



WISCONSIN LEGISLATIVE COUNCIL

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TO: REPRESENTATIVES SPENCER BLACK AND JAMES SOLETSKI AND SENATORS
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FROM: John Stolzenberg, Chief of Research Services and David L. Lowell, Senior Analyst

RE: Overview of Major Differences Between Senate Bill 450 and Senate Substitute
Amendment __ (LRBs0423/2) to Senate Bill 450 and Between Assembly Bill 649 and
Assembly Substitute Amendment __ (LRBs0431/1)

DATE: April 13, 2010

This memorandum provides an overview of the major differences between 2009 Senate Bill 450 (the "bill") and LRBs0423/2, a draft Senate substitute amendment to the bill (the "substitute amendment"). These differences are the same as the differences between the companion bill, 2009 Assembly Bill 649, and the corresponding companion substitute amendment, Assembly Substitute Amendment __ (LRBs0431/1) to Assembly Bill 649. The bill implements elements of the recommendations in the final report of the Governor's Task Force on Global Warming, dated July 2008.

The memorandum is divided into the following parts:

- Provisions in the bill that are *revised* in the substitute amendment.
- Provisions in the bill that are *included* in the substitute amendment *without change*.
- Provisions in the bill that are *not included* in the substitute amendment.
- New initiatives that are *added* by the substitute amendment.

The provisions in the bill are described in detail in the Legislative Council report titled *Description of Legislation*, dated February 24, 2010, that is posted at: <http://www.legis.state.wi.us/lc>.

Provisions in the Bill That Are Revised in the Substitute Amendment

Energy Efficiency and Renewable Resource Programs

- ***Program budgets – legislative oversight.*** Under *current law*, the budget for the statewide energy efficiency and renewable resource programs is set statutorily equal to 1.2% of the annual operating revenues of the electric and gas public utilities in this state. The Public

Service Commission (PSC) may increase the budget for the statewide energy efficiency and renewable resource programs above this level, based on studies and the consideration of statutorily specified criteria, and subject to review by the Joint Committee on Finance. The **bill** creates a different process, in which the PSC sets the program budgets based on a series of studies, but not subject to the criteria specified in current law and not subject to review by the Joint Committee on Finance. The **substitute amendment** restores the criteria and the committee review.

- Temporary supplemental funding for small-scale renewables. The **substitute amendment** requires energy providers, in the four years following enactment, to collect an amount equal to 0.2% of their annual operating revenues, which is in addition to the amounts they must collect to fund the statewide energy efficiency and renewable resource programs, to fund grants and loans for the installation of small-scale, distributed facilities for the generation of electricity from renewable resources.
- Large energy customer contributions. Under **current law and the bill**, the amount that a utility may require certain very large energy users to pay for funding of the statewide energy efficiency and renewable resource programs is capped at the amount they paid prior to enactment of 2005 Wisconsin Act 141, adjusted for inflation. The **substitute amendment** retains this cap for funding of the programs' budget up to 1.2% of the utilities' annual operating revenues; for funding any portion of the programs' budget that exceeds that amount, the general rule that costs must be allocated among customer classes applies to these large energy customers.
- General policy directive to the PSC. The **bill** directs the PSC to "exercise its regulatory authority to ensure that the maximum reductions in the use of and demand for electricity and natural gas are achieved" through a number of specified policy mechanisms and considering certain specified factors. The **substitute amendment** deletes this provision and instead directs the PSC to carry out its duties related to oversight of and budget-setting for the statewide energy efficiency and renewable resource programs in a manner that implements state energy policy, establishes all achievable and cost-effective energy savings, and is designed to enable the state to meet or exceed the greenhouse gas (GHG) emissions reduction and energy conservation goals established in this legislation.
- Commitment to community programs. The **bill** specifies that, if the PSC determines that a municipal utility or retail electric cooperative has not made a good faith effort to meet the energy conservation goals set for it, the PSC may order the utility or cooperative to partially fund and participate in the statewide energy efficiency and renewable resource programs. The **substitute amendment** specifies that the utility or cooperative may reestablish its commitment to community program if it provides reasonable assurance to the PSC that it will provide programs and set budgets reasonably designed to achieve the goals in the future.
- Microgeneration. The **substitute amendment** creates a new directive to the administrator of the statewide energy efficiency and renewable resource residential programs to study microgeneration equipment and, if the study determines this equipment is cost-effective, promote its use in residential buildings.

- Coordination with federal programs. The **substitute amendment** specifies that, if a federal program with similar requirements is created, the PSC shall administer the state program in a way that maximizes coordination with the federal program in order to minimize reporting and administrative burdens on energy providers, and shall recommend to the Legislature any legislation necessary to maximize such coordination.

Enhanced Renewable Portfolio Standard (RPS)

- Other fuels and other forms of energy. **Current law** allows only electricity derived from a renewable resource to be counted toward compliance with the RPS, with one limited exception related to electricity derived from the combustion of solid waste. The **bill** adds a second limited exception for solid waste and allows the application of certain nonelectric forms of energy toward compliance with the RPS. The **substitute amendment** adds, to the types of energy that may be applied, electricity and thermal energy derive from fuels produced by the pyrolysis, plasma gasification, or pelletization of various wastes.
- Energy conservation certificates. The **substitute amendment** also provides that an electric provider may use certificates generated by energy savings resulting from certain energy conservation investments in partial compliance with the RPS as follows:
 - 2013 and 2014, an electric provider may use conservation certificates for up to 2.5 percentage points of its requirement.
 - 2015 through 2019, conservation certificates may not be used.
 - 2020 through 2024, an electric provider may use conservation certificates for up to four percentage points of its requirement.
 - 2025 and subsequent years, an electric provider may use conservation certificates for up to five percentage points of its requirement.
- Small-scale renewable energy facilities. The **substitute amendment** specifies that renewable energy derived from a facility of two megawatts or less receives a 25% bonus in the calculation of renewable resource credits applicable toward compliance with the RPS, but not applicable toward compliance with the in-state requirement.
- Electricity from hydroelectric facilities in Manitoba. The **bill** specifies that electricity derived from a hydroelectric facility located in Manitoba, Canada that has a design capacity of 60 MW or more and is placed in service on or after the bill's effective date *may* be included in a renewable energy percentage if certain conditions are met. The **substitute amendment** replaces this provision and specifies that:
 - Renewable resource credits associated with electricity derived from this type of facility *shall* be included in a renewable energy percentage if a new set of conditions relating to the final licensure of two existing hydroelectric projects in Manitoba have been met.

- Manitoba must file with the PSC various documents, including the final approvals, licenses, and permits for these hydroelectric projects.
- The PSC must report to the Legislature a summary of these documents and any public comments the PSC receives on them.
- *Labor standards.* The *substitute amendment* specifies that, in order for energy conservation installed under a utility-administered program or a supplemental utility program to count toward compliance with the RPS, the owner of the facility at which the efficiency measures are installed must comply with labor standards specified by the PSC, including minimum wage and health care requirements as well as apprenticeship and training requirements.
- *Definition of “biomass.”* The *bill* revises the current statutory definition of “biomass.” The *substitute amendment* clarifies that the revised definition includes wood and biogas.
- *Electric providers with high baseline.* Certain electric providers have high baseline renewable percentages, such that compliance with the RPS will require them to achieve total renewable energy percentages far above other electric providers.¹ The *substitute amendment* provides that the RPS requirement for such an electric provider is 20% in 2020 and 25% in 2025 except that, if the electric provider’s baseline renewable percentage is greater than either of those requirements, it may not reduce its renewable energy percentage below its baseline renewable percentage.
- *Coordination with federal programs.* As with the energy efficiency and renewable resource programs, the *substitute amendment* specifies that, if a federal program is created with requirements similar to the Wisconsin RPS, the PSC shall administer the state program in a way that maximizes coordination with the federal program in order to minimize reporting and other administrative burdens on electric providers, and shall recommend to the Legislature any legislation necessary to maximize such coordination.

New Nuclear Power Plants

- *Output of new plants.* The *bill* conditions the PSC’s granting of a certificate of public convenience and necessity (CPCN) for a new nuclear power plant on the plant’s entire output of electricity being needed and used to meet the expected requirements for electricity of ratepayers or members of electric cooperatives in this state and the applicant demonstrating that the output will be needed and used for this purpose. The *substitute amendment* changes this criterion to require that the proposed plant satisfy the reasonable needs of the public for adequate supply of electric energy (i.e., the same criterion applicable to other large electric generation facilities under the current CPCN statute).
- *Nuclear waste plan.* The *bill* specifies that, among other criteria, the PSC may not grant a CPCN for a new nuclear power plant unless it determines that the plan for managing nuclear

¹ The RPS is stated as an electric provider’s baseline renewable percentage plus specified percentages. The usual characterization of the RPS as percentages – 10% in 2013, etc. – are averages across all electric providers.

waste from the plant “is economic, reasonable, stringent, and in the public interest, given the safety and other risks presented by the waste.” The *substitute amendment* replaces the last clause of this language with “*will satisfy the public welfare requirements of the people of this state, given the safety, security, and other risks presented by the waste.*”

- Legislative findings. The *substitute amendment* changes the Legislative Findings regarding new nuclear power plants to reflect the revised criteria and the security record of the nuclear industry.
- Nonseverability clause. The *bill* contains a nonseverability clause that applies to the provisions in the bill relating to the regulation of nuclear power plants. The *substitute amendment* does not contain this nonseverability clause.

Vehicles; Fuels; Planning; Transportation Infrastructure

- Engine idle reduction. The *substitute amendment*:
 - Applies engine idling restrictions not only to freight trucks but also to other types of on- and off-highway commercial motor vehicles, including buses and construction equipment, other than farm tractors, “implements of husbandry,” and vehicles subject to air pollution operation permits.
 - Expands the exceptions from restrictions on idling.
 - Creates duties of loading dock operators to minimize idling by trucks using the docks.
 - Creates more stringent idling restrictions near facilities containing sensitive populations, such as schools and hospitals, and establishes the responsibility of owners of construction sites to identify the location of these facilities on their construction plans.
- Carbon-audited transportation investments. The *bill* requires the Department of Transportation (DOT) to assess GHG emissions and energy use resulting from a transportation project for which the DOT prepares an environment impact statement or an environmental assessment and to consider GHG and energy use in its environmental evaluation of its “2030 Plan.” The *substitute amendment* replaces these requirements with a directive to the DOT and Department of Natural Resources (DNR) to estimate annual amounts of GHG emissions generated by transportation use in this state, by mode of transportation, and predict future amounts of these emissions and to report these estimates and projections for use in the state’s periodic evaluation of its GHG emissions reduction programs.
- Planning grants for compact development. The *bill* expands the Department of Administration’s (DOA) local government planning grant program to require planning under a grant that considers traditional neighborhood development to consider specified attributes of that type of development and direct the DOA to give preference to a grant that considers

traditional neighborhood development. The *substitute amendment* replaces these provisions with provisions that:

- Direct the DOA to give preference to grant applicants that have comprehensive plans in effect that achieve the statutory goals, have adopted ordinances for traditional neighborhood development or conservation subdivisions, and have submitted a grant application that includes planning efforts to increase overall residential densities.
- Create a new DOA-administered grant program for local government planning, funded by the same appropriations as for the current grant program, to finance: (a) the development or implementation of ordinances for traditional neighborhood development or conservation subdivisions; or (b) planning efforts to increase overall residential densities.
- Model parking ordinance. The *bill* directs the University of Wisconsin-Extension to develop a model market-pricing parking ordinance. The *substitute amendment* expands this directive to require development of at least one model ordinance for urban areas and one for nonurban areas and to require that the model ordinances address on-street parking, parking structures, and fee lots.

Energy Efficient Buildings and Equipment

- Building codes. The *bill* directs the Department of Commerce (Commerce) to create energy codes for commercial buildings and for one- and two-family dwellings and requires that the codes conform to a “generally accepted code.” The *substitute amendment* directs Commerce to ensure that the code applicable to one- and two-family dwellings be appropriate to specific conditions that exist in this state, and to consider incorporating the design standards of a generally accepted code.

Bioenergy

- Energy crop reserve program. The *bill* authorizes the Department of Agriculture, Trade and Consumer Protection (DATCP) to promulgate rules setting priorities in entering into contracts with landowners to promote various policy objectives; the *substitute amendment* requires that the DATCP promulgate such rules.
- Sustainable forest management and carbon sequestration. The *bill* directs the DNR to specify standards and practices for monitoring and measuring carbon sequestration on private forest lands, and to provide technical assistance on these practices. The *substitute amendment* expands the directive to apply also to urban and other public forest lands in the state.
- Bioenergy feedstock production incentive study. The *bill* directs the DATCP, in consultation with the DNR, to study incentives for the production of bioenergy feedstocks. The *substitute amendment* expands this study to also examine incentives for sustainable forestry practices.

Provisions in the Bill That Are Included in the Substitute Amendment Without Change

Initiatives in the bill on the following subjects are ***included*** in the substitute amendment without change:

- Goals; program coordination and evaluation; public education.
- Other provisions affecting PSC.
- Growth accommodation incentives.
- State government as leader (i.e., energy usage by state agencies).
- Local government-municipal levy limit and public school districts.
- Air permitting streamlining.
- Industrial development revenue bond allocation.
- Cap and trade program report.

Provisions in the Bill That Are Not Included in the Substitute Amendment

Initiatives in the bill on the following subjects are ***not included*** in the substitute amendment:

- Renewable (“feed-in”) tariffs.
- California vehicle emissions standards.
- Low carbon fuel standard.
- Surface transportation planning.
- Appliance efficiency standards.
- Industrial boiler efficiency.

New Provisions in the Substitute Amendment That is Not in the Bill

New initiatives on the following subjects are ***added*** by the substitute amendment:

- Small-scale renewable resources goal. The ***substitute amendment*** adds a statewide goal that by 2025 at least 1% of the renewable energy produced in the state annually is derived from renewable facilities with a design capacity of 10 megawatts or less.
- Municipal energy efficiency improvement loan programs. The ***substitute amendment*** expands the municipal energy efficiency improvement loan programs, authorized by 2009

Wisconsin Act 11, to apply to improvements not only in residences but also in commercial and industrial premises and to fund water efficiency improvements.

- *Biomass availability study.* The *substitute amendment* directs the DNR to convene a committee composed of state agency representatives and other interested persons to study the availability of biomass in this state and the impact that the use of biomass for energy production has on prices for biomass and to evaluate the highest and best uses for biomass.

If you have any questions regarding either the bill or the substitute amendment, please feel free to contact either of us at the Legislative Council staff offices.

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