



State of Wisconsin  
2009 - 2010 LEGISLATURE

FROM  
S0313/1

LRB S0313/L  
MDK/GMM/MES:cjs/gnw/jf

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ASSEMBLY SUBSTITUTE AMENDMENT 1,  
TO 2009 ASSEMBLY BILL 755

Now

Inserts  
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March 1, 2010 - Offered by Representative MASON.

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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 (2) (a) 1., 196.374 (3) (b) 2. (intro.), 196.374  
 3 (3) (b) 3., 196.374 (4) (b), 227.01 (13) (t), 946.15 (1), 946.15 (2), 946.15 (3) and  
 4 946.15 (4); and *to create* 20.445 (1) (jg), 66.0627 (1) (d), 106.06, 196.374 (2) (d),  
 5 196.374 (3) (b) 3m., 196.3745 and 709.03 (form) C. 25m. of the statutes;  
 6 **relating to:** allowing certain utilities to administer investment programs for  
 7 energy and water efficiency improvements and renewable energy applications,  
 8 creating requirements for political subdivision loans for similar improvements  
 9 and applications, ~~certain apprenticeship training grants~~ providing an  
 10 exemption from emergency rule procedures ~~and~~ granting rule-making authority  
 11 ~~and making an appropriation~~ *comma stays*

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

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~~SECTION 1. 20.445 (1) (jg) of the statutes is created to read:~~

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~~60.445 (1) (a) Apprenticeship training grants. All moneys received under s. 196.374 (3) (b) 3m, for making grants under s. 106.06.~~

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SECTION 2. 66.0627 (title) of the statutes, as affected by 2009 Wisconsin Act 11, is amended to read:

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

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

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

SECTION 4. 66.0627 (1) (d) of the statutes is created to read:

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

SECTION 5. 66.0627 (8) of the statutes, as created by 2009 Wisconsin Act 11, is amended to read:

66.0627 (8) Subject to s. 196.3745, a political subdivision may make a loan to a resident of an owner of a premises located in the political subdivision for making or installing an energy efficiency improvement, a water efficiency improvement, or a renewable resource application to the resident's residential property premises, or enter into an agreement with the owner regarding loan repayments to a 3rd party for owner-arranged financing for such purposes. If a political subdivision makes such a loan or enters into such an agreement, the political subdivision may collect the loan repayment as a special charge under this section. A political subdivision

*(Handwritten annotations: "A" circled, "strike" with arrow pointing to "Subject to s. 196.3745", "underscore" with arrow pointing to "Subject to s. 196.3745")*

1 may also collect the loan repayment as a special tax, using the method and  
2 procedures described in s. 66.0907 (3) (f). Notwithstanding the provisions of sub. (4),  
3 a special charge imposed under this subsection may be collected in ~~annual~~  
4 annual installments and may be included in the current or next tax roll for collection  
5 and settlement under ch. 74 even if the special charge is not delinquent.

6 **SECTION 6.** 103.49 (3) (ar) of the statutes, as affected by 2009 Wisconsin Act 28,  
7 is amended to read:

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

15 **SECTION 7.** 106.06 of the statutes is created to read:

16 **106.06 Apprenticeship training grants.** From the appropriation under s.  
17 20.445 (1) (g), the department shall make grants to support apprenticeship training  
18 programs that contractors and subcontractors are required to sponsor under s.  
19 196.3745 (5) (a) 3. The purpose of the grants shall be to prepare individuals to  
20 participate in the apprenticeship training programs. The department shall  
21 promulgate rules establishing requirements and procedures for the grants.

22 **SECTION 8.** 109.09 (1) of the statutes, as affected by 2009 Wisconsin Act 28, is  
23 amended to read:

24 109.09 (1) The department shall investigate and attempt equitably to adjust  
25 controversies between employers and employees as to alleged wage claims. The

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

20 **SECTION 9.** 111.322 (2m) (c) of the statutes, as affected by 2009 Wisconsin Act  
21 28, is amended to read:

22 111.322 **(2m)** (c) The individual files a complaint or attempts to enforce a right  
23 under s. 66.0903, 66.0904, 103.49, 196.3745 (5) (a) 1., or 229.8275 or testifies or  
24 assists in any action or proceeding under s. 66.0903, 66.0904, 103.49, 196.3745 (5)  
25 (a) 1., or 229.8275.

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**SECTION 10.** 196.374 (2) (a) 1. of the statutes is amended to read:

196.374 (2) (a) 1. The energy utilities in this state shall collectively establish and fund statewide energy efficiency and renewable resource programs. The energy utilities shall contract, on the basis of competitive bids, with one or more persons to develop and administer the programs. The utilities may not execute a contract under this subdivision unless the commission has approved the contract. The Except as provided in sub. (3) (b) 3m., the commission shall require each energy utility to spend the amount required under sub. (3) (b) 2. to fund statewide energy efficiency and renewable resource programs.

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

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

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**SECTION 12.** 196.374 (3) (b) 2. (intro.) of the statutes is amended to read:

196.374 (3) (b) 2. (intro.) The Except as provided in subd. 3m., the commission shall require each energy utility to spend 1.2 percent of its annual operating revenues to fund the utility's programs under sub. (2) (b) 1., the utility's ordered

1 programs, the utility's share of the statewide energy efficiency and renewable  
 2 resource programs under sub. (2) (a) 1., and the utility's share, as determined by the  
 3 commission under sub. (3) (b) 4., of the costs incurred by the commission in  
 4 administering this section. Subject to approval under subd. 3., and except as  
 5 provided in subd. 3m. the commission may require each energy utility to spend a  
 6 larger percentage of its annual operating revenues to fund these programs and costs.  
 7 The commission may make such a requirement based on the commission's  
 8 consideration of all of the following:

9 **SECTION 13.** 196.374 (3) (b) 3. of the statutes is amended to read:

10 196.374 (3) (b) 3. The commission shall submit to the joint committee on  
 11 finance any proposal to require each energy utility to spend a larger percentage of  
 12 its annual operating revenues than the percentage specified in subd. 2. (intro.) to  
 13 fund the programs specified in subd. 2. (intro.). If the cochairpersons of the  
 14 committee do not notify the commission within 10 working days after the commission  
 15 submits such a proposal that the committee has scheduled a meeting to review the  
 16 proposal, the commission may require each energy utility to spend the percentage  
 17 specified in the proposal. If, within 10 working days after the commission submits  
 18 a proposal, the cochairpersons of the committee notify the commission that the  
 19 committee has scheduled a meeting to review the proposal, but, within 90 days of  
 20 providing the notice, the committee does not object to the proposal, the commission  
 21 may require each energy utility to spend the percentage specified in the proposal.  
 22 If, within 90 days after providing the notice, the committee objects to the proposal,  
 23 the commission may not require each energy utility to spend the percentage specified  
 24 in the proposal.

25 **SECTION 14.** 196.374 (3) (b) 3m. of the statutes is created to read:

1 196.374 (3) (b) 3m. The commission shall require each energy utility to pay to  
2 the department of workforce development 10 percent of the percentage of its annual  
3 operating revenues that the commission requires the energy utility to spend under  
4 subd. 2. (intro.).

5 **SECTION 15.** 196.374 (4) (b) of the statutes is amended to read:

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

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

15 **196.3745 Energy and water efficiency and renewable energy**  
16 **investment program. (1) DEFINITIONS.** In this section:

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

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

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

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

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

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

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

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

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

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

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

24           **(3) TARIFFS.** A utility for which a program is authorized under sub. (2) shall file  
25 a tariff specifying the terms and conditions for making or installing improvements



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1 or applications at customer premises under the program. A tariff filed under this  
2 subsection shall have no effect until approved by the commission. A tariff filed by  
3 a utility under this subsection shall include all of the following:

4 (a) Terms and conditions for billing customers at premises for costs incurred  
5 at the premises in making or installing improvements or applications for which  
6 investments are made. The tariff shall allow the utility to collect, and enforce  
7 payment of, the amounts billed in the same manner as amounts billed for utility  
8 service.

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

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

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

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

20 1. "Performance contract" means a contract ~~for the evaluation and~~  
21 ~~recommendation of an improvement or application.~~ INSERT 9-21

22 2. "Qualified provider" means a person who is experienced in the design,  
23 implementation, and installation of improvements or applications and who has the  
24 ability to provide labor and material payment and performance bonds equal to the

1 maximum amount of any payments due under a performance contract entered into  
2 by the person.

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

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

8 2. As determined under criteria under par. (d), the water or energy savings  
9 resulting over the expected life of the improvement or application exceed the costs  
10 of the improvement or application.

*equal or* ← *equal or*

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

13 (c) *Audits.* 1. For a political subdivision loan, the political subdivision shall  
14 determine whether an audit under par. (b) 1. demonstrates that an improvement or  
15 application is cost-effective. A political subdivision shall determine that an  
16 improvement or application is cost-effective if the energy or water savings resulting

*equal or*

17 over the expected life of the improvement or application exceed the costs of the  
18 political subdivision loan. After an improvement or application is made or installed,  
19 a political subdivision shall require the performance of an additional audit to verify  
20 that the improvement or application was made or installed. The commission may not  
21 promulgate rules regarding any audit performed for or required by a political  
22 subdivision.

23 2. The commission shall promulgate rules for determining whether an audit  
24 under par. (b) 1. demonstrates that an improvement or application under a utility  
25 program is cost-effective. ~~For an improvement, the rules shall specify criteria that~~

1 include the energy or water savings resulting from the improvement and a period of  
2 time not exceeding 10 years that is required for the energy or water savings to equal  
3 the cost of the improvement. For an improvement or application, the rules may  
4 specify criteria that include comparing the cost of the improvement or application to  
5 the value of the premises benefited by the improvement or application. The  
6 commission shall also promulgate rules requiring the performance of an additional  
7 audit to verify that the improvement or application was installed or made and rules  
8 specifying the certification requirements a person must satisfy to perform any audit  
9 required for an improvement or application under a utility program.

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

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

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1 energy, and operation costs over the remaining useful life of the improvement or  
2 application, the improvement or application may be subject to a performance  
3 contract.

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

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

16 1. Agrees to pay all employees working on an improvement or application for  
17 which an investment is made under the program, or for which the political  
18 subdivision loan is made, who would be entitled to receive the prevailing wage rate  
19 under s. 66.0903 and who would not be required or permitted to work more than the  
20 prevailing hours of labor, as defined in s. 103.49 (1) (c), if the improvement or  
21 application were a project of public works under s. 66.0903, not less than the  
22 prevailing wage rate determined under s. 66.0903 (3) or (6) and not to require or  
23 permit those employees to work more than the prevailing hours of labor, except as  
24 permitted under s. 66.0903 (4) (a); to keep and permit inspection of records in the  
25 same manner as a contractor performing work on a project of public works that is

1 subject to s. 66.0903 is required to keep and permit inspection of records under s.  
2 66.0903 (10); and otherwise to comply with s. 66.0903 in the same manner as a  
3 contractor performing work on a project of public works that is subject to s. 66.0903  
4 is required to comply with s. 66.0903.

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

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

22 4. Provides the commission a detailed statement regarding related business  
23 entities if, at any time in the 3 years prior to inclusion on the prequalification list,  
24 the contractor or subcontractor has controlled or has been controlled by another

1 corporation, partnership, or other business entity operating in the construction  
2 industry.

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

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

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

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

22 9. Certifies to the commission that not less than 30 percent of the total hours  
23 of work performed by the contractor or subcontractor on an individual improvement  
24 or application will be performed by individuals who, if the work is performed in a 1st  
25 or 2nd class city, reside in the 1st or 2nd class city, or, if the work is not performed

1 in a 1st or 2nd class city, reside in the county in which the work is performed, and  
2 whose annual income during the year prior to performance of the work did not exceed  
3 200 percent of the poverty level under the federal poverty income guidelines of the  
4 federal Department of Health and Human Services under 42 USC 9902 (2). The  
5 commission shall promulgate rules for making certifications under this subdivision.  
6 The rules shall provide that, once a contractor or subcontractor makes a certification  
7 under this subdivision, the certification is valid for 3 years.

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

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

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

24 (d) A contractor or subcontractor shall report to the commission any material  
25 change to its business or operations that are relevant to the commission’s approval

1 to include the contractor or subcontractor in the prequalification list under par. (a).  
2 A contractor or subcontractor shall make a report required under this paragraph no  
3 later than 15 days after obtaining knowledge of the material change. If a contractor  
4 or subcontractor violates this paragraph, the commission may revoke the  
5 contractor's or subcontractor's inclusion in the prequalification list for a period of no  
6 more than 3 years.

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

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

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

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

24 (i) The commission shall periodically review the qualifications and  
25 performance of contractors and subcontractors included in the prequalification list



1 under par. (a). For good cause shown, the commission may, after notice and  
2 opportunity to be heard, revoke a contractor's or subcontractor's inclusion on the  
3 prequalification list. The commission shall promulgate rules defining "good cause"  
4 for purposes of this paragraph.

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

12 (am) The commission shall ensure in rate-making orders that a utility recovers  
13 from its ratepayers the amounts the utility spends for a utility program that exceed  
14 the amounts recovered from billing customers for improvements and applications  
15 under a tariff approved under sub. (3). The commission shall ensure that a utility  
16 is allowed to earn a rate of return on the amounts recovered under this paragraph  
that is equal to the utility's overall rate of return authorized by the commission.

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

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

*on net investment rate base*

*90 (as) Subject to subd 20.1*

*10*

*INSERT 17-13*

*INSERT 17-16*

1 (d) 1. A utility shall prioritize the utility’s spending on a utility program in the  
2 following manner:

3 a. If the source of the spending is a federal or state grant, the utility shall give  
4 the greatest priority to improvements and applications at residential premises and  
5 the least priority to improvements and applications at nonresidential premises of  
6 customers with the greatest demand for service provided by the utility ~~of the source~~

7 ~~of the spending is a federal grant, the utility shall comply with this subd. 1. a. to the~~  
8 ~~extent allowed under the federal law authorizing the grant~~

*unless the terms  
of the federal or state  
grant  
provide  
otherwise*

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

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

16 2. The commission shall promulgate rules implementing the requirements of  
17 subd. 1. and requiring utilities to make annual reports to the commission regarding  
18 their implementation of the requirements.

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

1 (b) A political subdivision shall prioritize spending on political subdivision  
 2 loans in a manner that gives the greatest priority to improvements and applications  
 3 at residential premises and the least priority to improvements and applications at  
 4 nonresidential premises of utility customers with the greatest demand for service  
 5 provided by utilities. This paragraph applies only to spending the source of which  
 6 is a federal or state grant and, with respect to a federal grant, only to the extent  
 7 allowed under the federal law authorizing the grant.

8 (c) A political subdivision shall prioritize improvements and applications that  
 9 have a similar priority under par. (b) by giving the greatest priority to improvements  
 10 and applications that are subject to performance contracts under sub. (4) (e).

11 **SECTION 17.** 227.01 (13) (t) of the statutes, as affected by 2009 Wisconsin Act  
 12 28, is amended to read:

13 227.01 (13) (t) Ascertains and determines prevailing wage rates under ss.  
 14 66.0903, 66.0904, 103.49, 103.50, 196.3745 (5) (a) 1., and 229.8275, except that any  
 15 action or inaction which ascertains and determines prevailing wage rates under ss.  
 16 66.0903, 66.0904, 103.49, 103.50, 196.3745 (5) (a) 1., and 229.8275 is subject to  
 17 judicial review under s. 227.40.

18 **SECTION 18.** 709.03 (form) C. 25m. of the statutes is created to read:

19 709.03 (form)

1 C.25m. I am aware that an energy or water efficiency .... ..  
2 improvement or renewable resource applica-  
3 tion has been made or installed to the prop-  
4 erty under a program authorized under s.  
5 196.3745 and that utility bills for the property  
6 will include unpaid costs of the improvement  
7 or application.

8 **SECTION 19.** 946.15 (1) of the statutes, as affected by 2009 Wisconsin Act 28,  
9 is amended to read:

10 946.15 (1) Any employer, or any agent or employee of an employer, who induces  
11 any person who seeks to be or is employed pursuant to a public contract as defined  
12 in s. 66.0901 (1) (c) or who seeks to be or is employed on a project on which a prevailing  
13 wage rate determination has been issued by the department of workforce  
14 development under s. 66.0903 (3), 66.0904 (4), 103.49 (3), 103.50 (3), 196.3745 (5) (a)  
15 1., or 229.8275 (3) or by a local governmental unit, as defined in s. 66.0903 (1) (d),  
16 under s. 66.0903 (6) or 66.0904 (6) to give up, waive, or return any part of the  
17 compensation to which that person is entitled under his or her contract of  
18 employment or under the prevailing wage rate determination issued by the  
19 department or local governmental unit, or who reduces the hourly basic rate of pay  
20 normally paid to an employee for work on a project on which a prevailing wage rate  
21 determination has not been issued under s. 66.0903 (3) or (6), 66.0904 (4) or (6),  
22 103.49 (3), 103.50 (3), 196.3745 (5) (a) 1., or 229.8275 (3) during a week in which the  
23 employee works both on a project on which a prevailing wage rate determination has  
24 been issued and on a project on which a prevailing wage rate determination has not  
25 been issued, is guilty of a Class I felony.

1           **SECTION 20.** 946.15 (2) of the statutes, as affected by 2009 Wisconsin Act 28,  
2 is amended to read:

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

18           **SECTION 21.** 946.15 (3) of the statutes, as affected by 2009 Wisconsin Act 28,  
19 is amended to read:

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

1 the wages to which that person is entitled under the prevailing wage rate  
2 determination issued by the department or local governmental unit to be deducted  
3 from the person's pay is guilty of a Class I felony, unless the deduction would be  
4 permitted under 29 CFR 3.5 or 3.6 from a person who is working on a project that is  
5 subject to 40 USC 3142.

6 **SECTION 22.** 946.15 (4) of the statutes, as affected by 2009 Wisconsin Act 28,  
7 is amended to read:

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

A.R.  
C  
see  
insert

17 **SECTION 23. Nonstatutory provisions.**

18 (1) By the first day of the 4th month beginning after the effective date of this  
19 subsection, the public service commission shall, using the procedure under section  
20 227.24 of the statutes, promulgate the rules required under section 196.3745 (4) (c)  
21 2., (d), and (e) 2., (5) (a) 8. and 9., (b), (c), (e), and (i), and (6) (d) 2., of the statutes, as  
22 created by this act, for the period before the effective date of the permanent rules  
23 promulgated under section 196.3745 (4) (c) 2., (d), and (e) 2., (5) (a) 8. and 9., (b), (c),  
24 (e), and (i), and (6) (d) 2. of the statutes, as created by this act, but not to exceed the  
25 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 (2) If the public service commission determines to promulgate rules instead of  
7 issuing an order under section 196.374 (2) (d) of the statutes, as created by this act,  
8 then, by the first day of the 4th month beginning after the effective date of this  
9 subsection, the public service commission shall, using the procedure under section  
10 227.24 of the statutes, promulgate rules under section 196.374 (2) (d) of the statutes,  
11 as created by this act, for the period before the effective date of the permanent rules  
12 promulgated under section 196.374 (2) (d) of the statutes, as created by this act, but  
13 not to exceed the period authorized under section 227.24 (1) (c) and (2) of the statutes.  
14 Notwithstanding section 227.24 (1) (a), (2) (b), and (3) of the statutes, the public  
15 service commission is not required to provide evidence that promulgating a rule  
16 under this subsection as an emergency rule is necessary for the preservation of the  
17 public peace, health, safety, or welfare and is not required to provide a finding of  
18 emergency for a rule promulgated under this subsection.

19 (3) By the first day of the 4th month beginning after the effective date of this  
20 subsection, the department of workforce development shall, using the procedure  
21 under section 227.24 of the statutes, promulgate the rules required under section  
22 106.06 of the statutes, as created by this act, for the period before the effective date  
23 of the permanent rules promulgated under section 106.06 of the statutes, as created  
24 by this act, but not to exceed the period authorized under section 227.24 (1) (c) and  
25 (2) of the statutes. Notwithstanding section 227.24 (1) (a), (2) (b), and (3) of the

INSEAT  
7-3-18

1 ~~statutes, the department of workforce development is not required to provide~~  
 2 ~~evidence that promulgating a rule under this subsection as an emergency rule is~~  
 3 ~~necessary for the preservation of the public peace, health, safety, or welfare and is~~  
 4 ~~not required to provide a finding of emergency for a rule promulgated under this~~  
 5 ~~subsection.~~

6 **SECTION 24. Initial applicability.**

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

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

12 ~~(1)~~ The treatment of section 709.03 (form) C. 25m. of the statutes first applies  
 13 to original real estate condition reports that are furnished on the effective date of this  
 14 subsection.

15 (END)

INSERT 24-14

A.R.  
D

a.r.  
A  
(see  
insert)





1 utility for the improvement or application. The commission shall promulgate rules  
2 establishing criteria for considering ability to pay, including comparing the cost of  
3 the improvement or application to the customer's equity in the premises.

4 **INSERT 17-16:**

5 that the utility expends under a program authorized under sub. (2)

6 **INSERT 17-17:**

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

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

16 a.r. B

**INSERT 23-18:**

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

21 **INSERT 24-14:**

22 **SECTION 1. Effective dates.** This act takes effect on the first day of the 3rd  
23 month beginning after publication, except as follows:

24 (1) The treatment of section 709.03 (form) C. 25m. of the statutes and SECTION

25 ~~(#)~~ of this act take effect on January 1, 2011.

A.R. P. 24, line 6 a draft (see p. 24, line 1 of draft.)  
a.r. A

a.r. B insert p 2,  
line 17

1

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

A.R. C  
see p. 22, line 17 of draft