



State of Wisconsin
2007 - 2008 LEGISLATURE

LRB-0193/P1

RCT./:...
Wlj

SOON (in 11/30)

PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION

OWate

Gen

1 AN ACT ...; relating to: management of greenhouse gases, granting rule-making
2 authority, and providing penalties.

Analysis by the Legislative Reference Bureau

This is a preliminary draft. An analysis will be provided in a later version.

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

3 SECTION 1. 20.005 (3) (schedule) of the statutes: at the appropriate place, insert
4 the following amounts for the purposes indicated:

		2007-08	2008-09
6	20.370 Natural resources, department of		
7	(2) AIR AND WASTE		
8	(cj) Greenhouse gas management PR A	-0-	-0-

9 SECTION 2. 20.370 (2) (cj) of the statutes is created to read:

1 the department and that achieves an equivalent reduction of greenhouse gas
2 emissions over the same period as a specific action that would otherwise be required
3 under this chapter.

4 (3) "Carbon dioxide equivalent" means the amount of carbon dioxide by weight
5 that would produce the same impact on global warming as a given weight of another
6 greenhouse gas.

7 (4) "Cost-effective" means economical in terms of cost per unit of reduced
8 emissions of greenhouse gases expressed in carbon dioxide equivalents.

9 (5) "Department" means the department of natural resources.

10 (6) "Direct emission reduction ^{action} ~~measure~~" means an action to reduce ^{greenhouse} ~~greenhouse~~
11 ~~gas~~ emissions, taken by a greenhouse gas emission source at the greenhouse gas
12 emission source.

13 (7) "Emission reduction ^{action} ~~measure~~" means a program, ^{measure} ~~measure~~, standard, or
14 alternative compliance mechanism authorized under this chapter, applicable to a
15 greenhouse gas emission source or category of greenhouse gas emission sources, that
16 is designed to reduce ~~emissions~~ of greenhouse gases ^{emissions}.

****NOTE: Or to sequester carbon or reduce the amount of greenhouse gas in the atmosphere?

17 (8) "Greenhouse ^{gas}" means carbon dioxide, methane, nitrous oxide,
18 hydrofluorocarbons, perfluorocarbons, and sulfur hexafluoride.

19 (9) "Greenhouse gas emission limit" means an authorization by the
20 department to emit up to a specified amount of greenhouse gas, expressed in carbon
21 dioxide equivalents, during a specified year.

22 (10) "Greenhouse ^{gas} emission source" means a source of greenhouse gas
23 emissions.

1 (11) "Market-based compliance mechanism" means any of the following:

2 (a) A system of market-based declining annual aggregate emission limitations
3 for significant sources or categories of significant sources.

4 (b) Greenhouse gas emission exchanges, banking, credits, or other
5 transactions, governed by rules promulgated by the department, that result in the
6 same reduction in greenhouse gas emissions over the same period as direct
7 compliance with a greenhouse gas emission limit or emission reduction measure
8 adopted by the department under this chapter.

9 (12) "Significant source" means a greenhouse gas emission source that is
10 identified under s. 286.03.

11 (13) "Statewide greenhouse gas emissions" means the total annual amount of
12 emissions of greenhouse gases in this state plus the total annual amount of emissions
13 of greenhouse gases from the generation of electricity outside this state that is
14 delivered in this state, including transmission and distribution line losses, expressed
15 in tons of carbon dioxide equivalent.

16 (14) "Statewide emission limit" means the maximum allowable level of
17 statewide greenhouse gas emissions, as determined by the department under s.
18 286.09 (1) (c), expressed in tons of carbon dioxide equivalent.

19 **286.03 Identification of significant sources.** The department shall
20 identify those greenhouse gas emission sources and categories of greenhouse gas
21 emission sources with emissions that are at a level of significance such that their
22 participation in the program under this chapter will enable the department to
23 effectively reduce greenhouse gas emissions and monitor compliance with the
24 statewide emission limit.

1 **286.05 Greenhouse gas emission reporting.** (1) RULES. The department
2 shall promulgate rules that require the annual reporting and verification of
3 greenhouse gas emissions from significant sources and that provide for the
4 monitoring and enforcement of compliance with the reporting and verification
5 requirements.

6 (2) REQUIREMENTS CONCERNING RULES. In the rules promulgated under sub. (1),
7 the department shall do all of the following:

8 (a) Phase in the requirements to monitor and report greenhouse gas emissions
9 beginning with the significant sources or categories of significant sources that
10 contribute most to statewide greenhouse gas emissions.

11 (b) Require the monitoring and reporting of greenhouse gas emissions from the
12 generation of electricity in this state and from the generation of electricity outside
13 this state that is delivered in this state, including transmission and distribution line
14 losses.

15 (c) To the extent appropriate and feasible, incorporate methods developed
16 under s. 285.78 for the registration of early emission reductions^{of greenhouse gas} and avoid ^{emissions}
17 significantly altering the reporting or verification program of a significant source
18 that registered reductions of greenhouse gas emissions under s. 285.78 before
19 December 1, 2007, except as necessary to ensure that reporting is complete and
20 verifiable for the purposes of compliance with this chapter.

***NOTE: I am not certain that this is appropriate because I do not know how
reporting under s. 285.78 compares to reporting under the California program referenced
in its legislation.

21 (d) Ensure rigorous and consistent accounting of greenhouse gas emissions and
22 provide for reporting tools and formats that ensure collection of necessary data.

1 (e) Ensure that significant sources maintain comprehensive records of all
2 reported greenhouse gas emissions.

3 (3) REVIEW REQUIRED. The department shall do all of the following:

4 (a) Periodically review the requirements in rules promulgated under sub. (1)
5 and update the rules as necessary.

6 (b) Review existing and proposed international, federal, and state greenhouse
7 gas emission reporting programs and make reasonable efforts to promote
8 consistency among the program established under this section and other programs
9 and to streamline reporting requirements on greenhouse gas emission sources.

10 **286.09 Statewide greenhouse gas emission limit.** (1) No later than
11 January 1, 2008, the department shall do all of the following:

12 (a) Conduct one or more meetings, with public notice and an opportunity for
13 all interested persons to comment, to assist it in determining what the level of
14 statewide greenhouse gas emissions was in 1990.

15 (b) To ensure the most accurate determination feasible under par. (c), evaluate
16 the best available scientific, technological, and economic information on greenhouse
17 gas emissions.

18 (c) At a public meeting determine, based on the information obtained under
19 pars. (a) and (b), what the level of statewide greenhouse gas emissions was in 1990
20 and approve a statewide emission limit to be achieved by 2020 that is equivalent to
21 that level.

****NOTE: This process seems unusual.

22 (2) The statewide emission limit approved under sub. (1) (c) remains in effect
23 after 2020.

1 (3) The department shall make recommendations to the legislature, under s.
2 13.172 (2), and to the governor on how to continue reductions in greenhouse gas
3 emissions beyond 2020.

4 **286.15 Greenhouse gas emissions; early action measures.** (1) On or
5 before June 30, 2007, the department shall publish and make available to the public
6 a list of emission reduction measures that can be implemented before the measures
7 and limits adopted under s. 286.23. The department shall identify emission
8 reduction measures that will achieve the maximum reduction in greenhouse gas
9 emissions from significant sources or categories of significant sources that is
10 technologically feasible and cost-effective, in furtherance of achieving the statewide
11 emission limit.

12 (2) The department shall promulgate rules, to take effect no later than January
13 1, 2010, to implement the measures identified under sub. (1).

14 **286.20 Greenhouse gas emission reduction plan.** (1) PLAN. The
15 department shall prepare and, no later than January 1, 2009, approve a plan for
16 achieving the maximum reduction in greenhouse gas emissions from significant
17 sources or categories of significant sources by 2020 that is technologically feasible
18 and cost-effective. In preparing the plan, the department shall consult with all state
19 agencies with jurisdiction over greenhouse gas emission sources. The department
20 shall consult with the public service commission on the elements of the plan that
21 pertain to energy-related matters, including the generation of electricity, any
22 standards or requirements that are based on the amount of electricity that an electric
23 provider sells to retail customers or members, the provision of reliable and affordable
24 electrical service, petroleum refining, and statewide fuel supplies to ensure that the

1 greenhouse gas emission reduction activities in the plan are complementary and not
2 duplicative and can be implemented in an efficient and cost-effective manner.

3 (2) CONTENTS. In the plan, the department shall identify and make
4 recommendations concerning direct emission reduction ^{actions} measures, alternative
5 compliance mechanisms, market-based compliance mechanisms, and monetary and
6 nonmonetary incentives for significant sources and categories of significant sources
7 sources that the department determines are necessary or desirable to facilitate
8 achievement by 2020 of the maximum reduction in green house gas emissions that
9 is technologically feasible and cost-effective.

10 (3) PREPARATION. In preparing the plan under this subsection, the department
11 shall do all of the following:

12 (a) Consider relevant information relating to greenhouse gas emission
13 reduction programs of local governmental units, other states, and other countries,
14 including the northeastern states, Canada, and the European Union.

15 (b) Evaluate the total potential costs and economic and noneconomic benefits
16 of the plan to this state's economy, environment, and public health, using the best
17 available economic models, techniques for estimating greenhouse gas emissions, and
18 other scientific methods.

19 (c) Take into account the relative contribution of each greenhouse gas emission
20 source or category of greenhouse gas emission sources to statewide greenhouse gas
21 emissions and the potential for adverse effects on small businesses and shall
22 recommend a threshold of greenhouse gas emissions below which requirements for
23 reductions in greenhouse gas emissions will not apply.

1 (d) Identify opportunities for emission reductions measures from voluntary
2 actions that can be verified and made enforceable, including carbon sequestration
3 projects and best management practices.

4 (4) PUBLIC MEETINGS. The department shall conduct a series of public meetings
5 to give interested persons an opportunity to comment on the plan under this section.
6 The board shall conduct some of the public meetings in regions of the state that have
7 the most significant exposure to air pollutants, including communities with minority
8 populations and communities with low-income populations.

9 (5) UPDATES. The department shall update the plan under this section at least
10 once every 5 years.

11 **286.23 Emission limits and reduction measures. (1) RULES.** The
12 department shall promulgate rules, to take effect no later than January 1, 2012,
13 containing greenhouse gas emission limits and emission reduction measures to
14 achieve the maximum reduction in green house gas emissions that is technologically
15 feasible and cost-effective, in furtherance of achieving the statewide emission limit.

16 (2) REQUIREMENTS CONCERNING RULE PROMULGATION. In promulgating rules
17 under this section, the department shall do all of the following to the extent feasible.

18 (a) Design the rules, including any distribution of allowances, in a manner that
19 is equitable, seeks to minimize costs and maximize total benefits in this state, and
20 encourages early action to reduce greenhouse gas emissions.

21 (b) Ensure that activities undertaken to comply with the rules will not have a
22 disproportionate impact on communities with low-income populations.

23 (c) Ensure that entities that have voluntarily reduced their greenhouse gas
24 emissions before the rules take effect receive appropriate credit for those reductions.

1 (d) Ensure that activities undertaken to comply with the rules complement,
2 and do not interfere with, efforts under ch. 285 to achieve and maintain compliance
3 with ambient air quality standards and to reduce emissions of hazardous air
4 contaminants.

5 (e) Ensure that the rules result in reductions of greenhouse gas emissions that
6 are permanent, quantifiable, verifiable, and enforceable.

7 (f) Ensure that any provision authorizing use of an alternative compliance
8 mechanism results in a reduction of greenhouse gas emissions that occurs over the
9 same period and in the same amount as any ~~direct reduction measure~~ ^{specific action} that would
10 otherwise be required under this section.

11 (g) Consider the cost effectiveness of the rules.

12 (h) Consider overall societal benefits, including reductions in other air
13 pollutants, diversification of energy sources, and other benefits to the economy, the
14 environment, and public health.

15 (i) Minimize the administrative burden of implementing and complying with
16 the rules.

17 (j) Minimize the extent to which reductions in emissions of greenhouse gases
18 within this state are offset by increases in emissions of greenhouse gases outside the
19 state.

20 (k) Consider the significance of the contribution of each greenhouse gas
21 emission source or category of greenhouse gas emission sources to statewide
22 emissions of greenhouse gases.

23 (L) Rely upon the best available economic and scientific information.

24 (m) Rely upon the department's assessment of existing and projected
25 technological capabilities.

1 (n) Consult with the public service commission concerning the rules that affect
2 providers of electricity and natural gas in order to minimize duplicative or
3 inconsistent regulatory requirements.

4 (3) MARKET-BASED COMPLIANCE MECHANISMS. (a) Subject to pars. (b) to (d),[✓] in the
5 rules promulgated under this section, the department may authorize the use of
6 market-based compliance mechanisms.

7 (b) Before including market-based compliance mechanisms in the rules
8 promulgated under this section, the department shall do all of the following ^{to the extent feasible} to the^o

9 extent feasible:^e ✓

10 1. Consider the potential for direct, indirect, and cumulative impacts on
11 emissions from using market-based compliance mechanisms, including localized
12 impacts in communities already adversely affected by air pollution.

13 2. Design the market-based compliance mechanisms to prevent any increase
14 in emissions of hazardous air contaminants or pollutants for which ambient air
15 quality standards have been established under s. 285.21.[✓]

16 3. Maximize additional environmental benefits and economic benefits in this
17 state, as the department determines is appropriate.

18 (c) If the department provides for the use of market-based compliance
19 mechanisms in the rules promulgated under this section, the department shall
20 specify in the rules how the market-based compliance mechanisms may be used by
21 entities subject to greenhouse gas emission limits and mandatory emission reporting
22 requirements to achieve compliance with their greenhouse gas emission limits.

23 (d) In furtherance of achieving the statewide emission limit, the department
24 may promulgate a rule that establishes a system of market-based declining annual
25 aggregate greenhouse gas emission limits for significant sources or categories of

(1) significant sources, applicable from January 1, 2012 to December 31, 2020, that the department determines will achieve the maximum reduction in greenhouse gas emissions that is technologically feasible and cost-effective, in the aggregate, from those significant sources or categories of significant sources, but only if the department complies with pars. (b) and (c) and ensures that the reduction is in addition to any greenhouse gas emission reduction otherwise required by law and any greenhouse gas emission reduction that would otherwise occur.

286.25 Voluntary reductions. (1) The department shall adopt methodologies for the quantification of greenhouse gas emission reductions from voluntary actions. Notwithstanding s. 227.10 (1), the department is not required to adopt the methodologies by rule.

(2) The department shall promulgate rules for verifying and enforcing greenhouse gas emission reductions from voluntary actions that the department authorizes to be used to comply with greenhouse gas emission limits.

286.27 Authority of the governor. (1) Notwithstanding the dates specified in ss. 286.09 (1) (into.) and (3), 286.15 (1), 286.20 (1), and 286.23 (1) in the event of extraordinary circumstances, catastrophic events, or threat of significant economic harm, the governor may adjust a deadline in s. 286.09 (1), 286.15 (1), 286.20 (1), or 286.23 (1), or in a rule promulgated under this chapter, to the earliest feasible date after the deadline, subject to sub. (2).

(2) The governor may not adjust a deadline by more than one year at a time, but the governor may make successive adjustments of the same deadline as long as the adjustments comply with sub. (1).

1 **(3)** No more than 10 days after making an adjustment under sub. (1), the
2 governor shall provide written notification of the adjustment to the chief clerk of each
3 house of the legislature.

 ***NOTE: Should the notice also be provided to the revisor for publication in the
administrative register, in order to ensure official notice that the statutory dates are not
applicable?

4 **286.31 Councils.** **(1)** The greenhouse gas management environmental justice
5 council shall advise the department in developing the plan under s. 286.20[✓] and in any
6 other matter in the implementation of this chapter.

7 **(2)** The greenhouse gas management economic and technology advancement
8 council shall advise the department on activities that will facilitate investment in
9 and implementation of technological research and development opportunities,
10 including identifying new technologies; research; demonstration projects; funding
11 opportunities; developing state, national, and international partnerships and
12 technology transfer opportunities; and identifying and assessing research and
13 advanced technology investment and incentive opportunities that will assist in the
14 reduction of greenhouse gas emissions. The council may also advise the department
15 on state, regional, national, and international economic and technological
16 developments related to greenhouse gas emission reductions.

17 **286.35 Fees.** **(1)** The department may promulgate rules establishing a
18 schedule of fees for greenhouse gas emission sources regulated under this chapter.
19 The department shall design the fee schedule to ensure that the amount of the fees
20 is not more than is reasonably necessary to fund the operation of the program under
21 this chapter.

22 **(2)** Any fees collected under sub. (1)[✓] shall be credited to the appropriation
23 account under s. 20.370 (2) (c).[✓]

1 **286.37 Other duties of the department.** (1) The department shall
2 determine the carbon dioxide equivalents of greenhouse gases based on the best
3 available scientific information, including information from the Intergovernmental
4 Panel on Climate Change.

5 (2) The department shall consult with other states, the federal government,
6 and other countries to identify the most effective strategies and methods to reduce
7 greenhouse gas emissions, manage greenhouse gas control programs, and facilitate
8 the development of integrated and cost-effective regional, national, and
9 international greenhouse gas emission reduction programs.

10 (3) The department shall ensure, to the extent feasible, that the rules,
11 programs, mechanisms, and incentives under its jurisdiction for the reduction of
12 greenhouse gas emissions direct public and private investment toward communities
13 with the most disadvantaged populations. The department shall provide the
14 opportunity for small businesses, schools, organizations that provide affordable
15 housing, and other community institutions to participate in and benefit from
16 statewide efforts to reduce greenhouse gas emissions.

17 **286.39 Duty of other state agencies.** Each state agency shall take actions
18 to reduce its greenhouse gas emissions.

****NOTE: The draft should define "state agency." Should authorities (like WHEDA
and the UW Hospitals and Clinics Authority) be covered by this requirement?

19 **286.50 Penalties.** (1) Any person who violates this chapter or any rule
20 promulgated, permit issued, or order issued under this chapter shall forfeit not less
21 than \$10 or more than \$25,000 for each violation. Each day of continued violation
22 is a separate offense.

1 (2) (a) Except as provided in par. (b), any person who intentionally commits
2 an act that violates, or fails to perform an act required by this chapter or any rule
3 promulgated, permit issued, or order issued under this chapter shall be fined not
4 more than \$25,000 per day of violation or imprisoned for not more than 6 months or
5 both.

6 (b) If the conviction under par. (a) is for a violation committed after another
7 conviction under par. (a), the person is guilty of a Class I felony, except that,
8 notwithstanding the maximum fine specified in s. 939.50 (3) (i), the person may be
9 fined not more than \$50,000 per day of violation.

10 **SECTION 6.** 299.95 of the statutes is amended to read:

11 **299.95 Enforcement; duty of department of justice; expenses.** The
12 attorney general shall enforce chs. 281 to 285 286 and 289 to 295 and this chapter,
13 except ss. 285.57, 285.59, and 299.64, and all rules, special orders, licenses, plan
14 approvals, permits, and water quality certifications of the department, except those
15 promulgated or issued under ss. 285.57, 285.59, and 299.64 and except as provided
16 in ss. 285.86 and 299.85 (7) (am). The circuit court for Dane county or for any other
17 county where a violation occurred in whole or in part has jurisdiction to enforce chs.
18 281 to 285 286 and 289 to 295 or this chapter or the rule, special order, license, plan
19 approval, permit, or certification by injunctive and other relief appropriate for
20 enforcement. For purposes of this proceeding where chs. 281 to 285 286 and 289 to
21 295 or this chapter or the rule, special order, license, plan approval, permit or
22 certification prohibits in whole or in part any pollution, a violation is considered a
23 public nuisance. The department of natural resources may enter into agreements
24 with the department of justice to assist with the administration of chs. 281 to 285 286
25 and 289 to 295 and this chapter. Any funds paid to the department of justice under

1 these agreements shall be credited to the appropriation account under s. 20.455 (1)
2 (k).

History: 1975 c. 39 s. 734; 1979 c. 34 s. 985g; 1979 c. 221; Stats. 1979 s. 144.98; 1981 c. 374; 1989 a. 284; 1993 a. 243; 1995 a. 27; 1995 a. 227 s. 829; Stats. 1995 s. 299.95; 1995 a. 290 s. 12; 1997 a. 35; 1999 a. 9; 2001 a. 6; 2003 a. 276; 2005 a. 347.

3 **SECTION 7. Nonstatutory provisions.**

4 (1) SUBMISSION OF PROPOSED RULES. The department of natural resources shall
5 submit in proposed form the rules required under section 286.05 (1) of the statutes,
6 as created by this act, to the legislative council staff under section 227.15 (1) of the
7 statutes no later than June 30, 2007.

***NOTE: As a practical matter, this date will need to be changed.

8 (END)

DN Note ✓

DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-0193/P1dn

RCT:.....

NHJ

Representative Black:

* This is a preliminary version of the proposal to reduce greenhouse gas emissions, based on the California law enacted this year (referred to as AB 32 or Chapter 488). The program created in the draft would be administered by the Department of Natural resources (DNR). The draft identifies the same kinds of gases as greenhouse gases as in the California law, although I believe that there are additional gases that promote global warming.

to For this preliminary draft, I used the deadlines in the California law, but some of those deadlines will not be practical given the inevitable delay between the enactment of the California law and your bill. I will need guidance about which deadlines to change and what they should be changed to.

It is worth noting that, as with the California legislation, the draft leaves to the rule-making process the identification of the methods that will be used to reduce greenhouse gas emissions. Generally, the draft does the following:

1. Requires DNR to promulgate rules requiring monitoring and reporting of greenhouse gas emissions in this state. DNR must phase in the requirements beginning with the types of sources that DNR determines emit the most greenhouse gases. DNR must require the reporting of greenhouse gas emissions from electricity generated outside the state that is delivered in the state, as well as from electricity generated in the state.
2. Requires DNR to determine the level of greenhouse gas emissions in Wisconsin in 1990 (including emissions from electricity generated outside the state that is delivered in the state) and to set a statewide greenhouse gas emission limit for 2020 that is equivalent to the 1990 level. The deadline for setting the 2020 limit is January 1, 2008.
3. Requires DNR to identify, no later than June 30, 2007, measures for reducing greenhouse gas emissions that can be implemented before the full planning and rule-making process described below. DNR must then make rules implementing the interim measures, to take effect no later than January 1, 2010.
4. Requires DNR to approve a plan, no later than January 1, 2009, for achieving reductions of greenhouse gas emissions that are technologically feasible and

cost-effective. The draft authorizes DNR to make recommendations concerning "direct emission reduction measures, alternative compliance mechanisms, market-based compliance mechanisms, and monetary and nonmonetary incentives."

* The first three of these terms are defined in the draft, although the definitions are not specific. *broad*

5. Requires DNR to promulgate rules, to take effect no later than January 1, 2012, containing greenhouse gas emission limits and emission reduction measures to achieve greenhouse gas emission reductions, in furtherance of achieving the statewide emission limit. The draft imposes a large number of requirements on DNR relating to the rules, for example, to design the rules in a manner that is equitable and seeks to minimize costs and maximize benefits; to ensure that low-income communities are not disproportionately affected; to give credit to emission sources that voluntarily reduced their greenhouse gas emissions before the rules ^{take} took effect; to ensure that emissions of certain other air pollutants do not increase; and to limit the extent to which reductions in emissions in this state are offset by increases in emissions outside of the state. The draft includes specific prerequisites to including "market-based compliance mechanisms," such as cap-and-trade provisions, in the rules.

6. Allows the governor to adjust deadlines that are in the law or in individual rules "in the event of extraordinary circumstances, catastrophic events, or threat of significant economic harm." Each extension may not exceed one year, but the governor may make additional extensions.

The language in the draft differs from the California law somewhat for several reasons. For one thing, we have different styles and forms for the statutes. Also, preexisting Wisconsin law differs from preexisting California law. For example, the states have different agencies (and California has several agencies that deal with environmental quality) and different ways of regulating and referring to entities that provide electricity.

One difference to ^{note} is that separately from this law California has imposed requirements on manufacturers of cars and trucks to reduce carbon dioxide emissions from their products. *fix font?* The motor vehicle manufacturers have challenged these requirements in federal court, arguing that the Clean Air Act preempts such state requirements. If the lawsuit is successful, it seems that California will have to impose more stringent measures under Chapter 488 to attain the statewide greenhouse gas emission limit than if the lawsuit fails (my understanding is that in California about 40 percent of the greenhouse gas emissions are from the transportation sector). If the lawsuit is unsuccessful, other states will be able to implement the same regulations on motor vehicle emissions.

* The California law provides penalties for violations ^{of} of the greenhouse gas provisions by incorporating by reference preexisting penalties for violations of various laws related to air quality. The referenced penalty provisions are about 15 pages long and have some problematic language (like making the level of penalty depend on whether a violation causes actual injury to "a considerable number of persons"), and some of the language is not easily applicable to the greenhouse gas provisions. Instead of trying to modify and include in the draft the California penalty provisions that are referenced

in Chapter 488, I provided penalty provisions that are the same as those in our clean air law, ch. 285, which include both civil and criminal penalties.

There are also some difficulties with the California language, which I have tried to minimize in this draft. (I understand that there are already controversies in California about what Chapter 488 means.) For example, the California definition of "cost-effective" really defines "cost." I have added the concept that "cost-effective" means economical. There are also places in which the California language is inconsistent. I have tried to make the draft internally consistent, although that required making some assumptions about what the proponents of AB 32 intended. I have obtained information about Chapter 488 from the Internet, but have not spoken to anyone in California about it. There are also a few organizational differences between this draft and the California law. I tried, for example, to gather related requirements together in order to make the language easier to understand. Still, some provisions of the draft will be open to varying interpretations.

Chapter 488 refers to the use of carbon sequestration, which is essentially the uptake of carbon from the atmosphere and the storage of the carbon. Carbon sequestration does not necessarily involve the reduction of carbon emissions. The draft does not clearly state that carbon sequestration (such as reforestation) may be used to meet the statewide emission limit by offsetting greenhouse gas emissions. Please let me know whether you want to allow this and I will make it clear one way or the other.

While the draft would clearly allow DNR to implement a cap-and-trade system for meeting the statewide emission limit, it does not clearly allow sources inside the state to obtain credits by trading with sources that are located outside of the state. The limit is a limit on emissions within the state (plus emissions from the generation of electricity outside of the state that is used in the state). Please let me know whether you want to allow trading with entities outside of the state (which would involve reducing emissions outside of the state) and I will make the draft clear in this respect.

The draft authorizes DNR to impose fees on sources that it regulates. This draft includes an annual appropriation into which the fee revenue would be deposited. The legislature would have to establish, in the budget act, the amount that DNR could spend each fiscal year. Please let me know if you would prefer a continuing appropriation that would allow DNR to spend however much it collected. Also, I assume that DNR would incur significant expenses before it could begin to collect the fees. Please let me know if you want to provide money to DNR for its initial expenses.

The two councils created in the draft do not have specified numbers of members or specified terms for the members. You might want to specify numbers and terms for members.

Please review the draft carefully. There are a few notes in the draft raising issues about specific provisions.

Feel free to contact me with any

* Please ~~let me know~~ if you have questions about this draft.

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DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-0193/P1dn
RCT:wj:rs

December 7, 2006

Representative Black:

This is a preliminary version of the proposal to reduce greenhouse gas emissions, based on the California law enacted this year (referred to as AB 32 or Chapter 488). The program created in the draft would be administered by the Department of Natural Resources (DNR). The draft identifies the same kinds of gases as greenhouse gases as in the California law, although I believe that there are additional gases that promote global warming.

For this preliminary draft, I used the deadlines in the California law, but some of those deadlines will not be practical given the inevitable delay between the enactment of the California law and your bill. I will need guidance about which deadlines to change and to what they should be changed.

It is worth noting that, as with the California legislation, the draft leaves to the rule-making process the identification of the methods that will be used to reduce greenhouse gas emissions. Generally, the draft does the following:

1. Requires DNR to promulgate rules requiring monitoring and reporting of greenhouse gas emissions in this state. DNR must phase in the requirements beginning with the types of sources that DNR determines emit the most greenhouse gases. DNR must require the reporting of greenhouse gas emissions from electricity generated outside the state that is delivered in the state, as well as from electricity generated in the state.
2. Requires DNR to determine the level of greenhouse gas emissions in Wisconsin in 1990 (including emissions from electricity generated outside the state that is delivered in the state) and to set a statewide greenhouse gas emission limit for 2020 that is equivalent to the 1990 level. The deadline for setting the 2020 limit is January 1, 2008.
3. Requires DNR to identify, no later than June 30, 2007, measures for reducing greenhouse gas emissions that can be implemented before the full planning and rule-making process described below. DNR must then make rules implementing the interim measures, to take effect no later than January 1, 2010.
4. Requires DNR to approve a plan, no later than January 1, 2009, for achieving reductions of greenhouse gas emissions that are technologically feasible and

cost-effective. The draft authorizes DNR to make recommendations concerning "direct emission reduction measures, alternative compliance mechanisms, market-based compliance mechanisms, and monetary and nonmonetary incentives." The first three of these terms are defined in the draft, although the definitions are broad.

5. Requires DNR to promulgate rules, to take effect no later than January 1, 2012, containing greenhouse gas emission limits and emission reduction measures to achieve greenhouse gas emission reductions, in furtherance of achieving the statewide emission limit. The draft imposes a large number of requirements on DNR relating to the rules, for example, to design the rules in a manner that is equitable and seeks to minimize costs and maximize benefits; to ensure that low-income communities are not disproportionately affected; to give credit to emission sources that voluntarily reduce their greenhouse gas emissions before the rules take effect; to ensure that emissions of certain other air pollutants do not increase; and to limit the extent to which reductions in emissions in this state are offset by increases in emissions outside of the state. The draft includes specific prerequisites to including "market-based compliance mechanisms," such as cap-and-trade provisions, in the rules.

6. Allows the governor to adjust deadlines that are in the law or in individual rules "in the event of extraordinary circumstances, catastrophic events, or threat of significant economic harm." Each extension may not exceed one year, but the governor may make additional extensions.

The language in the draft differs from the California law somewhat for several reasons. For one thing, we have different styles and forms for the statutes. Also, preexisting Wisconsin law differs from preexisting California law. For example, the states have different agencies (and California has several agencies that deal with environmental quality) and different ways of regulating and referring to entities that provide electricity.

One difference to note is that separately from this law California has imposed requirements on manufacturers of cars and trucks to reduce carbon dioxide emissions from their products. The motor vehicle manufacturers have challenged these requirements in federal court, arguing that the Clean Air Act preempts such state requirements. If the lawsuit is successful, it seems that California will have to impose more stringent measures under Chapter 488 to attain the statewide greenhouse gas emission limit than if the lawsuit fails (my understanding is that in California about 40 percent of the greenhouse gas emissions are from the transportation sector). If the lawsuit is unsuccessful, other states will be able to implement the same regulations on motor vehicle emissions.

The California law provides penalties for violations of the greenhouse gas provisions by incorporating by reference preexisting penalties for violations of various laws related to air quality. The referenced penalty provisions are about 15 pages long and have some problematic language (like making the level of penalty depend on whether a violation causes actual injury to "a considerable number of persons"), and some of the language is not easily applicable to the greenhouse gas provisions. Instead of trying to modify and include in the draft the California penalty provisions that are referenced

in Chapter 488, I provided penalty provisions that are the same as those in our clean air law, ch. 285, which include both civil and criminal penalties.

There are also some difficulties with the California language, which I have tried to minimize in this draft. (I understand that there are already controversies in California about what Chapter 488 means.) For example, the California definition of "cost-effective" really defines "cost." I have added the concept that "cost-effective" means economical. There are also places in which the California language is inconsistent. I have tried to make the draft internally consistent, although that required making some assumptions about what the proponents of AB 32 intended. I have obtained information about Chapter 488 from the Internet, but have not spoken to anyone in California about it. There are also a few organizational differences between this draft and the California law. I tried, for example, to gather related requirements together in order to make the language easier to understand. Still, some provisions of the draft will be open to varying interpretations.

Chapter 488 refers to the use of carbon sequestration, which is essentially the uptake of carbon from the atmosphere and the storage of the carbon. Carbon sequestration does not necessarily involve the reduction of greenhouse gas emissions. The draft does not clearly state that carbon sequestration (such as reforestation) may be used to meet the statewide emission limit by offsetting greenhouse gas emissions. Please let me know whether you want to allow this, and I will make it clear one way or the other.

While the draft would clearly allow DNR to implement a cap-and-trade system for meeting the statewide emission limit, it does not clearly allow sources inside the state to obtain credits by trading with sources that are located outside of the state. The limit is a limit on emissions within the state (plus emissions from the generation of electricity outside of the state that is used in the state). Please let me know whether you want to allow trading with entities outside of the state (which would involve reducing emissions outside of the state), and I will make the draft clear in this respect.

The draft authorizes DNR to impose fees on sources that it regulates. This draft includes an annual appropriation into which the fee revenue would be deposited. The legislature would have to establish, in each budget act, the amount that DNR could spend each fiscal year. Please let me know if you would prefer a continuing appropriation that would allow DNR to spend however much it collected. Also, I assume that DNR would incur significant expenses before it could begin to collect the fees. Please let me know if you want to provide money to DNR for its initial expenses.

The two councils created in the draft do not have specified numbers of members or specified terms for the members. You might want to specify numbers and terms for members.

Please review the draft carefully. There are a few notes in the draft raising issues about specific provisions.

Please feel free to contact me with any questions about this draft.

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1/23/07 Call from Spencer Black-

Redraft for introduction. Move all dates one year except for 2020 date.

He wants to allow carbon sequestration and trading with sources outside of the state

Appropriation is OK for now.

Q on p 13 after line 3 = yes

Q on p 14 after line 18 = yes