



**ASSEMBLY SUBSTITUTE AMENDMENT 2,
TO 2009 ASSEMBLY BILL 755**

March 16, 2010 – Offered by Representative MASON.

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

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

10 **SECTION 1.** 66.0627 (title) of the statutes, as affected by 2009 Wisconsin Act 11,
11 is amended to read:

1 **66.0627 (title) Special charges for current services and energy and**
2 **water efficiency improvement loans.**

3 **SECTION 2.** 66.0627 (1) (a) of the statutes, as created by 2009 Wisconsin Act 11,
4 is amended to read:

5 66.0627 (1) (a) “Energy efficiency improvement” means an improvement to a
6 residential any type of premises that reduces the usage of energy, or increases the
7 efficiency of energy usage, at the premises.

8 **SECTION 3.** 66.0627 (1) (d) of the statutes is created to read:

9 66.0627 (1) (d) “Water efficiency improvement” means an improvement to any
10 type of premises that reduces the usage of water, or increases the efficiency of water
11 usage, at the premises.

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

14 66.0627 (8) ~~A~~ Subject to s. 196.3745, a political subdivision may make a loan
15 to a resident of an owner of a premises located in the political subdivision for making
16 or installing an energy efficiency improvement, a water efficiency improvement, or
17 a renewable resource application to the resident’s residential property premises, or
18 enter into an agreement with the owner regarding loan repayments to a 3rd party
19 for owner–arranged financing for such purposes. If a political subdivision makes
20 such a loan or enters into such an agreement, the political subdivision may collect
21 the loan repayment as a special charge under this section. A political subdivision
22 may also collect the loan repayment as a special tax, using the method and
23 procedures described in s. 66.0907 (3) (f). Notwithstanding the provisions of sub. (4),
24 a special charge imposed under this subsection may be collected in annual

1 installments and may be included in the current or next tax roll for collection and
2 settlement under ch. 74 even if the special charge is not delinquent.

3 **SECTION 5.** 103.49 (3) (ar) of the statutes, as affected by 2009 Wisconsin Act 28,
4 is amended to read:

5 103.49 **(3)** (ar) In determining prevailing wage rates under par. (a) or (am), the
6 department may not use data from projects that are subject to this section, s. 66.0903,
7 66.0904, 103.50, 196.3745 (5) (a) 1., or 229.8275 or 40 USC 3142 unless the
8 department determines that there is insufficient wage data in the area to determine
9 those prevailing wage rates, in which case the department may use data from
10 projects that are subject to this section, s. 66.0903, 66.0904, 103.50, 196.3745 (5) (a)
11 1., or 229.8275 or 40 USC 3142.

12 **SECTION 6.** 109.09 (1) of the statutes, as affected by 2009 Wisconsin Act 28, is
13 amended to read:

14 109.09 **(1)** The department shall investigate and attempt equitably to adjust
15 controversies between employers and employees as to alleged wage claims. The
16 department may receive and investigate any wage claim which is filed with the
17 department, or received by the department under s. 109.10 (4), no later than 2 years
18 after the date the wages are due. The department may, after receiving a wage claim,
19 investigate any wages due from the employer against whom the claim is filed to any
20 employee during the period commencing 2 years before the date the claim is filed.
21 The department shall enforce this chapter and ss. 66.0903, 66.0904, 103.02, 103.49,
22 103.82, 104.12, 196.3745 (5) (a) 1., and 229.8275. In pursuance of this duty, the
23 department may sue the employer on behalf of the employee to collect any wage claim
24 or wage deficiency and ss. 109.03 (6) and 109.11 (2) and (3) shall apply to such actions.
25 Except for actions under s. 109.10, the department may refer such an action to the

1 district attorney of the county in which the violation occurs for prosecution and
2 collection and the district attorney shall commence an action in the circuit court
3 having appropriate jurisdiction. Any number of wage claims or wage deficiencies
4 against the same employer may be joined in a single proceeding, but the court may
5 order separate trials or hearings. In actions that are referred to a district attorney
6 under this subsection, any taxable costs recovered by the district attorney shall be
7 paid into the general fund of the county in which the violation occurs and used by that
8 county to meet its financial responsibility under s. 978.13 (2) (b) for the operation of
9 the office of the district attorney who prosecuted the action.

10 **SECTION 7.** 111.322 (2m) (c) of the statutes, as affected by 2009 Wisconsin Act
11 28, is amended to read:

12 111.322 **(2m)** (c) The individual files a complaint or attempts to enforce a right
13 under s. 66.0903, 66.0904, 103.49, 196.3745 (5) (a) 1., or 229.8275 or testifies or
14 assists in any action or proceeding under s. 66.0903, 66.0904, 103.49, 196.3745 (5)
15 (a) 1., or 229.8275.

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

17 196.374 **(2)** (d) *Contractors.* The commission shall prohibit, by order or rule,
18 the performance of any work on installing or making an energy efficiency
19 improvement, as defined in s. 196.3745 (1) (b), or renewable resource application, as
20 defined in s. 196.3745 (1) (f), under a contract under a program under par. (a) 1., (b)
21 1. or 2., or (c) by a contractor or subcontractor who is not included in the list specified
22 in s. 196.3745 (5) (a), except that the commission's order or rule shall allow the
23 performance of such work by a contractor or subcontractor who does not satisfy the
24 requirement under s. 196.3745 (5) (a) 3. if no contractor or subcontractor who
25 satisfies the requirement is available to perform the work. This paragraph applies

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

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

4 196.374 (4) (b) An energy utility that provides financing under an energy
5 efficiency program under sub. (2) (b) 1. or 2. for installation, by a customer, of energy
6 efficiency or renewable resource processes, equipment, or appliances, or an affiliate
7 of such a utility, may not sell to or install for the customer those processes,
8 equipment, appliances, or related materials. The Subject to any order or rule of the
9 commission under sub. (2) (d), the customer shall acquire the installation of the
10 processes, equipment, appliances, or related materials from an independent
11 contractor of the customer's choice.

12 **SECTION 10.** 196.3745 of the statutes is created to read:

13 **196.3745 Energy and water efficiency and renewable energy**
14 **investment program. (1) DEFINITIONS.** In this section:

15 (ag) "Administrative services" means, with respect to a utility, internal
16 program administrative activities of the utility and does not include project,
17 construction, or program management services or installations related to
18 improvements or applications.

19 (ar) "Cultural competency" means the ability to understand and act
20 respectfully toward, in a cultural context, the beliefs, interpersonal styles, attitudes,
21 and behaviors of persons of various cultures.

22 (b) "Energy efficiency improvement" means an improvement to any type of
23 premises that reduces the usage of energy, or increases the efficiency of energy usage,
24 at the premises.

1 (c) “Improvement or application” means an energy or water efficiency
2 improvement or renewable resource application.

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

4 (e) “Political subdivision loan” means a loan or agreement under s. 66.0627 (8)
5 regarding an improvement or application.

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

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

10 (h) “Utility program” means a program authorized under sub. (2).

11 (i) “Water efficiency improvement” means an improvement to any type of
12 premises that reduces the usage of water, or increases the efficiency of water usage,
13 at the premises.

14 **(2) AUTHORIZATION.** The commission may, upon application by a utility,
15 authorize the utility to administer, fund, or provide administrative services for a
16 program for investing in improvements or applications for any type of premises
17 served by the utility if the commission finds that the program is cost-effective.
18 Participation in such a program shall be at the discretion of utilities and premises
19 owners, and the commission may not require that a utility or premises owner
20 participate in such a program.

21 **(3) TARIFFS.** A utility for which a program is authorized under sub. (2) shall file
22 a tariff specifying the terms and conditions for making or installing improvements
23 or applications at customer premises under the program. A tariff filed under this
24 subsection shall have no effect until approved by the commission. A tariff filed by
25 a utility under this subsection shall include all of the following:

1 (a) Terms and conditions for billing customers at premises for costs incurred
2 at the premises in making or installing improvements or applications for which
3 investments are made. The utility may not bill a customer for any interest on any
4 amount on which the utility is allowed to earn a return under sub. (6) (as). The tariff
5 shall allow the utility to collect, and enforce payment of, the amounts billed in the
6 same manner as amounts billed for utility service.

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

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

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

17 **(4) COSTS AND SAVINGS.** (a) *Definitions.* In this subsection:

18 1. "Performance contract" means a contract under which a qualified provider
19 agrees to do all of the following:

20 a. Make an improvement or application on the property of another party.

21 b. Guarantee a minimum level of cost savings that will result from reduced
22 energy or water usage due to the improvement or application.

23 c. Commit to pay to the other party the difference between the guaranteed and
24 actual savings in the event that the guaranteed cost savings are not realized.

25 d. Validate the savings guarantee by periodic measurement and verification.

1 2. “Qualified provider” means a person who is experienced in the design,
2 implementation, and installation of improvements or applications and who has the
3 ability to provide labor and material payment and performance bonds equal to the
4 maximum amount of any payments due under a performance contract entered into
5 by the person.

6 (b) *In general.* A premises is not eligible for a political subdivision loan or an
7 investment for an improvement or application under a utility program unless one of
8 the following is satisfied:

9 1. An audit is performed that demonstrates that the improvement or
10 application is cost-effective with respect to the normal operation of the premises.

11 2. As determined under criteria under par. (d), the water or energy savings
12 resulting over the expected life of the improvement or application equal or exceed the
13 costs of the improvement or application.

14 3. The improvement or application is subject to a performance contract under
15 par. (e).

16 (c) *Audits.* 1. For a political subdivision loan, the political subdivision shall
17 determine whether an audit under par. (b) 1. demonstrates that an improvement or
18 application is cost-effective. A political subdivision shall determine that an
19 improvement or application is cost-effective if the energy or water savings resulting
20 over the expected life of the improvement or application equal or exceed the costs of
21 the political subdivision loan. After an improvement or application is made or
22 installed, a political subdivision shall require the performance of an additional audit
23 to verify that the improvement or application was made or installed. The commission
24 may not promulgate rules regarding any audit performed for or required by a
25 political subdivision.

1 2. The commission shall promulgate rules for determining whether an audit
2 under par. (b) 1. demonstrates that an improvement or application under a utility
3 program is cost-effective. The commission shall also promulgate rules requiring the
4 performance of an additional audit to verify that the improvement or application was
5 installed or made and rules specifying the certification requirements a person must
6 satisfy to perform any audit required for an improvement or application under a
7 utility program.

8 (d) *Criteria.* For a political subdivision loan, the political subdivision shall
9 specify criteria for making a determination under par. (b) 2. For a utility program,
10 the commission shall promulgate rules specifying criteria for making a
11 determination under par. (b) 2. A political subdivision and the commission shall
12 specify similar criteria for similar types of premises, improvements, and
13 applications.

14 (e) *Performance contracts.* 1. An improvement or application may be subject
15 to a performance contract if a report is obtained from a qualified provider containing
16 recommendations concerning the amount that should be spent on the improvement
17 or application. The report shall contain estimates of all costs of installation,
18 modifications, or remodeling, including costs of design, engineering, maintenance,
19 repairs, and financing. In addition, the report shall contain a guarantee specifying
20 a minimum amount by which water, energy, or operating costs for the premises will
21 be reduced, if the installation, modification, or remodeling is performed by that
22 qualified provider. If, after review of the report, it is determined that the
23 recommended spending is not likely to exceed the amount to be saved in water,
24 energy, and operation costs over the remaining useful life of the improvement or

1 application, the improvement or application may be subject to a performance
2 contract.

3 2. For a political subdivision loan, a political subdivision shall establish
4 requirements and procedures for reports and performance contracts under subd. 1.
5 The commission shall promulgate rules establishing requirements and procedures
6 for reports and performance contracts under subd. 1. for improvements or
7 applications under utility programs.

8 (f) *Ability to pay.* 1. If a political subdivision establishes the eligibility of
9 premises for a political subdivision loan under par. (b) 1. or 2., the political
10 subdivision shall also consider the ability of the owner of the premises to make the
11 payments required for the loan. A political subdivision shall establish criteria for
12 considering ability to pay, including comparing the cost of the improvement or
13 application made or installed pursuant to the political subdivision loan to the
14 owner's equity in the premises. The commission may not promulgate rules regarding
15 the requirements of this subdivision.

16 2. In addition to determining under par. (b) 1. or 2. the eligibility of a premises
17 for an improvement or application under a utility program, the utility shall also
18 consider the ability of the customer at the premises to pay the costs billed by the
19 utility for the improvement or application. The commission shall promulgate rules
20 establishing criteria for considering ability to pay, including comparing the cost of
21 the improvement or application to the customer's equity in the premises.

22 (5) CONTRACTORS AND SUBCONTRACTORS. (a) All work involved in making or
23 installing an improvement or application under a utility program or pursuant to a
24 political subdivision loan shall be performed by a contractor or subcontractor that
25 the commission has included on a list of prequalified contractors and subcontractors.

1 The commission shall approve a contractor or subcontractor for inclusion on the
2 prequalification list only if the commission determines that the contractor or
3 subcontractor satisfies all of the following:

4 1. Agrees to pay all employees working on an improvement or application for
5 which an investment is made under the program, or for which the political
6 subdivision loan is made, who would be entitled to receive the prevailing wage rate
7 under s. 66.0903 and who would not be required or permitted to work more than the
8 prevailing hours of labor, as defined in s. 103.49 (1) (c), if the improvement or
9 application were a project of public works under s. 66.0903, not less than the
10 prevailing wage rate determined under s. 66.0903 (3) or (6) and not to require or
11 permit those employees to work more than the prevailing hours of labor, except as
12 permitted under s. 66.0903 (4) (a); to keep and permit inspection of records in the
13 same manner as a contractor performing work on a project of public works that is
14 subject to s. 66.0903 is required to keep and permit inspection of records under s.
15 66.0903 (10); and otherwise to comply with s. 66.0903 in the same manner as a
16 contractor performing work on a project of public works that is subject to s. 66.0903
17 is required to comply with s. 66.0903.

18 2. Agrees not to permit an employee working on an improvement or application
19 for which an investment is made under the program or for which the political
20 subdivision loan is made to use, possess, attempt to possess, distribute, deliver, or
21 be under the influence of a drug, as defined in s. 103.503 (1) (d), or use or be under
22 the influence of alcohol, while performing that work, to have in place a written
23 program for the prevention of substance abuse among those employees in the same
24 manner as a contractor performing work on a project of public works that is subject
25 to s. 66.0903 is required to have in place such a written program under s. 103.503 (3),

1 and otherwise to comply with s. 103.503 in the same manner as a contractor
2 performing work on a project of public works that is subject to s. 66.0903 is required
3 to comply with s. 103.503.

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

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

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

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

21 7. Discloses to the commission whether in the 3 years prior to inclusion on the
22 prequalification list the contractor or subcontractor has had any type of business,
23 contracting, or trade license, certification, or registration revoked or suspended;
24 been debarred by any federal state, or local government agency; defaulted on any
25 project; committed a willful violation of federal or state safety law as determined by

1 a final decision of a court or government agency authority; or been found by a final
2 decision of a court or government agency to be in violation of any other law relating
3 to its contracting business, including wage and hour laws, prevailing wage laws,
4 environmental laws, antitrust laws, or tax laws, where the penalty for such violation
5 resulted in the imposition of a fine, back pay damages, or any other type of penalty,
6 in an amount of more than \$10,000.

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

9 9. Certifies to the commission that not less than 30 percent of the total hours
10 of work performed by the contractor or subcontractor on an individual improvement
11 or application will be performed by individuals who, if the work is performed in a 1st
12 or 2nd class city, reside in the 1st or 2nd class city, or, if the work is not performed
13 in a 1st or 2nd class city, reside in the county in which the work is performed, and
14 whose annual income during the year prior to performance of the work did not exceed
15 200 percent of the poverty level under the federal poverty income guidelines of the
16 federal Department of Health and Human Services under 42 USC 9902 (2). The
17 commission shall promulgate rules for making certifications under this subdivision.
18 The rules shall provide that, once a contractor or subcontractor makes a certification
19 under this subdivision, the certification is valid for 3 years.

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

1 (b) The commission may include on the prequalification list under par. (a) a
2 contractor or subcontractor who does not satisfy the requirement under par. (a) 3.
3 The commission shall promulgate rules allowing a contractor or subcontractor who
4 does not satisfy the requirement to perform work on an improvement or application
5 for which an investment is made under a utility program or for which a political
6 subdivision loan is made, only if no contractor or subcontractor who satisfies the
7 requirement is available to perform the work.

8 (c) Based on good cause shown by the disclosures required under par. (a) 7., the
9 commission may disapprove a contractor or subcontractor for inclusion in the
10 prequalification list under par. (a). The commission shall promulgate rules defining
11 “good cause” for purposes of this paragraph.

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

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

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

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

8 (h) The commission shall make the prequalification list under par. (a) available
9 to the public. The prequalification list shall show the name, address, identification
10 number assigned by the commission, and approval renewal date for each contractor
11 or subcontractor. The commission shall update the prequalification list on a monthly
12 basis and make the updated lists available to the public.

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

19 **(6) UTILITIES.** (a) A utility for which the commission authorizes a program
20 under sub. (2) and approves a tariff under sub. (3) may include a separate line item
21 on bills of a customer at premises benefited by an improvement or application made
22 or installed under the program that compares the costs of the program borne by the
23 customer with the energy or water savings resulting from the improvement or
24 application. Notwithstanding s. 218.04, a utility need not obtain a license as a
25 collection agency for this billing practice.

1 (am) The commission shall ensure in rate-making orders that a utility recovers
2 from its ratepayers the amounts the utility spends for a utility program that exceed
3 the amounts recovered from billing customers for improvements and applications
4 under a tariff approved under sub. (3).

5 (as) 1. Subject to subd. 2., the commission shall ensure that a utility is allowed
6 to earn a return on net investment rate base on the amounts that the utility expends
7 under a program authorized under sub. (2) at a rate that is equal to the utility's
8 overall rate of return authorized by the commission.

9 2. A utility may not earn a rate of return under subd. 1. on an expenditure that
10 is funded by a source other than the utility, including an expenditure funded by a
11 federal or state grant or customer contribution.

12 3. With respect to a customer payment that is invested under par. (c), the
13 commission shall establish requirements for determining the portion of the payment
14 on which the utility is eligible to earn a return under this paragraph. The portion
15 shall be based on the amount of the payment that is attributable to an expenditure
16 for which the utility is eligible to earn a return under this paragraph.

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

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

24 (d) 1. A utility shall prioritize the utility's spending on a utility program in the
25 following manner:

1 a. If the source of the spending is a federal or state grant, 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, unless the
5 terms of the federal or state grant provide otherwise.

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

10 c. A utility shall prioritize improvements and applications that have a similar
11 priority under subd. 1. a. and b. by giving the greatest priority to improvements and
12 applications that are subject to performance contracts under sub. (4) (e).

13 2. The commission shall promulgate rules implementing the requirements of
14 subd. 1. and requiring utilities to make annual reports to the commission regarding
15 their implementation of the requirements.

16 **(7) POLITICAL SUBDIVISIONS.** (a) A political subdivision shall use any
17 repayments of political subdivision loans to make additional political subdivision
18 loans. This paragraph applies only to political subdivision loans made from state or
19 federal grant moneys and, with respect to political subdivision loans made from
20 federal grant moneys, only to the extent allowed under the federal law authorizing
21 the grant.

22 (b) A political subdivision shall prioritize spending on political subdivision
23 loans in a manner that gives the greatest priority to improvements and applications
24 at residential premises and the least priority to improvements and applications at
25 nonresidential premises of utility customers with the greatest demand for service

1 provided by utilities. This paragraph applies only to spending the source of which
2 is a federal or state grant and, with respect to a federal grant, only to the extent
3 allowed under the federal law authorizing the grant.

4 **SECTION 11.** 227.01 (13) (t) of the statutes, as affected by 2009 Wisconsin Act
5 28, is amended to read:

6 227.01 (13) (t) Ascertains and determines prevailing wage rates under ss.
7 66.0903, 66.0904, 103.49, 103.50, 196.3745 (5) (a) 1., and 229.8275, except that any
8 action or inaction which ascertains and determines prevailing wage rates under ss.
9 66.0903, 66.0904, 103.49, 103.50, 196.3745 (5) (a) 1., and 229.8275 is subject to
10 judicial review under s. 227.40.

11 **SECTION 12.** 709.03 (form) C. 25m. of the statutes is created to read:

12 709.03 (form)

13 C.25m. I am aware that an energy or water efficiency
14 improvement or renewable resource applica-
15 tion has been made or installed to the prop-
16 erty under a program authorized under s.
17 196.3745 and that utility bills for the property
18 will include unpaid costs of the improvement
19 or application.

20 **SECTION 13.** 946.15 (1) of the statutes, as affected by 2009 Wisconsin Act 28,
21 is amended to read:

22 946.15 (1) Any employer, or any agent or employee of an employer, who induces
23 any person who seeks to be or is employed pursuant to a public contract as defined
24 in s. 66.0901 (1) (c) or who seeks to be or is employed on a project on which a prevailing
25 wage rate determination has been issued by the department of workforce

1 development under s. 66.0903 (3), 66.0904 (4), 103.49 (3), 103.50 (3), 196.3745 (5) (a)
2 1., or 229.8275 (3) or by a local governmental unit, as defined in s. 66.0903 (1) (d),
3 under s. 66.0903 (6) or 66.0904 (6) to give up, waive, or return any part of the
4 compensation to which that person is entitled under his or her contract of
5 employment or under the prevailing wage rate determination issued by the
6 department or local governmental unit, or who reduces the hourly basic rate of pay
7 normally paid to an employee for work on a project on which a prevailing wage rate
8 determination has not been issued under s. 66.0903 (3) or (6), 66.0904 (4) or (6),
9 103.49 (3), 103.50 (3), 196.3745 (5) (a) 1., or 229.8275 (3) during a week in which the
10 employee works both on a project on which a prevailing wage rate determination has
11 been issued and on a project on which a prevailing wage rate determination has not
12 been issued, is guilty of a Class I felony.

13 **SECTION 14.** 946.15 (2) of the statutes, as affected by 2009 Wisconsin Act 28,
14 is amended to read:

15 946.15 (2) Any person employed pursuant to a public contract as defined in s.
16 66.0901 (1) (c) or 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 gives up, waives, or returns to the employer or agent of the
21 employer any part of the compensation to which the employee is entitled under his
22 or her contract of employment or under the prevailing wage determination issued by
23 the department or local governmental unit, or who gives up any part of the
24 compensation to which he or she is normally entitled for work on a project on which
25 a prevailing wage rate determination has not been issued under s. 66.0903 (3) or (6),

1 66.0904 (4) or (6), 103.49 (3), 103.50 (3), 196.3745 (5) (a) 1., or 229.8275 (3) during
2 a week in which the person works part–time on a project on which a prevailing wage
3 rate determination has been issued and part–time on a project on which a prevailing
4 wage rate determination has not been issued, is guilty of a Class C misdemeanor.

5 **SECTION 15.** 946.15 (3) of the statutes, as affected by 2009 Wisconsin Act 28,
6 is amended to read:

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

18 **SECTION 16.** 946.15 (4) of the statutes, as affected by 2009 Wisconsin Act 28,
19 is amended to read:

20 946.15 (4) Any person employed on a project on which a prevailing wage rate
21 determination has been issued by the department of workforce development under
22 s. 66.0903 (3), 66.0904 (4), 103.49 (3), 103.50 (3), 196.3745 (5) (a) 1., or 229.8275 (3)
23 or by a local governmental unit, as defined in s. 66.0903 (1) (d), under s. 66.0903 (6)
24 or 66.0904 (6) who permits any part of the wages to which that person is entitled
25 under the prevailing wage rate determination issued by the department or local

1 governmental unit to be deducted from his or her pay is guilty of a Class C
2 misdemeanor, unless the deduction would be permitted under 29 CFR 3.5 or 3.6 from
3 a person who is working on a project that is subject to 40 USC 3142.

4 **SECTION 17. Nonstatutory provisions.**

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

18 (2) If the public service commission determines to promulgate rules instead of
19 issuing an order under section 196.374 (2) (d) of the statutes, as created by this act,
20 then, by the first day of the 4th month beginning after the effective date of this
21 subsection, the public service commission shall, using the procedure under section
22 227.24 of the statutes, promulgate rules under section 196.374 (2) (d) of the statutes,
23 as created by this act, for the period before the effective date of the permanent rules
24 promulgated under section 196.374 (2) (d) of the statutes, as created by this act, but
25 not to exceed the period authorized under section 227.24 (1) (c) and (2) of the statutes.

1 Notwithstanding section 227.24 (1) (a), (2) (b), and (3) of the statutes, the public
2 service commission is not required to provide evidence that promulgating a rule
3 under this subsection as an emergency rule is necessary for the preservation of the
4 public peace, health, safety, or welfare and is not required to provide a finding of
5 emergency for a rule promulgated under this subsection.

6 (3) The public service commission shall complete the initial version of the
7 prequalification list specified in section 196.3745 (5) (a) (intro.) of the statutes, as
8 created by this act, no later than the first day of the 3rd month beginning after the
9 effective date of this subsection.

10 **SECTION 18. Initial applicability.**

11 (1) The treatment of sections 66.0627 (1) (a) and (d) and (8) and 196.3745 of the
12 statutes first applies to loans made by political subdivisions on the effective date of
13 this subsection.

14 (2) The treatment of section 196.3745 (6) (d) 1. a. and (7) (b) of the statutes first
15 applies to grants received after the effective date of this subsection.

16 (3) 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 **SECTION 19. Effective dates.** This act takes effect on the first day of the 3rd
20 month beginning after publication, except as follows:

21 (1) The treatment of section 709.03 (form) C. 25m. of the statutes and SECTION
22 18 (3) of this act take effect on January 1, 2011.

23 (2) Section 17 (3) of this act takes effect on the day after publication.

24 (END)