



## 1995 ASSEMBLY BILL 962

February 26, 1996 - Introduced by Representatives VRAKAS, FREESE, GROTHMAN, GREEN, LEHMAN, MUSSER and PLOMBON, cosponsored by Senators ZIEN, COWLES, BUETTNER and SCHULTZ. Referred to Committee on Housing.

1     **AN ACT to repeal** 77.22 (2) (c), 77.22 (2) (d), 101.122 (6) and 101.122 (6r); **to**  
2     **amend** 101.122 (4) (a), 101.122 (7) (d) and 706.05 (12); and **to create** 101.122  
3     (3) (c), 101.122 (8) and 101.122 (9) of the statutes; **relating to:** eliminating the  
4     rental unit energy efficiency requirements, compliance with existing  
5     stipulations relating to the rental unit energy efficiency requirements, creating  
6     a procedure for issuing citations to certain persons who fail to comply with  
7     existing stipulations relating to the rental unit energy efficiency requirements  
8     and granting rule-making authority.

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### *Analysis by the Legislative Reference Bureau*

Under current law, the department of industry, labor and human relations (DILHR) administers a rental unit energy efficiency program. Under the program, DILHR promulgates rules establishing minimum energy efficiency standards for certain rental units. No owner of a rental unit covered by the standards may transfer ownership of the rental unit unless a DILHR inspector or an inspector approved by DILHR certifies that a rental unit meets the minimum energy efficiency standards established by DILHR. The requirement for certification that a rental unit covered by the minimum energy efficiency standards meets the standards does not apply if: 1) the inspector waives the requirement because the rental unit is scheduled for demolition within 2 years of the transfer of ownership; or 2) the new owner of the rental unit and DILHR or the city, village or town in which the rental unit is located enter into a stipulation that provides that the owner will bring the rental unit into compliance with the minimum energy efficiency standards no later than 12 months after the date of the first transfer of the rental unit after the standards take effect.

Current law provides penalties for violation of various statutory provisions relating to the rental unit energy efficiency program. One of the penalties provides that a person who fails to comply with the requirements of such a stipulation may be required to forfeit not more than \$500.

Also, under current law a real estate transfer fee form must be filed at the time a legal document conveying property is submitted to the register of deeds for recording. On that form, the parties to the change of ownership of the property must indicate whether the property is subject to the rental unit energy efficiency certification requirement, whether the requirement has been waived because of scheduled demolition, whether a stipulation regarding compliance has been entered into, or whether the rental unit energy efficiency program does not apply to the property. Every legal document that conveys an interest in real property and that is offered for recording must be accompanied by the real estate transfer fee form and, if the property is subject to the rental unit energy efficiency certification requirement, by a copy of the certification, of the waiver of that certification due to scheduled demolition or of a stipulation regarding compliance.

This bill sunsets the rental unit energy efficiency program on the day that the bill takes effect. Thus, under the bill, a transfer of the ownership of a rental unit that occurs anytime after the day the bill takes effect does not have to be certified as meeting the rental unit energy efficiency standards, nor does the owner of a rental unit that does not meet the rental unit energy efficiency standards have either to seek a waiver based on demolition or enter into a stipulation agreeing to bring the rental unit into compliance with the standards. The bill also eliminates the requirements that: 1) a real estate transfer fee form indicate whether the requirements of the rental unit energy efficiency program have been met, whether there has been a waiver or stipulation or whether the requirements do not apply; and 2) a legal instrument offered for recording have attached to it a copy of the certification, waiver or stipulation required under the program.

In addition, the bill establishes a citation procedure for enforcing stipulations that were entered into before the sunset of the requirements of the rental unit energy efficiency program. Under the citation procedure, DILHR or a city, village or town that is party to a stipulation may issue a citation to any person who has not complied with a stipulation. A citation may be issued once the person is one month past the date for compliance specified in the stipulation. A citation issued under the bill does not relieve the person from complying with the stipulation, and a person may be charged with multiple violations if each violation covers a period of at least 90 consecutive days of continued failure to comply and if there is no overlap between periods.

Under the bill, a citation specifies a date on which the person who has been issued the citation should appear in court to contest or plead no contest to the citation. The citation also specifies that the person may, without appearing in court, make a deposit of money in an amount set in a schedule by DILHR and may in writing plead no contest to the citation, in which case the money deposited is forfeited as a penalty for the noncompliance with the stipulation. If a person issued a citation pays a deposit but neither enters a written plea of no contest nor appears in court on the

date specified in the citation, the court may either: a) consider the nonappearance as a no contest plea and order the deposit forfeited as a penalty for the noncompliance; or 2) refuse to accept forfeiture of the deposit and require the issuance of a summons or an arrest warrant for the person. A person who fails to appear in court and whose nonappearance is considered by the court to be a no contest plea may, within 90 days of the date of the court appearance, withdraw the plea and contest the citation if the court finds that the person's failure to appear was due to mistake, inadvertence, surprise or excusable neglect.

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

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

1           **SECTION 1.** 77.22 (2) (c) of the statutes is repealed.

2           **SECTION 2.** 77.22 (2) (d) of the statutes is repealed.

3           **SECTION 3.** 101.122 (3) (c) of the statutes is created to read:

4           101.122 (3) (c) Enforce stipulations entered into under sub. (4) (c) before the  
5 effective date of this paragraph .... [revisor inserts date], by use of the citation  
6 procedure under sub. (8).

7           **SECTION 4.** 101.122 (4) (a) of the statutes is amended to read:

8           101.122 (4) (a) The rules adopted under sub. (2) (a) shall take effect on the first  
9 day of the 24th month after adoption of the rules. After the rules take effect, except  
10 as provided under pars. (b) and (c) and sub. (9), no owner may transfer a rental unit  
11 unless, within the previous 5 years, an inspector has inspected the unit and has  
12 issued a certificate stating that the unit satisfies applicable standards under sub. (2)  
13 (a) 1. or 2.

14           **SECTION 5.** 101.122 (6) of the statutes is repealed.

15           **SECTION 6.** 101.122 (6r) of the statutes is repealed.

16           **SECTION 7.** 101.122 (7) (d) of the statutes is amended to read:

1           101.122 (7) (d) *Stipulation.* Any person who fails to comply with the  
2 requirements of a stipulation under sub. (4) (c) may be issued a citation under sub.  
3 (8) and required to forfeit not more than \$500 per dwelling unit. A person may be  
4 charged with multiple violations under this paragraph if each violation covers a  
5 period of at least 90 consecutive days of continued failure to comply, if there is no  
6 overlap between periods and if each period begins after the date by which a rental  
7 unit was to have been brought into compliance.

8           **SECTION 8.** 101.122 (8) of the statutes is created to read:

9           101.122 (8) CITATION PROCEDURE. (a) 1. If a person fails to bring a rental unit  
10 covered by a stipulation under sub. (4) (c) into compliance with the requirements of  
11 the stipulation by the date specified in the stipulation, the department or the city,  
12 village or town which entered into the stipulation with the person may, anytime after  
13 the first day of the 13th month beginning after the date of the transfer of the rental  
14 unit, proceed under this subsection to recover a forfeiture, penalty assessment and  
15 jail assessment under sub. (7) (d).

16           2. All actions to recover a forfeiture, penalty assessment and jail assessment  
17 under this subsection are civil actions in the name of the state of Wisconsin and shall  
18 be heard in the circuit court for the county where the rental unit is located.

19           (b) The form of a citation issued under this subsection shall provide for the  
20 following:

21           1. The name and address of the alleged violator.

22           2. The name and department of the issuing department deputy or official.

23           3. The location, including the street address, of the rental unit to which the  
24 stipulation under sub. (4) (c) applies, the date by which the rental unit covered by the  
25 requirements of the stipulation was to have been brought into compliance, a

1 statement that the alleged violator has failed to bring the rental unit into  
2 compliance, the statute or administrative rule violated and a description of the  
3 failure to comply with the stipulation in language which can be readily understood  
4 by a person making a reasonable effort to do so.

5 4. The maximum forfeiture, penalty assessment and jail assessment for which  
6 the alleged violator might be found liable.

7 5. A date, time and place for the court appearance, and a notice to appear.

8 6. Provisions for deposit and stipulation in lieu of a court appearance.

9 7. Notice that if the alleged violator makes a deposit and fails to appear in court  
10 at the time fixed in the citation, the alleged violator will be considered to have  
11 tendered a plea of no contest and submitted to a forfeiture, penalty assessment and  
12 jail assessment plus costs, including any applicable fees prescribed in ch. 814, not to  
13 exceed the amount of the deposit. The notice shall also state that the court may  
14 decide to summon the alleged violator rather than accept the deposit and plea, that  
15 making a deposit obligates the alleged violator to bring the rental unit into  
16 compliance with the requirements of the stipulation under sub. (4) (c) and that  
17 continued failure to bring the rental unit into compliance may result in the issuance  
18 of additional citations.

19 8. Notice that if the alleged violator makes a deposit and signs the citation, the  
20 alleged violator will be considered to have tendered a plea of no contest and  
21 submitted to a forfeiture, penalty assessment and jail assessment plus costs,  
22 including any applicable fees prescribed in ch. 814, not to exceed the amount of the  
23 deposit. The notice shall also state that the court may decide to summon the alleged  
24 violator rather than accept the deposit and signed citation, that the alleged violator  
25 may, at any time before or at the time of the court appearance date, move the court

1 for relief from the effects of signing the citation, that making a deposit and signing  
2 the citation obligates the alleged violator to bring the building into compliance with  
3 the requirements of the stipulation under sub. (4) (c) and that continued failure to  
4 bring the rental unit into compliance may result in the issuance of additional  
5 citations.

6 9. Notice that the alleged violator may, either in person or by certified mail,  
7 enter a plea of not guilty and request a trial.

8 10. Notice that if the alleged violator does not make a deposit and fails to appear  
9 in court at the time fixed in the citation, the court may issue a summons or an arrest  
10 warrant.

11 11. Notice that if the alleged violator completes any work necessary to comply  
12 with the requirements of the stipulation under sub. (4) (c) the department or the city,  
13 village or town may request the court to reduce the amount of or waive the requested  
14 forfeiture.

15 12. Any other pertinent information.

16 (c) 1. If a court requires an alleged violator to be summoned under pars. (i) and  
17 (j), the summons shall be in the form specified under subd. 2. and shall be  
18 accompanied by a complaint in the form specified in subd. 3.

19 2. A summons shall contain all of the following:

20 a. The title of the cause, specifying the name of the court and county in which  
21 the action is brought and the names of all parties to the action.

22 b. A direction summoning and requiring the alleged violator to appear in a  
23 specified court on a particular date not less than 10 days following service of the  
24 summons to answer the accompanying complaint.

1           c. A notice that in case of failure to appear, judgment may be rendered against  
2 the alleged violator according to the demand of the complaint, or the court may issue  
3 a warrant for the alleged violator's arrest.

4           3. A complaint shall contain sufficient information to provide probable cause  
5 to believe that the alleged violator has not complied with the requirements of a  
6 stipulation under sub. (4) (c). The complaint shall accompany the summons and shall  
7 contain the information set forth in par. (b) 1. and 2. and all of the following:

8           a. The title of the cause, specifying the name of the court and county in which  
9 the action is brought and the names and addresses of the parties to the action.

10           b. A plain and concise statement of the alleged violator's failure to comply with  
11 the requirements of a stipulation under sub. (4) (c) and showing that the plaintiff is  
12 entitled to relief, the statute upon which the cause of action is based and a demand  
13 for a forfeiture, the amount of which shall not exceed the maximum set by the statute  
14 involved, a penalty assessment, a jail assessment and any other relief that is sought  
15 by the plaintiff.

16           c. In an action against a corporation the complaint must state that the alleged  
17 violator is a corporation and state whether it is a domestic or foreign corporation.

18           (d) A department deputy or the city, village or town official who signed the  
19 stipulation under sub. (4) (c) or his or her successor may issue a citation under this  
20 subsection. A citation shall be issued or served anywhere in the state by delivering  
21 a copy to the defendant personally, by leaving a copy at the alleged violator's usual  
22 place of abode with a person of discretion residing there or by mailing a copy to the  
23 defendant's last-known address.

24           (e) The issuance of a citation by a person authorized to do so under par. (d) is  
25 adequate process to give the appropriate court jurisdiction over the alleged violator

1 and the subject matter of the offense for the purpose of receiving cash deposits, if  
2 directed to do so, and for the purposes of pars. (h) and (i). Issuance and filing of a  
3 citation does not constitute commencement of an action. Issuance of a citation does  
4 not violate s. 946.68.

5 (f) 1. A person who receives a citation under this subsection may make a deposit  
6 by mailing a copy of the citation and the amount of money specified by the  
7 department deputy or other issuing official to the office of the clerk of courts in the  
8 county where the offense allegedly occurred, or by going to the office of the clerk of  
9 courts, the department, or the city, village or town official who issued the citation.

10 2. The basic amount of a deposit under subd. 1. shall be determined in  
11 accordance with a deposit schedule that the department shall establish. Each year  
12 the department shall review the schedule and may, after the review, revise the  
13 schedule. In addition to the basic amount determined according to the schedule, the  
14 deposit shall include court costs, including any applicable fees prescribed in ch. 814,  
15 and the applicable penalty assessment and jail assessment.

16 3. The person receiving a deposit under subd. 1. may allow the alleged violator  
17 to submit a check, share draft or other draft for the amount of the deposit or make  
18 the deposit by use of a credit card.

19 4. The person receiving a deposit under subd. 1. shall prepare a receipt in  
20 triplicate showing the purpose for which the deposit is made, stating that the alleged  
21 violator may inquire at the office of the clerk of court regarding the disposition of the  
22 deposit, and notifying the alleged violator that if he or she fails to appear in court at  
23 the time fixed in the citation he or she will be considered to have tendered a plea of  
24 no contest and submitted to a forfeiture, penalty assessment and jail assessment  
25 plus costs, including any applicable fees prescribed in ch. 814, not to exceed the

1 amount of the deposit and that the court may accept the plea and deposit. The  
2 original receipt shall be delivered to the alleged violator in person or by mail.

3 5. A department deputy or city, village or town official who collects a deposit  
4 under subd. 1. shall pay any deposits that he or she collects to the appropriate county  
5 treasurer no later than 20 days after he or she receives the deposit. If a department  
6 deputy or city, village or town official fails to make a timely payment, the county  
7 treasurer may collect the payment from the department deputy or city, village or  
8 town official by an action in the treasurer's name of office and upon any official bond  
9 of the department deputy or city, village or town official, with interest at the rate of  
10 12% per year from the time when the deposit should have been paid.

11 (g) If a person named as the alleged violator in a citation makes a cash deposit,  
12 the person may nevertheless appear in court at the time specified in the citation,  
13 provided that the cash deposit may be retained for application against any forfeiture,  
14 penalty assessment and jail assessment that may be imposed.

15 (h) If a person appears in court in response to a citation, the citation may be  
16 used as the initial pleading, unless the court directs that a formal complaint in the  
17 form specified under par. (c) 3. be issued, and the appearance confers personal  
18 jurisdiction over the person. The person may plead guilty, no contest or not guilty.  
19 If the person pleads guilty or no contest, the court shall accept the plea, enter a  
20 judgment of guilty and impose a forfeiture, the penalty assessment imposed by s.  
21 165.87 and the jail assessment imposed by s. 302.46. If a person pleads not guilty,  
22 his or her plea shall put all matters in the case at issue and the case shall be set for  
23 trial.

24 (i) If the alleged violator makes a cash deposit and fails to appear in court, the  
25 citation may serve as the initial pleading and the violator shall be considered to have

1 tendered a plea of no contest and submitted to a forfeiture, the penalty assessment  
2 imposed by s. 165.87 and the jail assessment imposed by s. 302.46, the sum of which  
3 forfeiture and assessments does not exceed the amount of the deposit. The court may  
4 either accept the plea of no contest and enter judgment accordingly or reject the plea.  
5 If the court accepts the plea of no contest, the alleged violator may, within 90 days  
6 after the date set for the appearance, move to withdraw the plea of no contest, open  
7 the judgment and enter a plea of not guilty if the alleged violator shows to the  
8 satisfaction of the court that the failure to appear was due to mistake, inadvertence,  
9 surprise or excusable neglect. If the court rejects the plea of no contest, the court  
10 shall issue a summons in the form specified under par. (c) 2. If the alleged violator  
11 fails to respond to the summons, the court shall issue an arrest warrant.

12 (j) If the alleged violator does not make a cash deposit and fails to appear in  
13 court at the time specified in the citation, the court may issue a summons in the form  
14 specified under par. (c) 2. or a warrant for the alleged violator's arrest.

15 (k) If the alleged violator desires to enter a not guilty plea, he or she may enter  
16 the plea in person or by certified mail. A letter entering a not guilty plea shall show  
17 the alleged violator's return address and shall request a trial. The court shall set a  
18 time and place for trial that is at least 10 days from the date on which the letter was  
19 mailed to the court and shall notify the alleged violator of the time and place of trial.

20 (L) The alleged violator or the department or city, village or town that  
21 prosecuted the action may appeal from a circuit court case involving a citation issued  
22 under this subsection. The appeal shall be to the court of appeals. An appeal by the  
23 alleged violator shall include a bond to the department or the city, village or town  
24 with surety, to be approved by the judge, that is sufficient to pay the judgment if the

1 judgment is affirmed in whole or in part on appeal. If the judgment is affirmed in  
2 whole or in part, execution may issue against both the alleged violator and the surety.

3 **SECTION 9.** 101.122 (9) of the statutes is created to read:

4 101.122 (9) SUNSET OF RENTAL UNIT ENERGY EFFICIENCY PROGRAM. Subsections  
5 (2) to (6w) do not apply to any transfer of a rental unit that occurs after the effective  
6 date of this subsection .... [revisor inserts date].

7 **SECTION 10.** 706.05 (12) of the statutes is amended to read:

8 706.05 (12) Every conveyance of any interest in real property offered for  
9 recordation shall be accompanied by the form under s. 77.22 (2). If the property is  
10 ~~subject to certification under s. 101.122 (4) (a), waiver under s. 101.122 (4) (b) or~~  
11 ~~stipulation under s. 101.122 (4) (c), the documents of conveyance offered for~~  
12 ~~recordation shall have appended the certificate required under s. 101.122 (4) (a), a~~  
13 ~~waiver under s. 101.122 (4) (b) or a stipulation under s. 101.122 (4) (c).~~

14 (END)