DNR to report to the Legislature and Governor on the program, including any legislation that would be necessary to implement the program in this state.

If you have any questions regarding either the substitute amendment or affected provisions in current law, please feel free to contact either of us at the Legislative Council staff offices

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