



WISCONSIN LEGISLATIVE COUNCIL

December 8, 2009

Climate Change Legislation

LRB-3883/1

Overview of Legislation

On July 24, 2008, the Governor's Task Force on Global Warming approved an extensive set of policy recommendations designed to reduce the emissions of greenhouse gases (GHG) and to take other steps to lessen the potential for climate change¹ related to those emissions. Some recommendations are amenable to implementation administratively, and state agencies have implemented or are implementing a number of these recommendations. Others require legislation to be put in place; LRB-3883/1 contains initiatives to implement many of these latter recommendations.

This report provides an overview of LRB-3883/1 (hereafter, the bill). For a comprehensive description of the bill, see the companion report, *Description of Legislation*; for a tool to help find the text of individual provisions, see *Topical Index to Legislation*.

GOALS; PROGRAM COORDINATION AND EVALUATION; PUBLIC EDUCATION

The bill:

- Declares statewide goals for the state for GHG emission reductions, energy conservation, generation of electricity from renewable resources, and new building energy use, and goals for state agencies for GHG emission reductions, energy conservation, and energy derived from biomass.
- Creates the Climate Change Coordinating Council, modeled on the Groundwater Coordinating Council, for the purpose of coordinating state programs and actions related to climate change and advising policymakers on related matters.

¹ This report uses the term "climate change" because, while an increase in average global temperatures are fundamental to the physical phenomena at issue, the anticipated results are a far more complex array of changes in global climatic patterns.

- Establishes a multi-step process for the creation of a quadrennial report to the Legislature and Governor by the Climate Change Coordinating Council that evaluates whether the state is achieving its statewide GHG emission reduction goals and whether any state or local climate change related programs should be modified or created. This process includes the Department of Natural Resources (DNR):
 - Periodically collecting or estimating GHG emissions data from man-made and natural sources.
 - Preparing a state GHG emissions inventory and analysis of information in the inventory.
 - Preparing an assessment for the Council of changes in net GHG emissions and whether current and future statewide GHG emission reduction goals are being, or will be, met.
- Directs the Climate Change Coordinating Council to promote and coordinate state educational and training programs related to climate change, and directs DNR to establish and maintain the central state Internet site on climate change.

PUBLIC SERVICE COMMISSION (PSC)

Enhanced Energy Efficiency and Renewable Resource Programs

Under current law, a number of programs provide a broad range of energy efficiency and renewable resource services, the best known being the program called Focus on Energy. Among other revisions to these programs, the bill:

- Replaces the fixed funding of the current programs with a system that sets funding based on a determination of the energy savings that could potentially be achieved cost-effectively by the programs and the budgets necessary to achieve those savings, as determined by PSC.
- Expands the programs to address energy conservation in the use of liquid petroleum (LP) gas and heating oil, in addition to electricity and natural gas.
- Requires greater accountability of programs administered by utilities, retail electric cooperatives, and large customers, and requires the imposition of remedies in cases where a program has failed to meet its goals because the administrator has not made a good faith effort or has not adequately controlled conditions under its control.
- Authorizes the PSC to allow an investor-owned utility to earn a return on capital invested in energy conservation or efficiency equipment installed on a customer's premises if the PSC determines that the investment is prudent and "a cost-effective means of advancing energy conservation or efficiency."

Enhanced Renewable Portfolio Standard

A renewable portfolio standard (RPS) is a policy that requires electric suppliers (utilities and cooperatives) to ensure that specified percentages of the electricity they sell is derived from renewable resources. The bill revises the current Wisconsin RPS in three ways, requiring that:

- Certain standards be met earlier than under current law.
- Higher standards be met in subsequent years than under current law.
- In the later years, a portion of the standard be met with electricity derived from renewable resources located in Wisconsin. The bill also creates legislative findings that lay out the policy basis for this in-state portion of the RPS.

The bill also makes a number of changes to the sources of energy that qualify for compliance with the RPS. Specifically, the following qualify:

- Hydroelectric power from certain large facilities (with a capacity of 60 megawatts or more) located out of state. (Under current law, no power from large hydroelectric facilities qualifies.)
- Electricity derived from the burning of solid waste if the solid waste: (1) has recyclable and noncombustible materials removed; and (2) is burned in a facility that is owned by a county in this state and that was in service before January 1, 1998.
- Nonelectric energy derived from renewable resources, such as biogas, the thermal output from various sources, or usable light delivered by a solar light pipe.

Under current law, a credit is created if an electric provider has a surplus of renewable energy in a reporting period. The bill revises the statutes governing such credit, specifying that:

- Credits are created when electricity is generated from a renewable resource.
- Credits may be separated from the energy for trading, banking, or use in compliance with the RPS.
- Credits do not expire.

Under the bill, compliance with the RPS is demonstrated by documenting the generation or purchase of credits, rather than documenting the sale of renewable electricity.

Renewable (“Feed-In”) Tariffs

The bill directs PSC to order investor-owned and municipal electric utilities that sell at retail to offer to purchase electricity generated at new small-scale renewable energy facilities within the utility’s service territory under standard purchase terms and conditions prescribed by PSC.

New Nuclear Power Plants

The bill makes a number of changes to the regulation of nuclear power plants by PSC, including the review and approval by PSC to construct a new nuclear power plant under the certificate of public convenience and necessity (CPCN) and “nuclear moratorium” laws. Among other revisions, the bill:

- Applies the CPCN and nuclear moratorium laws to all sizes of new nuclear power plants, irrespective of plant ownership.
- Modifies the findings PSC must make under the nuclear moratorium law to approve a new nuclear power plant, including:
 - Replacing the finding requiring a federally licensed high-level nuclear waste disposal facility with a finding on the plan for managing these wastes.
 - Requiring consideration of the air pollution from the proposed plant versus feasible alternatives.
 - Adding findings on the reasonableness of the cost of the plant, and on the entire output of the plant being needed and used to meet the expected requirements for electricity of utility ratepayers or electric cooperative members in the state.
- Specifies a set of legislative findings that provide the policy basis for the entire output finding in the nuclear moratorium law, and a nonseverability clause under which all of the changes in nuclear power plant regulation in the bill are voided if a court finds the requirement for the entire output finding unconstitutional.
- Adds requirements for funding the decommissioning of new nuclear power plants.
- Applies current PSC regulations regarding modification, operation, and sale of utility owned power plants to new nuclear power plants not owned by a utility.
- Delays the effective date of all of these changes until after PSC has initially implemented the enhanced energy efficiency and renewable resource programs and the enhanced RPS identified above.

Other Provisions Affecting PSC

The bill includes a number of other provisions affecting PSC. Among these, the bill:

- Expedites PSC’s review of proposals for construction of renewable energy facilities.
- Reinforces prohibitions on PSC requiring utilities to conduct energy efficiency and renewable resource programs beyond those programs discussed above.
- Makes extensive technical changes to current statutes, including reorganization, changes in terminology, and repeal of obsolete statutes.

VEHICLES; FUELS; PLANNING; TRANSPORTATION INFRASTRUCTURE

The bill includes a number of provisions addressing GHG emissions from vehicles, either through direct controls and limitations or indirectly through transportation and land use planning and transportation infrastructure. The bill:

- Directs DNR to specify, by rule, vehicle emission limitations identical to the California GHG emission standards and other emission standards applicable to passenger cars, light-duty trucks, and medium-duty vehicles that are passenger vehicles and have gross vehicle weights of 10,000 pounds or less.
- Authorizes DNR to specify, by rule, vehicle emission limitations identical to the California zero emission vehicle standards, if DNR determines they would be an effective and efficient part of the state's strategy for meeting the statewide GHG emission reduction goals described above.
- Prohibits operators of freight trucks from idling the truck's primary propulsion engine, on or off a highway, for more than five minutes in any 60-minute period, except under any of seven specified circumstances.
- Directs DNR to specify, by rule, a state low carbon fuel standard that specifies the allowable weight of GHG per unit energy content of a transportation fuel, if: (1) the Midwestern Governors Association's advisory group on these standards recommends their design; and (2) the advisor group's recommendations are endorsed by specified Midwestern governors, including the Governor of Wisconsin.
- Directs the Department of Transportation (DOT), if it prepares an environmental impact statement or an environmental assessment for a transportation project funded partly or totally with state funds, to include in the statement or assessment an evaluation of the GHG emissions and energy use that will result from the project and alternatives to the project.
- Directs DOT, as part of the environmental evaluation of its long-range multimodal transportation plan for the 20-year period ending in 2030, to consider GHG emissions and energy use in the transportation facility or service needs addressed in the plan.
- Changes the preparation of state and regional multimodal transportation plans and transportation improvement programs by:
 - Requiring DOT and metropolitan planning organizations (MPOs) to set surface transportation GHG reduction goals; incorporate to the extent practicable, strategies identified by DOT for reducing GHG emissions from surface transportation into their plans and programs using methods and procedures developed by DOT; and assess and report on the implementation of the strategies and their progress in meeting their goals.

- Prohibiting DOT from providing financial assistance to an MPO unless the MPO has made a good faith effort to incorporate these strategies and use these methods and procedures in its plans and programs.
- Directs UW-Extension to develop a model market-pricing parking ordinance.
- Amends the local government planning grant program administrated by the Department of Administration (DOA) to:
 - Require grant recipients to consider whether any area considered for “traditional neighborhood development” (TND) is one of the specified types of areas, and whether making any area a TND would result in a reduction in travel, energy use, or GHG emissions.
 - Add a criterion for a grant application to receive preference - that the planning efforts funded by the grant must include consideration of TND.
- Authorizes the agencies administering five state economic development grant or loan programs² to give greater weight in determining whether to award a grant or make a loan under the program to an application from a municipality or county if the application is for a project that will result in a reduction of travel, energy use, or GHG emissions, or is located in an area designated for a qualifying TND or subject to the green building code, identified below, or to a qualifying “Green Tier” project.
 - Changes, where applicable, the required match by the recipient, amount of assistance, or other grant conditions in these programs to further encourage the implementation of qualifying projects.
- Directs DNR to conduct various studies relating to vehicle GHG emissions, including new California vehicle GHG emission standards and idling reductions by other types of vehicles.

ENERGY EFFICIENT BUILDINGS AND EQUIPMENT

Buildings

With regard to building codes, the bill:

- Requires that the energy conservation portion of the commercial building code be at least as strong as the International Energy Conservation Code, and directs Commerce to create parallel energy conservation provisions in the 1- and 2-family dwelling code.

² These programs, and their administering agency, are the Transportation Facilities Economic Assistance and Development Program (DOT), Brownfields Site Assessment Grants (DNR), Main Street Program (Commerce), Brownfields Grant Program (Commerce), and Forward Innovation Fund (Commerce).

- Directs Commerce to establish a voluntary green building code that provides greater energy conservation benefits than the mandatory codes.
- Directs DOA to ensure that major state building projects conform to the new voluntary code and that other building projects conform to that code to the extent technically feasible and cost-effective.
- Directs Commerce to establish conservation standards for certain agricultural buildings.

Equipment

To increase the efficiency of equipment used in the state, the bill:

- Establishes energy efficiency standards for compact audio devices, televisions, and digital versatile disc (DVD) players and recorders, based on standards in California.
- Requires the owners of industrial, non-utility boilers to annually inspect and adjust their boilers to ensure they operate at maximum efficiency.

STATE AND LOCAL GOVERNMENT

The bill addresses GHG emissions from state agencies and local governments through the following:

- Directs certain state agencies (those with operations that produce significant GHG emissions) to assess their GHG emissions; set goals for reducing those emissions; and develop and implement plans to achieve those goals.
- Directs the Office of Energy Independence to work with interested school districts to engage voluntarily in the same process as the state agencies.
- Excludes moneys levied by municipalities for energy efficiency measures or renewable energy products from their levy limits.

BIOENERGY

The bill includes a number of provisions relating to the production of biomass as a feedstock for the production of fuel or energy. The bill:

- Creates an Energy Crop Reserve Program, under which the Department of Agriculture, Trade and Consumer Protection (DATCP) makes payments to land owners to subsidize the establishment and production of biomass crops.
- Directs DNR, with several other agencies, to take a variety of actions to encourage the production of biomass for energy uses from private forest lands in Wisconsin.

- Directs DATCP, with DNR, to study the adequacy of current incentives, in the market and in government programs, to prompt producers to produce enough biomass for use as a bioenergy feedstock to significantly contribute to achievement of the state's GHG emission reduction goals.

INDUSTRIAL EFFICIENCY INCENTIVES

The bill addresses GHG emissions reductions through the following industrial efficiency incentives:

- Directs DNR, as part of its continual assessment and streamlining of air pollution permit obligations, to develop and implement measures to lessen these obligations for projects that would significantly reduce GHG emissions while not requiring a major source construction permit.
- Directs Commerce to annually dedicate 25% of the portion of the volume cap on federally tax exempt "private activity bonds" allocated to municipalities and corporations formed on their behalf for industrial development revenue bonds that are issued to finance a specified "clean energy manufacturing facility" or a "renewable power generating facility."

CAP AND TRADE PROGRAM REPORT

If a federal cap and trade program is established or a regional cap and trade program is recommended by Midwestern governors, including the Governor of Wisconsin, the bill directs DNR to report to the Legislature and Governor on the program, including any legislation that would be necessary to implement the program in this state.

This document was prepared by *John Stolzenberg, Chief of Research Services*, and *David Lovell, Senior Analyst*.

JES:DLL:ty