

1993 Assembly Bill 701

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1993 WISCONSIN ACT 414

AN ACT *to repeal* 101.08, 101.19 (1) (k), 101.655, 145.02 (5) and 145.25; *to renumber* 236.292; *to renumber and amend* 1.12, 700.41 (2) (c) and 700.41 (4); *to amend* 1.12 (title), 13.101 (4), 13.48 (2) (h) 2. a., 16.75 (1m), 16.847 (8) (a) and (b) 1 to 3 and (9) (b), 20.505 (5) (q), 66.031 (intro.), 66.032 (title) and (1) (f) (intro.) and 1 and (i), 66.032 (3) (a) and (b) 1, (5) (b), (6) (a) and (b), (9) (title) and (a) (intro.) and (12) (a), 66.033, 101.02 (15) (j), 101.63 (1), 101.73 (1), 236.13 (2) (d), 700.41 (title) and (1) and 700.41 (3); and *to create* 1.12 (1), 1.12 (3) to (5), 13.48 (2) (k), 14.165, 16.75 (10), 16.847 (9) (c) and (d), 16.95 (13) to (15), 26.36, 60.61 (2) (i), 66.032 (1) (m), 93.46 (1) (d), 100.26 (8), 100.46, 196.025, 236.292 (2), 700.41 (2) (c) 1. b., 700.41 (2) (h), 700.41 (4) (b) and 844.22 of the statutes, **relating to:** state energy policy, energy use by state and local governmental facilities, regulation of energy consuming products, governor's energy awards, local land use restrictions regarding wind and solar energy systems, granting rule-making authority and providing a penalty.

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

PREFATORY NOTE: This bill was recommended by the legislative council's special committee on energy resources. The special committee was directed by the legislative council to study state laws, policies and programs to encourage the maximum development and use of energy conservation and indigenous, sustainable energy resources, in order to minimize the amount of nonsustainable energy purchased from out-of-state sources and to enhance economic development and employment in this state.

State efforts to increase the efficiency with which energy is used and to stimulate the development of renewable energy resources are based on a number of concerns. These include the need to secure adequate future supplies of energy, to reduce the environmental effects of energy systems powered by carbon-based and nuclear fuels, to reduce the costs to consumers of the construction of energy generation and transmission systems and to reduce the flow of capital out of Wisconsin for the purchase of energy.

In this bill, the special committee recommends several general policy statements with regard to how energy is generated and used in Wisconsin. Principal among these is the creation of a priority list of options that, to the extent cost-effective and technically feasible, is to be considered in meeting all energy demands. In creating the priority list, the special committee is attempting to influence the energy-related decisions of all energy users, generators and regulatory bodies. The spe-

cial committee seeks to achieve more efficient use of energy and a greater reliance on renewable energy resources throughout the state. At the same time, the special committee does not want to create inflexible mandates or deprive decision makers of the discretion needed to respond appropriately to the circumstances surrounding energy-related decisions. Consequently, the bill attempts to ensure implementation of the priority list through a combination of directives and encouragement, while reserving substantial discretionary authority to the decision maker.

The bill directs state agencies and local governmental units to meet their own energy needs through energy efficiency improvements and renewable energy resources and by following the priority list, to the extent that these options are cost-effective and technically feasible. The bill does not direct any other person who makes energy-related decisions to follow the priority list. However, expression of the priority list as the policy of this state, without a statutory directive, is intended to encourage businesses, manufacturers and other private energy users, as well as public utilities and other energy generators, to follow the priority list. In addition, the bill directs the department of administration (DOA) and the public service commission (PSC) to implement the priorities in designing and implementing energy programs and in making energy-related decisions and orders.

By using the phrase, "to the extent cost-effective and technically feasible", the bill provides a large element of discretion to state agencies and local governmental units in following the priority list to meet their own energy needs. For example, in designing the energy-related aspects of a new

building, an agency would be required to include energy conservation measures and renewable energy systems that are cost-effective and technically feasible. However, the agency would have discretion to determine whether measures and systems are cost-effective and technically feasible.

Also, the bill creates no penalties or other mechanism to compel any party to comply with the priority list in making energy-related decisions, nor does it create any standards for determining the extent to which the priority list is actually used in making such decisions. Rather, compliance with the directive that agencies follow the priority list will be reflected in the overall pattern of decisions made by each agency, such as the total set of energy-related aspects of a new building's design, the total mix of energy sources called for in a PSC-ordered advance plan for electric utilities or the long-term pattern of an agency's purchasing decisions. Similarly, the success of implementing the priority list will be reflected in the overall pattern of energy generation and use, across the state and through time.

The bill also establishes state goals related to energy efficiency, the development of renewable energy resources and the expansion of forest resources. It requires regular reports to the legislature regarding progress made in meeting the energy efficiency and afforestation goals.

In this bill, the special committee also recommends several statutory changes to existing programs to refine the programs and keep them in compliance with current federal law. Specifically, the bill does all of the following:

1. Promotes the use of lighting designs that utilize natural daylight in state building projects and cogeneration technologies and renewable fuels in state owned or operated steam generating facilities.
2. Authorizes the governor to issue awards for energy conservation activities and renewable energy systems.
3. Directs DOA to develop written materials describing the development and use of life cycle cost estimates.
4. Creates a state purchasing preference for fuel and energy systems and equipment produced in this state.
5. Modifies the state facilities energy efficiency program as follows:
 - a. Specifies conditions regarding the repayment of loans to state agencies under the program.
 - b. Requires equal distribution of saved utility expenses between the general fund, the energy efficiency fund under current s. 25.90 and the agency.
 - c. Limits maintenance projects funded from the energy efficiency fund to the maintenance of projects with an energy efficiency benefit.
 - d. Directs DOA to determine the amount of utility expenses saved by an energy efficiency project.
 - e. Specifies the procedure for approving an agency's use of saved utility expenses.
 - f. Directs DOA to disseminate information regarding the cost and effectiveness of energy efficiency projects.
 - g. Creates a pilot program for the intensive monitoring of energy use by state facilities.
6. Directs the department of agriculture, trade and consumer protection (DATCP) to include the development of industrial and commercial products, including alternative fuels, from crops under the agricultural diversification program.
7. Authorizes DATCP to adopt and enforce rules regarding the sale and installation of energy consuming products

regulated under federal law if the rules are identical to federal law.

8. Repeals several statutes relating to the efficiency of certain energy consuming products, which have been superseded by federal law.

9. Makes various changes to statutes regarding local land use restrictions to ensure the uniform treatment of wind and solar energy systems by these statutes.

SECTION 1. 1.12 (title) of the statutes is amended to read:

1.12 (title) State energy policy.

SECTION 2. 1.12 of the statutes is renumbered 1.12 (2) and amended to read:

1.12 (2) (title) CONSERVATION POLICY. ~~All agencies of the state~~ A state agency or local governmental unit shall, to the fullest extent possible, investigate and consider the maximum conservation of energy resources as an important factor when making any major decision ~~which~~ that would significantly affect energy usage.

SECTION 3. 1.12 (1) of the statutes is created to read: 1.12 (1) DEFINITIONS. In this section:

(a) "Local governmental unit" has the meaning given in s. 19.42 (7u).

NOTE: Section 19.42 (7u) defines a "local governmental unit" as a political subdivision of this state, a special purpose district in this state, an instrumentality or corporation of such a political subdivision or special purpose district, a combination or subunit of any of the foregoing or an instrumentality of the state and any of the foregoing.

(b) "State agency" means an office, department, agency, institution of higher education, the legislature, a legislative service agency, the courts, a judicial branch agency, an association, society or other body in state government which is created or authorized to be created by the constitution or by law, for which appropriations are made by law.

SECTION 4. 1.12 (3) to (5) of the statutes are created to read:

1.12 (3) GOALS. (a) *Energy efficiency.* It is the goal of the state to reduce the ratio of energy consumption to economic activity in the state.

(b) *Renewable energy resources.* It is the goal of the state that, to the extent that it is cost-effective and technically feasible, all new installed capacity for electric generation in the state be based on renewable energy resources, including hydroelectric, wood, wind, solar, refuse, agricultural and biomass energy resources.

(c) *Afforestation.* It is the goal of the state to ensure a future supply of wood fuel and reduce atmospheric carbon dioxide by increasing the forested areas of the state.

(4) PRIORITIES. In meeting energy demands, the policy of the state is that, to the extent cost-effective and technically feasible, options be considered based on the following priorities, in the order listed:

(a) Energy conservation and efficiency.

(b) Noncombustible renewable energy resources.

(c) Combustible renewable energy resources.

1993 Assembly Bill 701

(d) Nonrenewable combustible energy resources, in the order listed:

1. Natural gas.
2. Oil or coal with a sulphur content of less than 1%.
3. All other carbon-based fuels.

(5) MEETING ENERGY DEMANDS. (a) In designing all new and replacement energy projects, a state agency or local governmental unit shall rely to the greatest extent feasible on energy efficiency improvements and renewable energy resources, if the energy efficiency improvements and renewable energy resources are cost-effective and technically feasible and do not have unacceptable environmental impacts.

(b) To the greatest extent cost-effective and technically feasible, a state agency or local governmental unit shall design all new and replacement energy projects following the priorities listed in sub. (4).

NOTE: Subsection 1.12 (3) establishes goals to increase the energy efficiency of the state economy, increase reliance on renewable energy resources for electric generation and increase the forested areas of the state.

Subsection 1.12 (4) establishes a priority list of options for meeting energy demands. The list does not include the option of nuclear energy.

Subsection 1.12 (5) directs state agencies and local governmental units to meet energy demands, to the extent cost-effective and technically feasible, by relying on energy efficiency and on renewable energy sources and by following the priorities created by this draft.

SECTION 5. 13.101 (4) of the statutes is amended to read:

13.101 (4) The committee may transfer between appropriations and programs if the committee finds that unnecessary duplication of functions can be eliminated, more efficient and effective methods for performing programs will result or legislative intent will be more effectively carried out because of such transfer, if legislative intent will not be changed as the result of such transfer and the purposes for which the transfer is requested have been authorized or directed by the legislature, or to implement s. 16.847 (8) (b) 3. The authority to transfer between appropriations includes the authority to transfer between 2 fiscal years of the same biennium, between 2 appropriations of the same agency and between an appropriation of one agency and an appropriation of a different agency. No transfer between appropriations or programs may be made to offset deficiencies arising from the lack of adequate expenditure controls by a department, board, institution, commission or agency. The authority to transfer between appropriations shall not include the authority to transfer from sum sufficient appropriations as defined under s. 20.001 (3) (d) to other types of appropriations.

NOTE: Authorizes the legislature's joint committee on finance to transfer funds representing utility expenses saved as a result of energy efficiency projects funded under s. 16.847 between appropriations for purposes specified by the affected

agency. Section 16.847 authorizes DOA to make loans to state agencies for energy efficiency projects and authorizes the agencies to retain a portion of the cost savings for their general program operations. This provision specifies the procedure for approving the agency's use of those funds.

SECTION 6. 13.48 (2) (h) 2. a. of the statutes is amended to read:

13.48 (2) (h) 2. a. Provide maximum practical use of passive solar energy system design elements, including daylight lighting designs.

NOTE: Adds lighting designs that utilize natural daylight to the list of renewable energy system design elements that the building commission must consider prior to authorizing any new state building, addition or major renovation.

SECTION 7. 13.48 (2) (k) of the statutes is created to read:

13.48 (2) (k) 1. In designing the construction or renovation of central steam generating facilities, the building commission shall employ a design for the cogeneration of steam and electricity unless the building commission determines that such a design is not cost-effective and technically feasible. The building commission may not release funds for the construction of a new central steam generating facility unless the requirements of this subdivision have been satisfied.

2. To the greatest extent cost-effective and technically feasible, the building commission shall ensure that state owned or operated steam generating facilities are designed to allow the use of biomass fuels and refuse-derived fuels.

NOTE: Directs the building commission to design state-owned steam generating facilities for cogeneration of steam and electricity, using biomass and refuse-derived fuels, to the extent cost-effective and technically feasible.

SECTION 8. 14.165 of the statutes is created to read:
14.165 Governor's energy awards. (1) AWARDS. The governor may issue awards to recognize outstanding accomplishments or efforts related to energy conservation or renewable energy systems. Awards may be made for all of the following:

- (a) Public and private sector activities.
- (b) New building design, building renovation or upgrading and maintaining existing equipment.
- (c) Demand-side management programs.
- (d) Contributions by engineers, architects and other professionals.

(e) Industrial applications.

(2) RECOMMENDATIONS. The department of administration, department of development and public service commission shall make recommendations to the governor for awards under sub. (1).

NOTE: Authorizes the governor to issue awards for energy conservation activities and renewable energy systems. The awards are intended to provide an incentive for further accomplishments and efforts, and to allow others to be made aware of and benefit from the accomplishments and efforts of the award recipients.

1993 Assembly Bill 701

SECTION 9. 16.75 (1m) of the statutes is amended to read:

16.75 (1m) The department shall award each order or contract for materials, supplies or equipment on the basis of life cycle cost estimates, whenever such action is appropriate. Each authority shall award each order or contract for materials, supplies or equipment on the basis of life cycle cost estimates, whenever such action is appropriate. The terms, conditions and evaluation criteria to be applied shall be incorporated in the solicitation of bids or proposals. The life cycle cost formula may include, but is not limited to, the applicable costs of energy efficiency, acquisition and conversion, money, transportation, warehousing and distribution, training, operation and maintenance and disposition or resale. The department shall prepare documents containing technical guidance for the development and use of life cycle cost estimates, and shall make the documents available to local governmental units.

NOTE: Current law requires DOA and local governmental units [see s. 66.299 (5)] to purchase equipment and supplies based on life cycle cost estimates, whenever that action is appropriate. This amendment requires DOA to develop written materials describing the development and use of life cycle cost estimates, and make that information available to local governmental units so as to assist local governmental units in complying with the statutory requirement.

SECTION 10. 16.75 (10) of the statutes is created to read:

16.75 (10) An agency that has building, fleet or energy management responsibilities shall, to the extent cost-effective and technically feasible, rely upon energy systems that utilize fuels produced in this state. In reviewing bids for the purchase of fuels or energy systems or equipment, the agency shall purchase fuel or energy systems or equipment produced in this state if the cost of the lowest responsible bid for such fuel or energy systems or equipment is no greater than the lowest responsible bid for fuel or energy systems or equipment produced outside of this state.

NOTE: Directs state agencies to utilize fuels produced in this state and creates a “tie breaker” preference for the purchase of fuels and energy systems and equipment produced in this state.

SECTION 11. 16.847 (8) (a) and (b) 1. to 3. and (9) (b) of the statutes are amended to read:

16.847 (8) (a) As a condition of receiving a loan under sub. (6), an agency shall enter into an agreement to repay the loan from utility expenses saved by the energy efficiency project. The agreement shall specify the annual repayment amount and the appropriation to which the loan shall be repaid. Annually, the department may transfer the specified repayment amount from an appropriation described in the agreement to the same account in the energy efficiency fund from which the loan was made. The department shall determine the amount of utility expenses saved by an energy efficiency project.

(b) 1. The department may transfer one-third of the annual savings to the general fund.

2. The department may transfer one-third of the annual savings to the energy efficiency fund for maintenance of projects with an energy efficiency benefit and for energy efficiency monitoring.

3. Subject to ~~review~~ approval under s. ~~16.50 (2) 13.101 (4)~~, the agency may retain one-third of the annual savings for its general program operations.

(9) (b) From the appropriation under s. 20.505 (5) (q), the department may expend amounts deposited in the energy efficiency fund under sub. (8) (b) 2. for maintenance of projects with an energy efficiency benefit and for energy efficiency monitoring.

NOTE: The state facilities energy efficiency program under s. 16.847 authorizes DOA to make loans to state agencies for energy efficiency projects. For 6 years following repayment of the loan, utility expenses saved as a result of the project are divided between the general fund, the energy efficiency fund and funds retained by the agency for general program operations. DOA may use funds placed in the energy efficiency fund for energy efficiency monitoring, educational programs regarding energy efficiency and maintenance. This SECTION modifies the program as follows:

1. Specifies conditions regarding the repayment of loans.
2. Requires equal distribution of saved utility expenses between the general fund, the energy efficiency fund and the agency.
3. Limits maintenance projects funded from the energy efficiency fund to the maintenance of projects with an energy efficiency benefit.
4. Directs DOA to determine the amount of utility expenses saved by an energy efficiency project.
5. Specifies the procedure for approving an agency’s use of saved utility expenses. Under current law, such use is reviewed by the secretary of administration, under a statute that does not authorize the transfer of funds between appropriations. Under this proposal, such use would be reviewed by the legislature’s joint committee on finance under a statute that is amended by this bill to authorize such transfers.

SECTION 12. 16.847 (9) (c) and (d) of the statutes are created to read:

16.847 (9) (c) The department shall monitor the cost and performance of energy efficiency projects funded under this section. The department shall disseminate this information to other state agencies, the manufacturers of energy systems, architects, design engineers, contractors and the general public to promote a broader awareness and knowledge of the savings that may be achieved through energy efficiency projects and the cost and performance of currently available energy systems.

(d) The department shall establish a pilot program to intensively monitor energy use in selected state facilities to determine the optimal level of monitoring required to do all of the following:

1. Plan and measure energy savings from energy efficiency improvements.
2. Maintain and operate energy systems as efficiently as possible.

1993 Assembly Bill 701

- 5 -

NOTE: Directs DOA to disseminate information regarding the cost and effectiveness of energy efficiency projects and to intensively monitor energy use by state facilities on a pilot basis.

SECTION 13. 16.95 (13) to (15) of the statutes are created to read:

16.95 (13) Implement the priorities under s. 1.12 (4) in designing the department's energy programs and in awarding grants or loans for energy projects.

(14) By rule, establish a standardized method for measuring the energy efficiency of the state's economy to be used in preparing the report under sub. (15). In establishing the methodology, the department shall consider methodologies currently in use for this purpose, including the methodology used by the world bank.

(15) Before April 1 annually, submit a report to the legislature under s. 13.172 (3) regarding progress made in meeting the energy efficiency goal under s. 1.12 (3) (a).

NOTE: Directs DOA to do all of the following:

1. Implement the priorities for meeting energy demands, created by this bill, in designing its energy programs.
2. Establish, by rule, a method for measuring the energy efficiency of the state's economy.
3. Report annually to the legislature on progress made in meeting the energy efficiency goal created by this bill.

SECTION 14. 20.505 (5) (q) of the statutes is amended to read:

20.505 (5) (q) *Energy efficiency.* From the energy efficiency fund, all moneys received for maintenance of projects with an energy efficiency benefit, for energy efficiency monitoring and for education programs under s. 16.847 (9) and to make loans under s. 16.847 (6) (a).

NOTE: See the NOTE following the amendment of s. 16.847 (9) (b) regarding the use of the energy efficiency fund for maintenance projects.

SECTION 15. 26.36 of the statutes is created to read:

26.36 Forest energy resources. Biennially, in consultation with the department of agriculture, trade and consumer protection and any other appropriate agency, the department shall prepare a report regarding the extent of forest lands in this state and the potential of such lands to provide fuel for use in electric generating facilities, industrial facilities and home heating systems. The report shall evaluate progress made in meeting the afforestation goal under s. 1.12 (3) (c). The department shall submit the report before April 1 of each even-numbered year to the legislature under s. 13.172 (3).

NOTE: Directs the department of natural resources, in consultation with other state agencies, to prepare a biennial report to the legislature regarding progress made in meeting the afforestation goal created by this bill.

SECTION 16. 60.61 (2) (i) of the statutes is created to read:

60.61 (2) (i) Provide adequate access to sunlight for solar collectors and to wind for wind energy systems.

NOTE: Adds to the grant of authority for town zoning ordinances, to clarify that towns may regulate land uses to assure adequate access to sunlight and wind for renewable energy

systems. This provision is the same as the authority currently granted to counties in s. 59.97 (1) and to cities and villages in s. 62.23 (7) (c).

SECTION 17. 66.031 (intro.) of the statutes is amended to read:

66.031 (title) Regulation of solar and wind energy systems. (intro.) No county, city, town or village may place any restriction, either directly or in effect, on the installation or use of a solar energy system, as defined ~~under in~~ s. 13.48 (2) (h) 1. g., or a wind energy system, as defined in s. 66.032 (1) (m), unless the restriction satisfies one of the following conditions:

NOTE: Expands the prohibition of local regulations that restrict solar energy systems to include wind energy systems. The statute allows a local restriction on solar or wind energy systems if the restriction: 1) serves to preserve or protect the public health or safety; 2) does not significantly increase the cost of the system or significantly decrease its efficiency; or 3) allows for an alternative system of comparable cost and efficiency.

SECTION 18. 66.032 (title) and (1) (f) (intro.) and 1 and (i) of the statutes are amended to read:

66.032 (title) Solar and wind access permits.

(1) (f) (intro.) "Impermissible interference" means the blockage of wind from a wind energy system or solar energy from a collector surface or proposed collector surface for which a permit has been granted under this section during a collector use period if such blockage is by any structure or vegetation on property, an owner of which was notified under sub. (3) (b). "Impermissible interference" does not include:

1. Blockage by a narrow protrusion, including but not limited to a pole or wire, which does not substantially interfere with absorption of solar energy by a solar collector or does not substantially block wind from a wind energy system.

(i) "Permit" means a solar access permit or a wind access permit issued under this section.

SECTION 19. 66.032 (1) (m) of the statutes is created to read:

66.032 (1) (m) "Wind energy system" means equipment that converts and then stores or transfers energy from the wind into usable forms of energy.

SECTION 20. 66.032 (3) (a) and (b) 1., (5) (b), (6) (a) and (b), (9) (title) and (a) (intro.) and (12) (a) of the statutes are amended to read:

66.032 (3) (a) In a municipality which provides for granting a permit under this section, an owner who has installed or intends to install a solar collector or wind energy system may apply to an agency for a permit.

(b) 1. The name and address of the applicant, and the address of the land upon which the solar collector or wind energy system is or will be located.

(5) (b) An agency may grant a permit subject to any condition or exemption the agency deems necessary to minimize the possibility that the future development of nearby property will create an impermissible interfer-

1993 Assembly Bill 701

ence or to minimize any other burden on any person affected by granting the permit. Such conditions or exemptions may include but are not limited to restrictions on the location of the solar collector or wind energy system and requirements for the compensation of persons affected by the granting of the permit.

(6) (a) The agency shall specify the property restricted by the permit under sub. (7) and shall prepare notice of the granting of the permit. The notice shall include the identification required under s. 706.05 (2) (c) for the owner and the property upon which the solar collector or wind energy system is or will be located and for any owner and property restricted by the permit under sub. (7), and shall indicate that the property may not be developed and vegetation may not be planted on the property so as to create an impermissible interference with the solar collector or wind energy system which is the subject of the permit unless the permit affecting the property is terminated under sub. (9) or unless an agreement affecting the property is filed under sub. (10).

(b) The applicant shall record with the register of deeds of the county in which the property is located the notice under par. (a) for each property specified under par. (a) and for the property upon which the solar collector or wind energy system is or will be located.

(9) (title) TERMINATION OF SOLAR OR WIND ACCESS RIGHTS. (a) (intro.) Any right protected by a permit under this section shall terminate if the agency determines that the solar collector or wind energy system which is the subject of the permit is:

(12) (a) This section may not be construed to require that an owner obtain a permit prior to installing a solar collector or wind energy system.

NOTE: Current s. 66.032 authorizes municipalities (cities, villages, towns and counties) to adopt procedures for issuing solar access permits. The purpose of a solar permit is to impose restrictions on adjacent land to protect the permit holder's access to solar energy for solar collectors constructed on the permit holder's property. Although municipalities are required to comply with the requirements of the statute when issuing solar access permits, municipalities are not required to adopt a procedure or issue solar access permits. This SECTION expands the scope of the statute to apply to wind energy systems.

After a municipality issues a permit under this statute, the permit applicant must record notice of the permit restrictions with the register of deeds and the notice must be recorded both in connection with the property benefited by the permit and any property restricted by the permit. After a permit is issued, any person who interferes with the solar collector or wind energy system is liable to the permit holder for damages, court costs and reasonable attorney fees. A permit holder is also entitled to an injunction requiring the trimming of vegetation that interferes with solar collectors or wind energy systems and is located on property restricted by a permit.

SECTION 21. 66.033 of the statutes is amended to read:

66.033 (title) **Municipal control of vegetation blocking solar or wind energy systems.** Any county, city, village or town may provide by ordinance for the

trimming of vegetation which blocks solar energy, as defined ~~under~~ in s. 66.032 (1) (k), from a collector surface, as defined under s. 700.41 (2) (b) or which block wind from a wind energy system, as defined in s. 66.032 (1) (m). The ordinance may include, but is not limited to, a designation of responsibility for the costs of the trimming. ~~The ordinance may not require the trimming of vegetation that was planted by the owner or occupant of the property on which the vegetation is located before the installation of the solar or wind energy system.~~

NOTE: Expands the current statute that authorizes municipal ordinances for the trimming of vegetation that blocks a solar collector so that the statute applies to wind energy systems as well. This provision also provides that an ordinance may not apply to vegetation planted prior to installation of the solar or wind energy system.

SECTION 22. 93.46 (1) (d) of the statutes is created to read:

93.46 (1) (d) Promote and assist the development and use of industrial and commercial products from agricultural commodities and forestry products, including alternative fuels produced from agricultural source stocks.

NOTE: Directs DATCP to include the development of industrial and commercial products, including alternative fuels, from crops under the agricultural diversification program.

SECTION 23. 100.26 (8) of the statutes is created to read:

100.26 (8) Any person who violates s. 100.46 may be required to forfeit not more than \$100.

NOTE: See the NOTE following the creation of s. 100.46 regarding standards for energy consuming products.

SECTION 24. 100.46 of the statutes is created to read:

100.46 Energy consuming products. (1) ENERGY CONSERVATION STANDARDS. The department may by rule adopt energy conservation standards for products that have been established in or promulgated under 42 USC 6291 to 6309.

(2) **PROHIBITED ACTS; ENFORCEMENT.** No person may sell at retail, install or cause to be installed any product that is not in compliance with rules promulgated under sub. (1). In addition to other penalties and enforcement procedures, the department may apply to a court for a temporary or permanent injunction restraining any person from violating a rule adopted under sub. (1).

NOTE: Authorizes DATCP to adopt and enforce rules regarding the sale and installation of energy consuming products regulated under federal law, such as lighting, gas appliance ignition devices and plumbing products.

SECTION 25. 101.02 (15) (j) of the statutes is amended to read:

101.02 (15) (j) The department shall ascertain, fix and order such reasonable standards or rules for the construction, repair and maintenance of places of employment and public buildings, as shall render them safe. ~~No such standard or rule may increase the maximum energy use, as defined in s. 101.08 (1) (f), allowed for a fluorescent lamp ballast, as defined in s. 101.08 (1)~~

1993 Assembly Bill 701

(g), under s. 101.08 (2) or decrease the minimum energy efficiency required for a fluorescent lamp ballast, as defined in s. 101.08 (1) (g), under s. 101.08 (2).

NOTE: See the NOTE following the repeal of s. 101.08 regarding fluorescent lamp ballast standards.

SECTION 26. 101.08 of the statutes is repealed.

NOTE: Repeals the statute that establishes specific requirements for the efficiency of fluorescent lamp ballasts and for certification that products meet the standards. State regulation of fluorescent lamp ballast efficiency has been preempted by the national appliance energy conservation act of 1987 and regulations promulgated by the U.S. department of energy in 10 CFR 430.

SECTION 27. 101.19 (1) (k) of the statutes is repealed.

NOTE: See the NOTE following the repeal of s. 101.08 regarding fluorescent lamp ballast standards.

SECTION 28. 101.63 (1) of the statutes is amended to read:

101.63 (1) Adopt rules which establish standards for the construction and inspection of one- and 2-family dwellings and components thereof. Where feasible, the standards used shall be those nationally recognized and shall apply to the dwelling and to its electrical, heating, ventilating, air conditioning and other systems, including plumbing, as defined in s. 145.01 (10). No set of rules may be adopted which has not taken into account the conservation of energy in construction and maintenance of dwellings and the costs of specific code provisions to home buyers in relationship to the benefits derived from the provisions. ~~No standard under this subchapter may increase the maximum energy use, as defined in s. 101.08 (1) (f), allowed for a fluorescent lamp ballast, as defined in s. 101.08 (1) (g), under s. 101.08 (2) or decrease the minimum energy efficiency required for a fluorescent lamp ballast, as defined in s. 101.08 (1) (g), under s. 101.08 (2).~~

NOTE: See the NOTE following the repeal of s. 101.08 regarding fluorescent lamp ballast standards.

SECTION 29. 101.655 of the statutes is repealed.

NOTE: Repeals the statute that prohibits pilot lights on new gas appliances and requires DILHR to promulgate rules for intermittent ignition devices. The state regulation of intermittent ignition devices has been preempted by the national appliance energy conservation act of 1987 and regulations promulgated by the U.S. department of energy in 10 CFR 430.

SECTION 30. 101.73 (1) of the statutes is amended to read:

101.73 (1) Adopt rules which establish standards for the use of building materials, methods and equipment in the manufacture and installation of manufactured buildings for use as dwellings or dwelling units. Where feasible, the standards used shall be those nationally recognized and shall apply to the dwelling and to its electrical, heating, ventilating, air conditioning and other systems. Such rules shall take into account the conservation of energy in construction and maintenance of dwellings and the costs to home buyers of specific code provisions in relation to the benefits derived therefrom. ~~No standard~~

~~under this subchapter may increase the maximum energy use, as defined in s. 101.08 (1) (f), allowed for a fluorescent lamp ballast, as defined in s. 101.08 (1) (g), under s. 101.08 (2) or decrease the minimum energy efficiency required for a fluorescent lamp ballast, as defined in s. 101.08 (1) (g), under s. 101.08 (2).~~

NOTE: See the NOTE following the repeal of s. 101.08 regarding fluorescent lamp ballast standards.

SECTION 31. 145.02 (5) of the statutes is repealed.

NOTE: See the NOTE following the repeal of s. 145.25 regarding plumbing fixture standards.

SECTION 32. 145.25 of the statutes is repealed.

NOTE: Repeals the statute that prohibits the retail sale or installation of plumbing fixtures that have flow rates in excess of designated amounts. The state regulation of plumbing fixtures has generally been preempted by the energy policy act of 1992 [P.L. 102-486, sec. 123], although states may retain more stringent preexisting standards under certain limited circumstances. The current statutory requirement for self-closing faucets is more stringent and could be retained but is repealed by this bill in order to achieve consistency with nationwide standards.

SECTION 33. 196.025 of the statutes is created to read:
196.025 Duties of the commission. To the extent cost-effective, technically feasible and environmentally sound, the commission shall implement the priorities under s. 1.12 (4) in making all energy-related decisions and orders, including advance plan, rate setting and rule-making orders.

NOTE: Directs PSC to implement the priorities for meeting energy demands, created by this bill, in making all energy-related decisions and orders.

SECTION 34. 236.13 (2) (d) of the statutes is amended to read:

236.13 (2) (d) As a further condition of approval, any county, town, city or village may require the dedication of easements by the subdivider for the purpose of assuring the unobstructed flow of solar or wind energy across adjacent lots in the subdivision.

NOTE: Under current s. 236.13 (2) (d), when approving a subdivision plat, a municipal government may require the subdivider to dedicate easements to ensure the unobstructed flow of solar energy across adjacent lots. This SECTION expands the scope of the statute to apply to wind energy as well.

SECTION 35. 236.292 of the statutes is renumbered 236.292 (1).

SECTION 36. 236.292 (2) of the statutes is created to read:

236.292 (2) All restrictions on platted land that prevent or unduly restrict the construction and operation of solar energy systems, as defined in s. 13.48 (2) (h) 1. g., or a wind energy system, as defined in s. 66.032 (1) (m), are void.

NOTE: Prohibits private land use controls, such as deed restrictions, covenants or easements, that prevent or unduly restrict the construction and operation of solar or wind energy systems. The initial applicability provision at the end of this bill makes the prohibition on such restrictions applicable ret-

roactively to restrictions on private land created before the effective date of this legislation.

This provision is based on a comparable provision in current s. 236.292 that is applicable to restrictions on platted land that interfere with the development of the Ice Age Trail. In *Wielebski v. Ice Age Park and Trail Foundation*, an unpublished court of appeals' decision (No. 92-0242), the court of appeals held that s. 236.292 was retroactive and that retroactive application of the statute did not constitute an unconstitutional impairment of contract.

SECTION 37. 700.41 (title) and (1) of the statutes are amended to read:

700.41 (title) Solar and wind access. (1) PURPOSE. The purpose of this section is to promote the use of solar and wind energy by allowing an owner of an active or passive solar energy system or a wind energy system to receive compensation for an obstruction of solar energy by a structure outside a neighbor's building envelope as defined by zoning restrictions in effect at the time the solar collector or wind energy system was installed.

SECTION 38. 700.41 (2) (c) of the statutes is renumbered 700.41 (2) (c) 1. (intro.) and amended to read:

700.41 (2) (c) 1. (intro.) "Obstruction" means any of the following:

a. The portion of a building or other structure which blocks solar energy from a collector surface between the hours of 9 a.m. to 3 p.m. standard time if the portion of the building or structure is outside a building envelope in effect on the date of the installation of the solar collector.

2. "Obstruction" does not include blockage by a pole, wire, television antenna or radio antenna.

SECTION 39. 700.41 (2) (c) 1. b. of the statutes is created to read:

700.41 (2) (c) 1. b. The portion of a building or other structure which blocks wind from a wind energy system if the portion of the building or structure is outside a building envelope in effect on the date of the installation of the wind energy system.

SECTION 40. 700.41 (2) (h) of the statutes is created to read:

700.41 (2) (h) "Wind energy system" has the meaning given in s. 66.032 (1) (m).

SECTION 41. 700.41 (3) of the statutes is amended to read:

700.41 (3) DAMAGES. Except as provided under sub. (4), the owner of a solar energy system or a wind energy system is entitled to receive damages, court costs and reasonable attorney fees from any person who uses property which he or she owns or who permits any other person to use the property in any way which would create an obstruction of the owner's solar collector surface or wind energy system. The owner of the solar energy system or wind energy system shall have the burden of showing by a preponderance of the evidence the amount of the damages.

1993 Assembly Bill 701

SECTION 42. 700.41 (4) of the statutes is renumbered 700.41 (4) (a), and 700.41 (4) (a) (intro.), as renumbered, is amended to read:

700.41 (4) (a) (intro.) ~~This~~ The provisions of this section does related to solar energy systems do not apply to any obstruction:

SECTION 43. 700.41 (4) (b) of the statutes is created to read:

700.41 (4) (b) The provisions of this section related to wind energy systems do not apply to any obstruction:

1. Existing on or before the effective date of this subdivision [revisor inserts date].

2. For which a building permit was issued before the installation of the wind energy system, the wind to which is blocked by the obstruction.

3. Existing on or before the date of installation of the wind energy system, the wind to which is blocked by the obstruction.

NOTE: Under current s. 700.41, an owner may rely on existing zoning at the time that a solar collector is installed. The effect of the statute is to freeze the "building envelope" of adjacent properties. The building envelope is defined as the 3-dimensional area on a lot, based on zoning existing at the time that the solar collector is installed, that designates the existing ground level and any height restrictions, setback requirements, side yard and rear yard requirements. The owner of the solar collector is entitled under the statute to rely on that fixed building envelope as dictating the maximum structure that may be installed on the property. After installation of the solar collector, the building envelope is fixed and no structure may be constructed beyond the building envelope that interferes with the solar collector, even if subsequent zoning amendments would permit a larger structure. Also, no variance, special exception or special or conditional use may authorize a structure beyond the fixed building envelope if the structure will interfere with the solar collector. If the solar collector is subsequently obstructed by a structure built outside the fixed building envelope, the owner of the solar collector may sue to recover damages, court costs and attorney fees from the person who obstructs or permits the obstruction of the solar collector.

This bill expands current s. 700.41 so that it also applies to wind energy systems.

SECTION 44. 844.22 of the statutes is created to read:

844.22 Obstruction of solar or wind energy system. Any structure that is constructed or vegetative growth that occurs on adjoining or nearby property after a solar energy system, as defined in s. 13.48 (2) (h) 1. g., or a wind energy system, as defined in s. 66.032 (1) (m), is installed on any property, that interferes with the functioning of the solar or wind energy system, is considered to be a private nuisance.

NOTE: The issue of obstruction of solar collectors has been litigated in the Wisconsin supreme court in *Prah v. Maretti*, 108 Wis. 2d 223, 321 N.W.2d 182 (1982). This case involved a property owner who had made a substantial investment in solar collectors to supply energy for heat and hot water. Subsequently, the defendant purchased the lot adjacent to and immediately south of the plaintiff's lot and planned to construct a home that would have substantially interfered with

1993 Assembly Bill 701

– 9 –

the plaintiff's solar collectors, although the defendant's home would have complied with all deed restrictions and zoning ordinances. The plaintiff attempted to persuade the defendant to alter plans for the construction but the defendant commenced construction notwithstanding the potential adverse effects on the plaintiff's solar system.

The supreme court held that the plaintiff had stated a claim of common law private nuisance upon which relief could be granted. A court's decision in a private nuisance case involves balancing the utility of the defendant's conduct against the gravity of the harm. To make this decision, a court will consider such factors as the extent of harm to the plaintiff, the suitability of solar heat at that location, the availability of remedies to the plaintiff and the costs to the defendant in avoiding the harm. Also, the defendant's compliance with building codes and zoning ordinances is relevant but not determinative.

This bill codifies the decision in *Prah v. Maretti* and expands the result of that case to cover wind energy systems, as well as solar energy systems, and to cover vegetation as well as structures. The effect of this proposal is to provide a remedy to prevent interference with solar collectors and wind energy systems, even if none of the other types of statutory protections are available.

SECTION 45. Nonstatutory provisions; building commission. (1) REVIEW OF CENTRAL STEAM GENERAT-

ING FACILITIES. The building commission shall undertake a review of all central steam generating facilities owned or operated by the state to identify technically feasible and cost-effective projects to convert such facilities for the cogeneration of steam and electricity. For purposes of this subsection, a project is cost-effective if the projected cost to construct and operate the cogeneration facility over its expected life is less than the projected cost to operate the existing facility over the same period, accounting for the value of electricity that the cogeneration facility will produce. As an addition to its recommendations for the long-range state building program under section 13.48 (7) of the statutes for the 1995-97 fiscal biennium, the building commission shall propose a priority schedule of all technically feasible and cost-effective projects identified under this section.

SECTION 46. Initial applicability. (1) RESTRICTIONS ON PLATTED LAND. Section 236.292 (2) of the statutes applies to restrictions on platted land created before, on or after the effective date of this subsection.