



2009 ASSEMBLY BILL 755

February 17, 2010 - Introduced by Representatives MASON, SOLETSKI, ZIGMUNT, GRIGSBY, MOLEPSKE JR., FIELDS, YOUNG, ROYS, COLON, BERCEAU, A. WILLIAMS, ZEPNICK and TOLES, cosponsored by Senator HOLPERIN. Referred to Committee on Jobs, the Economy and Small Business.

1 **AN ACT** *to renumber* 16.26 and 196.374 (5) (a); *to amend* 66.0627 (8), 103.49 (3)
2 (ar), 109.09 (1), 111.322 (2m) (c), 196.374 (4) (b), 196.374 (5) (b) 1., 196.374 (5)
3 (b) 2., 196.374 (5) (bm) 1., 196.374 (5m) (a), 196.378 (1) (i), 196.378 (3) (a) 1.,
4 196.378 (3) (c), 227.01 (13) (t), 946.15 (1), 946.15 (2), 946.15 (3) and 946.15 (4);
5 and *to create* 16.26 (2), 196.374 (2) (b) 2m., 196.374 (2) (d), 196.374 (5) (a) 2.,
6 196.3745, 196.378 (3) (a) 1m. and 709.03 (form) C. 25m. of the statutes;
7 **relating to:** allowing certain utilities to administer investment programs for
8 energy efficiency improvements and renewable energy applications, creating
9 requirements for political subdivision loans for similar improvements and
10 applications, providing an exemption from emergency rule procedures, and
11 granting rule-making authority.

Analysis by the Legislative Reference Bureau

This bill allows the Public Service Commission (PSC) to authorize an electric, natural gas, or water public utility (utility) to administer, fund, or provide administrative services for a program for investing in energy efficiency improvements and renewable resource applications at any type of premises served

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by the utility. The bill defines “energy efficiency improvement” as an improvement that reduces the usage of energy or increases the efficiency of energy usage at premises, and the bill defines “renewable resource application” as the application of specified renewable energy resources, such as, for example, solar or wind power, at premises. The bill allows the PSC to authorize a program only upon application by a utility and prohibits the PSC from requiring that utilities participate in such a program. In addition, if the utility is an investor-owned electric or natural gas utility (energy utility), the PSC may authorize a program only if the PSC finds the program is cost-effective. The bill requires a utility for which the PSC authorizes a program to file a tariff with the PSC that specifies the terms and conditions of utility and nonutility service provided to customers at premises where energy efficiency improvements or renewable resource applications are made under the program. A tariff has no effect until approved by the PSC.

In addition, the bill specifies that premises are not eligible for an investment under an authorized program unless an audit is performed that demonstrates that an energy efficiency improvement or renewable resource application is cost-effective, as specified in rules promulgated by the PSC. The rules may specify criteria that include comparing the cost of an improvement or application to the value of the premises. In addition, for an energy efficiency improvement, the rules may specify criteria that include the energy savings resulting from the improvement and the period of time required for the energy savings to equal the cost of the improvement. In addition, the PSC must promulgate rules requiring the performance of audit after an energy efficiency improvement or renewable resource application is made or installed. The purpose of such a postaudit is to verify that the improvement or application was made or installed. The bill requires the PSC to promulgate rules specifying the certification requirements that a person must satisfy to perform either type of audit.

The bill also requires that all work involved in making or installing an energy efficiency improvement or renewable resource application under an authorized program must be performed by a contractor or subcontractor that the PSC has included on a prequalification list of approved contractors and subcontractors. The PSC may include a contractor or subcontractor on the list only if the PSC determines that the contractor or subcontractor satisfies certain requirements, including the following: 1) agrees to comply with prevailing wage and substance abuse prevention requirements that apply to certain public works projects; 2) certifies that employees are not improperly classified as independent contractors in violation of federal or state law; 3) satisfies cultural competency requirements in rules promulgated by the PSC; 4) certifies every three years that not less than 30 percent of the total hours worked on an individual energy efficiency improvement or renewable resource application will be performed by individuals who had incomes in the prior year that do not exceed 200 percent of federal poverty guidelines and who reside in the 1st or 2nd class city where the work is performed, or, if the work is not performed in a 1st or 2nd class city in the county where the work is performed; and 5) discloses certain past disciplinary actions and violations of federal or state law. If the past disciplinary actions and violations constitute “good cause,” as defined by the PSC by rule, the PSC

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may exclude a contractor or subcontractor from the list. In addition, the PSC must determine that a contractor or subcontractor has agreed to sponsor an apprenticeship program administered by the Department of Workforce Development. However, the bill allows work to be performed by a contractor or subcontractor who does not sponsor such a program, but only if contractors and subcontractors who sponsor such a program are not available to perform the work.

The bill also imposes the requirements described above regarding audits and prequalification on certain loans made under current law by cities, villages, towns, and counties (political subdivisions). Under current law, a political subdivision is authorized to make a loan to a resident for making or installing an energy efficiency improvement or renewable resource application to the resident's residential property. Current law allows a political subdivision to collect loan repayments as special charges, divide the special charges into installments, and include the special charges in tax rolls even if they are not delinquent. The bill allows political subdivisions to make the loans for any type of premises, not just residential property as under current law. In addition, a premises is not eligible for a loan unless the audit requirements described above are satisfied. The post-audit requirements also apply to the loans. Also, all work on energy efficiency improvements and renewable resource applications made or installed pursuant to a loan must be performed by contractors and subcontractors who are included on the prequalification list described above.

The bill also includes requirements for utilities and political subdivisions to prioritize spending on utility programs authorized under the bill and political subdivision loans. For utility spending whose source is a grant by the PSC, the utility must give the greatest priority to energy efficiency improvements and renewable resource applications at residential premises and the least priority to energy efficiency improvements and renewable resource applications at nonresidential premises of customers with the greatest demand for utility service. For utility spending from other sources, the priorities are reversed. For political subdivision loans, the bill requires political subdivisions to give the greatest priority to energy efficiency improvements and renewable resource applications at residential premises and the least priority to nonresidential premises of utility customers with the greatest demand for utility services. The PSC must promulgate rules implementing the priorities and requiring utilities and political subdivisions to make annual reports regarding implementation of the priorities.

The bill also does all of the following:

1. Requires the PSC to make grants to political subdivisions for loans described above and to utilities for programs authorized under the bill. The bill directs the PSC to make the grants from certain federal block grants that the state receives under a program administered by the federal Department of Energy under the American Recovery and Reinvestment Act of 2009. The bill also requires the PSC to allocate the federal grants in the manner required under the federal program.

2. Requires political subdivisions and utilities that receive payments from residents and customers for energy efficiency improvements and renewable resource

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applications under authorized utility programs and political subdivision loans to use the payments to invest in other improvements and applications.

3. Requires a tariff filed by a utility for which a program is authorized to include contracts between the utility and an owner of property benefited by an energy efficiency improvement or renewable resource application. The contracts must require the owner to do the following: a) inform lessees that are liable for utility service that the cost of the improvement or application will appear on the lessees' utility bills; and b) inform a purchaser of the property that the purchaser, or any other person who is liable for utility service at the property, is liable for the unpaid costs of the improvement or application, and that such costs will appear on utility bills for the property.

4. Allows a utility that participates in the program to include a separate line item on customer bills that compares certain costs of the program with energy savings resulting from an energy efficiency improvement or renewable resource application made under the program.

5. Prohibits a utility with an authorized program from recovering from ratepayers any bad debt related to nonutility services provided under the program.

6. Specifies that, if a utility with an authorized program is an energy utility, the PSC must ensure in rate-making orders that the utility recovers from its ratepayers the amounts spent on the program at a rate of return equal to the utility's overall rate of return authorized by the PSC.

7. Requires an owner of residential property to make a disclosure about an energy efficiency improvement or renewable resource application made under an authorized utility program on the real estate conditions report that is required for residential property transfers.

8. Requires contractors and subcontractors to apply to renew their inclusion on the prequalification list every two years, allows the PSC to conditionally approve a contractor or subcontractor for inclusion on the list, allows the PSC to revoke inclusion for "good cause," as defined in rules promulgated by the PSC, and requires the PSC to update the list on a monthly basis and make the list available to the public.

9. Requires the PSC to promulgate a rule or issue an order that prohibits any work under contracts under energy efficiency and renewable resource programs administered by the PSC under current law from being performed by contractors and subcontractors who are not included on the prequalification list described above. However, the rule or order must allow performance of work by contractors and subcontractors who do not satisfy the apprenticeship requirements only if contractors and subcontractors who do satisfy the requirements are not available to perform the work.

10. Requires DOA to promulgate a rule similar to the rule described above that applies to work under contracts under a federal weatherization program administered by DOA under current law.

11. Prohibits an energy utility from counting any spending under a program authorized under the bill toward compliance with requirements under current law

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for spending a specified percentage of the energy utility's annual operating revenues on energy efficiency and renewable resource programs.

Finally, current law requires certain electric utilities and cooperatives to ensure that, in a given year, a specified percentage of the electricity it sells at retail is derived from renewable resources. These requirements are commonly referred to as renewable portfolio standards (RPSs). Current law also allows electric utilities and cooperatives to create credits based on the amount of electricity derived from renewable resources that is sold at retail in a year and that exceeds the RPS for the year. Subject to certain restrictions, an electric utility or cooperative may use the credit in a subsequent year to help comply with an RPS, or sell the credit to another electric utility or cooperative to help the buyer comply with an RPS. This bill requires the PSC to promulgate rules that allow an electric utility to create an additional credit that can be used or sold like the credits under current law. The PSC's rules must allow for the creation of credits that are based on the reductions in energy usage, increases in efficiency of electricity usage, and generation of renewable energy that results from an energy efficiency improvement or renewable resource application under a program authorized by the PSC under the bill, but only if the spending source for the improvement or application is not a PSC grant under the bill. The PSC's rules must include requirements for measuring the amount of such reductions, increases, and generation, and calculating the amount of a credit. In addition, the bill eliminates the requirement under current law that a credit must be used in a year subsequent to the the year in which it is created or purchased.

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.** 16.26 of the statutes is renumbered 16.26 (1).

2 **SECTION 2.** 16.26 (2) of the statutes is created to read:

3 16.26 (2) The department shall prohibit by rule the performance of any work
4 under a contract entered into under sub. (1) by a contractor or subcontractor who is
5 not included in the list specified in s. 196.3745 (5) (a), except that the department's
6 rule shall allow the performance of work by a contractor or subcontractor who does
7 not satisfy the requirement under s. 196.3745 (5) (a) 3. if no contractor or
8 subcontractor who satisfies the requirement is available to perform the work. This

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1 subsection applies to contracts that are entered into, extended, modified, or renewed
2 on the effective date of the department's rule.

3 **SECTION 3.** 66.0627 (8) of the statutes, as created by 2009 Wisconsin Act 11, is
4 amended to read:

5 66.0627 (8) ~~A~~ Subject to s. 196.3745, a political subdivision may make a loan
6 to a resident of the political subdivision for making or installing an energy efficiency
7 improvement or a renewable resource application to the resident's residential
8 ~~property~~ premises. If a political subdivision makes such a loan, the political
9 subdivision may collect the loan repayment as a special charge under this section.
10 Notwithstanding the provisions of sub. (4), a special charge imposed under this
11 subsection may be collected in installments and may be included in the current or
12 next tax roll for collection and settlement under ch. 74 even if the special charge is
13 not delinquent.

14 **SECTION 4.** 103.49 (3) (ar) of the statutes, as affected by 2009 Wisconsin Act 28,
15 is amended to read:

16 103.49 (3) (ar) In determining prevailing wage rates under par. (a) or (am), the
17 department may not use data from projects that are subject to this section, s. 66.0903,
18 66.0904, 103.50, 196.3745 (5) (a) 1., or 229.8275 or 40 USC 3142 unless the
19 department determines that there is insufficient wage data in the area to determine
20 those prevailing wage rates, in which case the department may use data from
21 projects that are subject to this section, s. 66.0903, 66.0904, 103.50, 196.3745 (5) (a)
22 1., or 229.8275 or 40 USC 3142.

23 **SECTION 5.** 109.09 (1) of the statutes, as affected by 2009 Wisconsin Act 28, is
24 amended to read:

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1 109.09 (1) The department shall investigate and attempt equitably to adjust
2 controversies between employers and employees as to alleged wage claims. The
3 department may receive and investigate any wage claim which is filed with the
4 department, or received by the department under s. 109.10 (4), no later than 2 years
5 after the date the wages are due. The department may, after receiving a wage claim,
6 investigate any wages due from the employer against whom the claim is filed to any
7 employee during the period commencing 2 years before the date the claim is filed.
8 The department shall enforce this chapter and ss. 66.0903, 66.0904, 103.02, 103.49,
9 103.82, 104.12, 196.3745 (5) (a) 1., and 229.8275. In pursuance of this duty, the
10 department may sue the employer on behalf of the employee to collect any wage claim
11 or wage deficiency and ss. 109.03 (6) and 109.11 (2) and (3) shall apply to such actions.
12 Except for actions under s. 109.10, the department may refer such an action to the
13 district attorney of the county in which the violation occurs for prosecution and
14 collection and the district attorney shall commence an action in the circuit court
15 having appropriate jurisdiction. Any number of wage claims or wage deficiencies
16 against the same employer may be joined in a single proceeding, but the court may
17 order separate trials or hearings. In actions that are referred to a district attorney
18 under this subsection, any taxable costs recovered by the district attorney shall be
19 paid into the general fund of the county in which the violation occurs and used by that
20 county to meet its financial responsibility under s. 978.13 (2) (b) for the operation of
21 the office of the district attorney who prosecuted the action.

22 **SECTION 6.** 111.322 (2m) (c) of the statutes, as affected by 2009 Wisconsin Act
23 28, is amended to read:

24 111.322 (2m) (c) The individual files a complaint or attempts to enforce a right
25 under s. 66.0903, 66.0904, 103.49, 196.3745 (5) (a) 1., or 229.8275 or testifies or

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1 assists in any action or proceeding under s. 66.0903, 66.0904, 103.49, 196.3745 (5)
2 (a) 1., or 229.8275.

3 **SECTION 7.** 196.374 (2) (b) 2m. of the statutes is created to read:

4 196.374 (2) (b) 2m. The commission may authorize an energy utility to
5 administer, fund, or provide administrative services for a program described in s.
6 196.3745 (2) if the commission finds that the program is cost-effective.

7 **SECTION 8.** 196.374 (2) (d) of the statutes is created to read:

8 196.374 (2) (d) *Contractors.* The commission shall prohibit, by order or rule,
9 the performance of any work under a contract under a program under par. (a) 1., (b)
10 1. or 2., or (c) by a contractor or subcontractor who is not included in the list specified
11 in s. 196.3745 (5) (a), except that the commission's order or rule shall allow the
12 performance of work by a contractor or subcontractor who does not satisfy the
13 requirement under s. 196.3745 (5) (a) 3. if no contractor or subcontractor who
14 satisfies the requirement is available to perform the work. This paragraph applies
15 to contracts that are entered into, extended, modified, or renewed on the effective
16 date of the commission's order or rule.

17 **SECTION 9.** 196.374 (4) (b) of the statutes is amended to read:

18 196.374 (4) (b) An energy utility that provides financing under an energy
19 efficiency program under sub. (2) (b) 1. or 2. for installation, by a customer, of energy
20 efficiency or renewable resource processes, equipment, or appliances, or an affiliate
21 of such a utility, may not sell to or install for the customer those processes,
22 equipment, appliances, or related materials. The Subject to any order or rule of the
23 commission under sub. (2) (d), the customer shall acquire the installation of the
24 processes, equipment, appliances, or related materials from an independent
25 contractor of the customer's choice.

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1 **SECTION 10.** 196.374 (5) (a) of the statutes is renumbered 196.374 (5) (a) 1.

2 **SECTION 11.** 196.374 (5) (a) 2. of the statutes is created to read:

3 196.374 (5) (a) 2. The commission shall ensure in rate-making orders that an
4 energy utility recovers from its ratepayers the amounts the energy utility spends for
5 a program authorized under sub. (2) (b) 2m. and that an energy utility is allowed to
6 earn a rate of return on such amounts that is equal to the energy utility's overall rate
7 of return authorized by the commission.

8 **SECTION 12.** 196.374 (5) (b) 1. of the statutes is amended to read:

9 196.374 (5) (b) 1. Except as provided in sub. (2) (c) and par. (bm) 2., if the
10 commission has determined that a customer of an energy utility is a large energy
11 customer under 2005 Wisconsin Act 141, section 102 (8) (b), then, each month, the
12 energy utility shall collect from the customer, for recovery of amounts under par. (a)
13 1., the amount determined by the commission under 2005 Wisconsin Act 141, section
14 102 (8) (c).

15 **SECTION 13.** 196.374 (5) (b) 2. of the statutes is amended to read:

16 196.374 (5) (b) 2. A customer of an energy utility that the commission has not
17 determined is a large energy customer under 2005 Wisconsin Act 141, section 102 (8)
18 (b), may petition the commission for a determination that the customer is a large
19 energy customer. The commission shall determine that a petitioner is a large energy
20 customer if the petitioner satisfies the definition of large energy customer for any
21 month in the 12 months preceding the date of the petition. If the commission makes
22 such a determination, the commission shall also determine the amount that the
23 energy utility may collect from the customer each month for recovery of the amounts
24 under par. (a) 1. The commission shall determine an amount that ensures that the
25 amount collected from the customer is similar to the amounts collected from other

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1 customers that have a similar level of energy costs as the customer. Except as
2 provided in sub. (2) (c) and par. (bm) 2., each month, the energy utility shall collect
3 from the customer, for recovery of amounts under par. (a) 1., the amount determined
4 by the commission under this subdivision.

5 **SECTION 14.** 196.374 (5) (bm) 1. of the statutes is amended to read:

6 196.374 **(5)** (bm) 1. The commission shall commence a proceeding ~~for~~ for
7 creating a proposal for allocating within different classes of customers an equitable
8 distribution of the recovery of the amounts under par. (a) 1. by all energy utilities.
9 The purpose of the allocation is to ensure that customers of an energy utility within
10 a particular class are treated equitably with respect to customers of other energy
11 utilities within the same class. No later than December 31, 2008, the commission
12 shall submit the proposal to the governor and chief clerk of each house of the
13 legislature for distribution to the appropriate standing committees of the legislature
14 under s. 13.172 (3).

15 **SECTION 15.** 196.374 (5m) (a) of the statutes is amended to read:

16 196.374 **(5m)** (a) The commission shall ensure that, on an annual basis, each
17 customer class of an energy utility has the opportunity to receive grants and benefits
18 under energy efficiency programs in an amount equal to the amount that is recovered
19 from the customer class under sub. (5) (a) 1. Biennially, the commission shall submit
20 a report to the governor, and the chief clerk of each house of the legislature for
21 distribution to the legislature under s. 13.172 (2), that summarizes the total amount
22 recovered from each customer class and the total amount of grants made to, and
23 benefits received by, each customer class.

24 **SECTION 16.** 196.3745 of the statutes is created to read:

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1 **196.3745 Energy efficiency and renewable energy investment**
2 **program. (1) DEFINITIONS.** In this section:

3 (a) “Cultural competency” means the ability to understand and act respectfully
4 toward, in a cultural context, the beliefs, interpersonal styles, attitudes, and
5 behaviors of persons of various cultures.

6 (b) “Energy efficiency improvement” means an improvement to any type of
7 premises that reduces the usage of energy, or increases the efficiency of energy usage,
8 at the premises.

9 (c) “Improvement or application” means an energy efficiency improvement or
10 renewable resource application.

11 (d) “Political subdivision” means a city, village, town, or county.

12 (e) “Political subdivision loan” means a loan under s. 66.0627 (8) for an
13 improvement or application.

14 (f) “Renewable resource application” means the application of a renewable
15 resource, as defined in s. 196.374 (1) (j), at any type of premises.

16 (g) “Utility” means a public utility that furnishes electricity, natural gas, or
17 water service to retail customers.

18 **(2) AUTHORIZATION.** Subject to s. 196.374 (2) (b) 2m., the commission may, upon
19 application by a utility, authorize the utility to administer, fund, or provide
20 administrative services for a program for investing in improvements or applications
21 for any type of premises served by the utility. Participation in such a program shall
22 be at the discretion of utilities and premises owners, and the commission may not
23 require that a utility or premises owner participate in such a program.

24 **(3) TARIFFS.** A utility for which a program is authorized under sub. (2) shall file
25 a tariff specifying the terms and conditions of utility and nonutility service provided

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1 to customers at premises where improvements or applications are made under the
2 program. A tariff filed under this subsection shall have no effect until approved by
3 the commission. A tariff filed by a utility under this subsection shall include all of
4 the following:

5 (a) Terms and conditions for billing customers at premises for utility and
6 nonutility service related to improvements or applications for which investments are
7 made.

8 (b) A contract between the utility and an owner of property benefited by an
9 improvement or application that requires the owner to inform any property lessees
10 who are liable for utility service that the cost of the improvement or application will
11 appear on the lessees' utility bills.

12 (c) A contract between the utility and an owner of property benefited by an
13 improvement or application that requires the owner to inform any purchaser of the
14 property that the purchaser, or any other person who is liable for utility service at
15 the property, is liable for the unpaid cost of the improvement or application and that
16 such unpaid cost will appear on utility bills for the property.

17 (d) Any other term or condition required by the commission.

18 **(4) AUDITS.** (a) *Preaudits.* A premises is not eligible for an investment for an
19 improvement or application under a program authorized under sub. (2) and a
20 premises is not eligible for a political subdivision loan unless an audit is performed
21 that demonstrates that the improvement or application is cost-effective. The
22 commission shall promulgate rules for determining whether an improvement or
23 application is cost-effective. For an improvement or application, the rules may
24 specify criteria that include comparing the cost of the improvement or application to
25 the value of the premises benefited by the improvement or application. For an

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1 improvement, the rules may specify criteria that include the energy savings
2 resulting from the improvement and the period of time required for the energy
3 savings to equal the cost of the improvement.

4 (b) *Postaudits.* The commission shall promulgate rules requiring the
5 performance of an audit after an improvement or application is made or installed
6 under a program authorized under sub. (2) or pursuant to a political subdivision
7 loan. The purpose of the audit shall be to verify that an improvement or application
8 was made or installed.

9 (c) *Certifications.* The commission shall promulgate rules specifying the
10 certification requirements that a person must satisfy in order to perform an audit
11 required under this subsection.

12 **(5) CONTRACTORS AND SUBCONTRACTORS.** (a) All work involved in making or
13 installing an improvement or application under a program authorized under sub. (2)
14 or pursuant to a political subdivision loan shall be performed by a contractor or
15 subcontractor that the commission has included on a list of prequalified contractors
16 and subcontractors. The commission shall approve a contractor or subcontractor for
17 inclusion on the prequalification list only if the commission determines that the
18 contractor or subcontractor satisfies all of the following:

19 1. Agrees to pay all employees working on an improvement or application for
20 which an investment is made under the program, or for which the political
21 subdivision loan is made, who would be entitled to receive the prevailing wage rate
22 under s. 66.0903 and who would not be required or permitted to work more than the
23 prevailing hours of labor, as defined in s. 103.49 (1) (c), if the improvement or
24 application were a project of public works under s. 66.0903, not less than the
25 prevailing wage rate determined under s. 66.0903 (3) or (6) and not to require or

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1 permit those employees to work more than the prevailing hours of labor, except as
2 permitted under s. 66.0903 (4) (a); to keep and permit inspection of records in the
3 same manner as a contractor performing work on a project of public works that is
4 subject to s. 66.0903 is required to keep and permit inspection of records under s.
5 66.0903 (10); and otherwise to comply with s. 66.0903 in the same manner as a
6 contractor performing work on a project of public works that is subject to s. 66.0903
7 is required to comply with s. 66.0903.

8 2. Agrees not to permit an employee working on an improvement or application
9 for which an investment is made under the program or for which the political
10 subdivision loan is made to use, possess, attempt to possess, distribute, deliver, or
11 be under the influence of a drug, as defined in s. 103.503 (1) (d), or use or be under
12 the influence of alcohol, while performing that work, to have in place a written
13 program for the prevention of substance abuse among those employees in the same
14 manner as a contractor performing work on a project of public works that is subject
15 to s. 66.0903 is required to have in place such a written program under s. 103.503 (3),
16 and otherwise to comply with s. 103.503 in the same manner as a contractor
17 performing work on a project of public works that is subject to s. 66.0903 is required
18 to comply with s. 103.503.

19 3. Except as provided in par. (b), agrees, if the contractor or subcontractor
20 employs employees in trades that are apprenticeable under subch. I of ch. 106, to
21 sponsor an apprenticeship training program that is approved by the department of
22 workforce development for each of those trades and to employ in each of those trades
23 the maximum ratio of apprentices to journeymen that are permitted under
24 standards adopted, recognized, or approved by that department.

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1 4. Provides the commission a detailed statement regarding related business
2 entities if, at any time in the 3 years prior to inclusion on the prequalification list,
3 the contractor or subcontractor has controlled or has been controlled by another
4 corporation, partnership, or other business entity operating in the construction
5 industry.

6 5. Certifies to the commission that the contractor or subcontractor understands
7 that, in performing work under the program or pursuant to the political subdivision
8 loan, the contractor or subcontractor will be required to use as subcontractors only
9 those entities that are also included on the prequalification list.

10 6. Certifies to the commission that employees are not improperly classified as
11 independent contractors in violation of federal or state law.

12 7. Discloses to the commission whether in the 3 years prior to inclusion on the
13 prequalification list the contractor or subcontractor has had any type of business,
14 contracting, or trade license, certification, or registration revoked or suspended;
15 been debarred by any federal state, or local government agency; defaulted on any
16 project; committed a willful violation of federal or state safety law as determined by
17 a final decision of a court or government agency authority; or been found by a final
18 decision of a court or government agency to be in violation of any other law relating
19 to its contracting business, including wage and hour laws, prevailing wage laws,
20 environmental laws, antitrust laws, or tax laws, where the penalty for such violation
21 resulted in the imposition of a fine, back pay damages, or any other type of penalty,
22 in an amount of more than \$10,000.

23 8. Satisfies cultural competency requirements established in rules
24 promulgated by the commission.

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1 9. Certifies to the commission that not less than 30 percent of the total hours
2 of work performed by the contractor or subcontractor on an individual improvement
3 or application will be performed by individuals who, if the work is performed in a 1st
4 or 2nd class city, reside in the 1st or 2nd class city, or, if the work is not performed
5 in a 1st or 2nd class city, reside in the county in which the work is performed, and
6 whose annual income during the year prior to performance of the work did not exceed
7 200 percent of the poverty level under the federal poverty income guidelines of the
8 federal Department of Health and Human Services under 42 USC 9902 (2). The
9 commission shall promulgate rules for making certifications under this subdivision.
10 The rules shall provide that, once a contractor or subcontractor makes a certification
11 under this subdivision, the certification is valid for 3 years.

12 10. Certifies to the commission that an application for inclusion on the
13 prequalification list has been executed by a principal or person employed by the
14 applicant who has sufficient knowledge to address all matters in the application,
15 including an attestation stating, under the penalty of perjury, that all information
16 submitted is true, complete, and accurate.

17 (b) The commission may include on the prequalification list under par. (a) a
18 contractor or subcontractor who does not satisfy the requirement under par. (a) 3.
19 The commission shall promulgate rules allowing a contractor or subcontractor who
20 does not satisfy the requirement to perform work on an improvement or application
21 for which an investment is made under a program authorized under sub. (2) or for
22 which a political subdivision loan is made, only if no contractor or subcontractor who
23 satisfies the requirement is available to perform the work.

24 (c) Based on good cause shown by the disclosures required under par. (a) 7., the
25 commission may disapprove a contractor or subcontractor for inclusion in the

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1 prequalification list under par. (a). The commission shall promulgate rules defining
2 “good cause” for purposes of this paragraph.

3 (d) A contractor or subcontractor shall report to the commission any material
4 change to its business or operations that are relevant to the commission’s approval
5 to include the contractor or subcontractor in the prequalification list under par. (a).
6 A contractor or subcontractor shall make a report required under this paragraph no
7 later than 15 days after obtaining knowledge of the material change. If a contractor
8 or subcontractor violates this paragraph, the commission may revoke the
9 contractor’s or subcontractor’s inclusion in the prequalification list for a period of no
10 more than 3 years.

11 (e) Except for conditional approvals under par. (f), a contractor’s or
12 subcontractor’s inclusion in the prequalification list under par. (a) is valid for 2 years,
13 unless the commission revokes the inclusion under par. (d). The commission shall
14 promulgate rules for a contractor or subcontractor to apply every 2 years for the
15 commission to renew an approval for inclusion in the prequalification list.

16 (f) The commission may conditionally approve a contractor or subcontractor for
17 inclusion in the prequalification list under par. (a) for a period not exceeding 2 years.
18 The commission shall set forth in writing any conditions of an approval made under
19 this paragraph.

20 (g) Prior to disapproving a contractor or subcontractor for inclusion in the
21 prequalification list under par. (a), the commission shall provide the contractor or
22 subcontractor with notice and opportunity to be heard.

23 (h) The commission shall make the prequalification list under par. (a) available
24 to the public. The prequalification list shall show the name, address, identification
25 number assigned by the commission, and approval renewal date for each contractor

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1 or subcontractor. The commission shall update the prequalification list on a monthly
2 basis and make the updated lists available to the public.

3 (i) The commission shall periodically review the qualifications and
4 performance of contractors and subcontractors included in the prequalification list
5 under par. (a). For good cause shown, the commission may, after notice and
6 opportunity to be heard, revoke a contractor's or subcontractor's inclusion on the
7 prequalification list. The commission shall promulgate rules defining "good cause"
8 for purposes of this paragraph.

9 (6) UTILITIES. (a) A utility for which the commission authorizes a program
10 under sub. (2) and approves a tariff under sub. (3) may include a separate line item
11 on bills of a customer at premises benefited by an improvement or application made
12 or installed under the program that compares the costs of the program borne by the
13 customer with the energy savings resulting from the improvement or application.
14 Notwithstanding s. 218.04, a utility need not obtain a license as a collection agency
15 for this billing practice.

16 (b) Any costs that an energy utility, as defined in s. 196.374 (1) (e), incurs to
17 administer, fund, or provide administrative services for an investment made in
18 accordance with a tariff approved under sub. (3) shall be in addition to the amounts
19 the commission requires the energy utility to spend under s. 196.374 (3) (b) 2.

20 (c) A utility shall use any payments received for improvements and
21 applications from customers pursuant to a program authorized under sub. (2) to
22 invest in other improvements and applications under the program.

23 (d) 1. A utility for which a program is authorized under sub. (2) shall prioritize
24 the utility's spending on the program in the following manner:

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1 a. If the source of the spending is a grant under sub. (8) (b), the utility shall give
2 the greatest priority to improvements and applications at residential premises and
3 the least priority to improvements and applications at nonresidential premises of
4 customers with the greatest demand for service provided by the utility.

5 b. If the source of the spending is not a grant under sub. (8) (b), the utility shall
6 give the greatest priority to improvements and applications at nonresidential
7 premises of customers with the greatest demand for service provided by the utility
8 and the least priority to improvements and applications at residential premises.

9 2. The commission shall promulgate rules implementing the requirements of
10 subd. 1. and requiring utilities to make annual reports to the commission regarding
11 their implementation of the requirements.

12 (e) A utility may not recover from ratepayers any bad debt related to nonutility
13 services provided under a tariff approved under sub. (3).

14 **(7) POLITICAL SUBDIVISIONS.** (a) A political subdivision shall use any
15 repayments of political subdivision loans to make additional political subdivision
16 loans.

17 (b) A political subdivision shall prioritize spending on political subdivision
18 loans in a manner that gives the greatest priority to improvements and applications
19 at residential premises and the least priority to improvements and applications at
20 nonresidential premises of utility customers with the greatest demand for service
21 provided by utilities. The commission shall promulgate rules implementing the
22 requirements of this paragraph and requiring political subdivisions to make annual
23 reports to the commission regarding their implementation of the requirements.

24 **(8) GRANTS.** (a) In this subsection, "block grant program" means the the energy
25 efficiency and conservation block grant program under P.L. 111-5.

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1 (b) Notwithstanding s. 16.54 (2) (a), the commission shall administer all
2 moneys received by the state under the block grant program for the purpose of
3 making grants to political subdivisions that make political subdivision loans and to
4 utilities for which programs are authorized under sub. (2). The commission shall
5 allocate the moneys received under the block grant program in the manner required
6 under the block grant program. A political subdivision or utility may use a grant only
7 for costs associated with political subdivision loans or a program authorized under
8 sub. (2).

9 **SECTION 17.** 196.378 (1) (i) of the statutes is amended to read:

10 196.378 (1) (i) “Renewable resource credit” means a credit calculated in
11 accordance with rules promulgated under sub. (3) (a) 1. ~~and, 1m., or 2.~~

12 **SECTION 18.** 196.378 (3) (a) 1. of the statutes is amended to read:

13 196.378 (3) (a) 1. Subject to subd. 2., an electric provider that provides total
14 renewable energy to its retail electric customers or members in excess of the
15 percentages specified in sub. (2) (a) 2., or that satisfies the requirements specified in
16 rules promulgated under subd. 1m., may, in the applicable year, create a renewable
17 resource credit and sell to any other electric provider the renewable resource credit
18 or a portion of the renewable resource credit at any negotiated price. An electric
19 provider that creates or purchases a renewable resource credit or portion may use
20 the credit or portion ~~in a subsequent year~~, as provided under par. (c), to establish
21 compliance with sub. (2) (a) 2. The commission shall promulgate rules that establish
22 requirements for the creation and use of a renewable resource credit created on or
23 after January 1, 2004, including calculating the amount of a renewable resource
24 credit, and for the tracking of renewable resource credits by a regional renewable

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1 resource credit tracking system. The rules shall specify the manner for aggregating
2 or allocating credits under this subdivision or sub. (2) (b) 4. or 5.

3 **SECTION 19.** 196.378 (3) (a) 1m. of the statutes is created to read:

4 196.378 (3) (a) 1m. The commission shall promulgate rules that allow an
5 electric utility to create renewable resource credits based on the reduction in
6 electricity usage, increase in the efficiency of electricity usage, and generation of
7 renewable energy that results in a year from an improvement or application, as
8 defined in s. 196.3745 (1) (c), under a program of the electric utility that is authorized
9 under s. 196.3745 (2), but only if the utility's spending source for the improvement
10 or application is not a grant under s. 196.3745 (8) (b). The rules shall include
11 requirements for measuring the amount of such a reduction, increase, and
12 generation and calculating the amount of a renewable resource credit. With respect
13 to reductions, the rules shall provide that a reduction equal to one kilowatt-hour
14 results in the creation of a renewable resource credit equal to one kilowatt-hour.

15 **SECTION 20.** 196.378 (3) (c) of the statutes is amended to read:

16 196.378 (3) (c) A renewable resource credit created under s. 196.378 (3) (a),
17 2003 stats., may not be used after December 31, 2011. A renewable resource credit
18 created under par. (a) 1., 1m., or 2., ~~as affected by 2005 Wisconsin Act 141~~, may not
19 be used after the 4th year after the year in which the credit is created, except the
20 commission may promulgate rules specifying a different period of time if the
21 commission determines that such period is necessary for consistency with any
22 regional renewable resource credit trading program that applies in this state.

23 **SECTION 21.** 227.01 (13) (t) of the statutes, as affected by 2009 Wisconsin Act
24 28, is amended to read:

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1 227.01 (13) (t) Ascertains and determines prevailing wage rates under ss.
2 66.0903, 66.0904, 103.49, 103.50, 196.3745 (5) (a) 1., and 229.8275, except that any
3 action or inaction which ascertains and determines prevailing wage rates under ss.
4 66.0903, 66.0904, 103.49, 103.50, 196.3745 (5) (a) 1., and 229.8275 is subject to
5 judicial review under s. 227.40.

6 **SECTION 22.** 709.03 (form) C. 25m. of the statutes is created to read:

7 709.03 (form)

8 C.25m. I am aware that an energy efficiency improve-
9 ment or renewable resource application has
10 been made or installed to the property under
11 a program authorized under s. 196.3745 and
12 that utility bills for the property will include
13 unpaid costs of the improvement or applica-
14 tion.

15 **SECTION 23.** 946.15 (1) of the statutes, as affected by 2009 Wisconsin Act 28,
16 is amended to read:

17 946.15 (1) Any employer, or any agent or employee of an employer, who induces
18 any person who seeks to be or is employed pursuant to a public contract as defined
19 in s. 66.0901 (1) (c) or who seeks to be or is employed on a project on which a prevailing
20 wage rate determination has been issued by the department of workforce
21 development under s. 66.0903 (3), 66.0904 (4), 103.49 (3), 103.50 (3), 196.3745 (5) (a)
22 1., or 229.8275 (3) or by a local governmental unit, as defined in s. 66.0903 (1) (d),
23 under s. 66.0903 (6) or 66.0904 (6) to give up, waive, or return any part of the
24 compensation to which that person is entitled under his or her contract of
25 employment or under the prevailing wage rate determination issued by the

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1 department or local governmental unit, or who reduces the hourly basic rate of pay
2 normally paid to an employee for work on a project on which a prevailing wage rate
3 determination has not been issued under s. 66.0903 (3) or (6), 66.0904 (4) or (6),
4 103.49 (3), 103.50 (3), 196.3745 (5) (a) 1., or 229.8275 (3) during a week in which the
5 employee works both on a project on which a prevailing wage rate determination has
6 been issued and on a project on which a prevailing wage rate determination has not
7 been issued, is guilty of a Class I felony.

8 **SECTION 24.** 946.15 (2) of the statutes, as affected by 2009 Wisconsin Act 28,
9 is amended to read:

10 946.15 (2) Any person employed pursuant to a public contract as defined in s.
11 66.0901 (1) (c) or employed on a project on which a prevailing wage rate
12 determination has been issued by the department of workforce development under
13 s. 66.0903 (3), 66.0904 (4), 103.49 (3), 103.50 (3), 196.3745 (5) (a) 1., or 229.8275 (3)
14 or by a local governmental unit, as defined in s. 66.0903 (1) (d), under s. 66.0903 (6)
15 or 66.0904 (6) who gives up, waives, or returns to the employer or agent of the
16 employer any part of the compensation to which the employee is entitled under his
17 or her contract of employment or under the prevailing wage determination issued by
18 the department or local governmental unit, or who gives up any part of the
19 compensation to which he or she is normally entitled for work on a project on which
20 a prevailing wage rate determination has not been issued under s. 66.0903 (3) or (6),
21 66.0904 (4) or (6), 103.49 (3), 103.50 (3), 196.3745 (5) (a) 1., or 229.8275 (3) during
22 a week in which the person works part-time on a project on which a prevailing wage
23 rate determination has been issued and part-time on a project on which a prevailing
24 wage rate determination has not been issued, is guilty of a Class C misdemeanor.

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1 **SECTION 25.** 946.15 (3) of the statutes, as affected by 2009 Wisconsin Act 28,
2 is amended to read:

3 946.15 (3) Any employer or labor organization, or any agent or employee of an
4 employer or labor organization, who induces any person who seeks to be or is
5 employed on a project on which a prevailing wage rate determination has been issued
6 by the department of workforce development under s. 66.0903 (3), 66.0904 (4), 103.49
7 (3), 103.50 (3), 196.3745 (5) (a) 1., or 229.8275 (3) or by a local governmental unit, as
8 defined in s. 66.0903 (1) (d), under s. 66.0903 (6) or 66.0904 (6) to permit any part of
9 the wages to which that person is entitled under the prevailing wage rate
10 determination issued by the department or local governmental unit to be deducted
11 from the person's pay is guilty of a Class I felony, unless the deduction would be
12 permitted under 29 CFR 3.5 or 3.6 from a person who is working on a project that is
13 subject to 40 USC 3142.

14 **SECTION 26.** 946.15 (4) of the statutes, as affected by 2009 Wisconsin Act 28,
15 is amended to read:

16 946.15 (4) Any person employed on a project on which a prevailing wage rate
17 determination has been issued by the department of workforce development under
18 s. 66.0903 (3), 66.0904 (4), 103.49 (3), 103.50 (3), 196.3745 (5) (a) 1., or 229.8275 (3)
19 or by a local governmental unit, as defined in s. 66.0903 (1) (d), under s. 66.0903 (6)
20 or 66.0904 (6) who permits any part of the wages to which that person is entitled
21 under the prevailing wage rate determination issued by the department or local
22 governmental unit to be deducted from his or her pay is guilty of a Class C
23 misdemeanor, unless the deduction would be permitted under 29 CFR 3.5 or 3.6 from
24 a person who is working on a project that is subject to 40 USC 3142.

25 **SECTION 27. Nonstatutory provisions.**

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1 (1) By the first day of the 4th month beginning after the effective date of this
2 subsection, the public service commission shall, using the procedure under section
3 227.24 of the statutes, promulgate the rules required under section 196.3745 (4) (a),
4 (b), and (c), (5) (a) 8. and 9., (b), (c), (e), and (i), (6) (d) 2., and (7) (b) of the statutes,
5 as created by this act, for the period before the effective date of the permanent rules
6 promulgated under section 196.3745 (4) (a), (b), and (c), (5) (a) 8. and 9., (b), (c), (e),
7 and (i), (6) (d) 2. and (7) (b) of the statutes, as created by this act, but not to exceed
8 the period authorized under section 227.24 (1) (c) and (2) of the statutes.
9 Notwithstanding section 227.24 (1) (a), (2) (b), and (3) of the statutes, the public
10 service commission is not required to provide evidence that promulgating a rule
11 under this subsection as an emergency rule is necessary for the preservation of the
12 public peace, health, safety, or welfare and is not required to provide a finding of
13 emergency for a rule promulgated under this subsection.

14 (2) If the public service commission determines to promulgate rules instead of
15 issuing an order under section 196.374 (2) (d) of the statutes, as created by this act,
16 then, by the first day of the 4th month beginning after the effective date of this
17 subsection, the public service commission shall, using the procedure under section
18 227.24 of the statutes, promulgate rules under section 196.374 (2) (d) of the statutes,
19 as created by this act, for the period before the effective date of the permanent rules
20 promulgated under section 196.374 (2) (d) of the statutes, as created by this act, but
21 not to exceed the period authorized under section 227.24 (1) (c) and (2) of the statutes.
22 Notwithstanding section 227.24 (1) (a), (2) (b), and (3) of the statutes, the public
23 service commission is not required to provide evidence that promulgating a rule
24 under this subsection as an emergency rule is necessary for the preservation of the

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1 public peace, health, safety, or welfare and is not required to provide a finding of
2 emergency for a rule promulgated under this subsection.

3 (3) By the first day of the 4th month beginning after the effective date of this
4 subsection, the department of administration shall, using the procedure under
5 section 227.24 of the statutes, promulgate the rules required under section 16.26 (2)
6 of the statutes, as created by this act, for the period before the effective date of the
7 permanent rules promulgated under section 16.26 (2) of the statutes, as created by
8 this act, but not to exceed the period authorized under section 227.24 (1) (c) and (2)
9 of the statutes. Notwithstanding section 227.24 (1) (a), (2) (b), and (3) of the statutes,
10 the department of administration is not required to provide evidence that
11 promulgating a rule under this subsection as an emergency rule is necessary for the
12 preservation of the public peace, health, safety, or welfare and is not required to
13 provide a finding of emergency for a rule promulgated under this subsection.

SECTION 28. Initial applicability.

14 (1) The treatment of sections 66.027 (8) and 196.3745 of the statutes first
15 applies to loans made by political subdivisions on the effective date of this subsection.

16 (2) The treatment of section 709.03 (form) C. 25m. of the statutes first applies
17 to original real estate condition reports that are furnished on the effective date of this
18 subsection.
19

20 (END)