



State of Wisconsin
1997 - 1998 LEGISLATURE

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1997 ASSEMBLY BILL 941

March 20, 1998 – Introduced by Representatives RILEY, HANSON, MUSSER, TURNER, OLSEN, SPRINGER, UNDERHEIM, MURAT, PORTER, CULLEN, NOTESTEIN, SPILLNER, GRONEMUS, PLOUFF, L. YOUNG, BOCK, BOYLE, CARPENTER, R. YOUNG, BALDWIN, JOHNSRUD, OTTE, R. POTTER and PLALE, cosponsored by Senators SHIBILSKI, GEORGE, WIRCH, PLACHE, C. POTTER and GROBSCHMIDT. Referred to Joint committee on Finance.

1 **AN ACT to amend** 168.01 (2), 168.12 (1g), 168.12 (1r), 168.12 (5), 168.12 (8) (a),
2 (c) and (d), 168.12 (9), 168.125, 168.13, 168.15, 168.17 and 196.374 (2); and **to**
3 **create** 15.105 (27), 16.006, 16.395, 20.505 (4) (t), 25.17 (1) (jx), 25.96, 168.01
4 (1m), 168.12 (1c) and 196.378 of the statutes; **relating to:** creating a
5 low-income energy board, requiring contributions to a low-income energy
6 fund, imposing a heating oil fee, granting rule-making authority and making
7 an appropriation.

Analysis by the Legislative Reference Bureau

Under current law, the department of administration (DOA) administers a low-income energy assistance program (LIEAP) and a low-income weatherization program (LIWP), funded with federal grants, to assist households with incomes of not more than 150% of the poverty line (low-income households).

This bill creates a low-income energy board (board) that is attached to DOA. The board must monitor the effectiveness of LIEAP and LIWP and establish and administer, through the bureau of weatherization in DOA's division of housing, programs to provide assistance to low-income households for early identification and prevention of energy crises, furnace and boiler replacement or repair, payment of home heating costs, weatherization and energy conservation. The board must also assess biennially the needs of low-income households, recommend additional energy

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programs to meet the needs of low-income households and submit an annual report to the governor and the legislature that includes an evaluation of the effectiveness of the board's programs and the board's recommendations.

The bill also creates a low-income energy fund (fund) to fund the board and its programs. Contributions to the fund consist of a heating oil fee and a contribution from electric and gas public utilities and cooperative associations (electric or gas providers). The heating oil fee is assessed by the department of commerce on heating oil and propane that is received for sale in the state or for sale for export to this state. The department of commerce must set the heating oil fee at a rate sufficient to generate in each fiscal year an amount equal to 17% of the difference between \$105,000,000 and the federal moneys received for LIEAP and LIWP. The public service commission must designate a method for calculating and collecting the contributions from electric and gas providers. The method must ensure each of the following:

1. That the contributions collected from electric and gas providers in a fiscal year are equal to 83% of the difference between \$105,000,000 and the funds received under federal low-income energy assistance and weatherization programs.

2. That electric public utilities and cooperative associations are responsible for making half of the contributions and gas public utilities and cooperative associations are responsible for the other half.

3. That the amount that an electric or gas provider is required to contribute is based on the total number of the provider's end users, which the bill defines as the ultimate users of electricity or gas provided by an electric or gas provider.

In addition, the bill requires an electric or gas provider to charge an access fee to its end users for the purpose of recovering the entire amount of its contribution in a fiscal year. An electric or gas provider may recover no more than 80% of its contribution from residential end users and no more than 20% from nonresidential end users. The access fee must be uniform within each class of end users and may not be based on the volume of gas or electricity that an end user uses. Finally, the bill prohibits an electric or gas provider from stating an access fee surcharge on the bill of an end user.

For further information see the *state and local* fiscal estimate, which will be printed as an appendix to this bill.

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

- 1 **SECTION 1.** 15.105 (27) of the statutes is created to read:
- 2 15.105 (27) LOW-INCOME ENERGY BOARD. (a) In this subsection:
- 3 1. "Electric or gas provider" has the meaning given in s. 196.378 (1) (a).
- 4 1m. "End user" has the meaning given in s. 196.378 (1) (b).

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1 2. “Low-income household” has the meaning given in s. 16.006 (1) (b).

2 (b) There is created a low-income energy board that is attached to the
3 department of administration under s. 15.03. The board shall consist of the following
4 members appointed for 3-year terms:

5 1. Four residential end users of electric or gas providers. At least 2 of the
6 members appointed under this subdivision shall be members of low-income
7 households or organizations that represent the interests of low-income households.

8 2. Two nonresidential end users of electric or gas providers.

9 3. Five representatives, directors or officers of electric or gas providers or
10 retailers or wholesalers of electric or gas service who are not public utilities, as
11 defined in s. 196.01 (5).

12 **SECTION 2.** 16.006 of the statutes is created to read:

13 **16.006 Low-income energy board.** (1) In this section:

14 (a) “Board” means the low-income energy board.

15 (b) “Low-income household” means any individual or group of individuals who
16 are living together as one economic unit for whom residential energy is customarily
17 purchased in common or who make undesignated payments for energy in the form
18 of rent and whose household income is not more than 150% of the poverty line as
19 determined under 42 USC 9902 (2).

20 (c) “Total funding” means the sum of all moneys received under 42 USC 8621
21 to 8629 and 42 USC 6861 to 6873 in a fiscal year, contributions specified in s. 196.378
22 (2) that are collected in that fiscal year, assessments paid under the rules
23 promulgated under s. 196.378 (4m) (a) in that fiscal year and fees specified in s.
24 168.12 (1c) that are collected in that fiscal year, less the amount used for the board’s
25 administrative expenses under sub. (3).

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1 (2) The board shall do all of the following:

2 (a) Monitor the effectiveness of the programs under ss. 16.385 and 16.39.

3 (b) In consultation with the advisory body required under 42 USC 6864 (b) (1),
4 establish programs to be administered by the division of housing to provide
5 assistance to low-income households for all of the following:

6 1. Early identification and prevention of energy crises.

7 2. Furnace or boiler replacement or repair.

8 3. Heating assistance, as defined in s. 16.385 (1) (bm).

9 4. Weatherization and energy conservation.

10 (c) In establishing and administering the programs under par. (b), the board
11 shall ensure, in each fiscal year, all of the following:

12 1. That the programs specified in par. (b) 1., 2. and 3. receive from the
13 appropriation under s. 20.505 (4) (t) an amount necessary to ensure that at least 52%
14 of the total funding is used for the programs specified in par. (b) 1., 2. and 3. and s.
15 16.385.

16 2. That the program specified in par. (b) 4. receives from the appropriation
17 under s. 20.505 (4) (t) an amount necessary to ensure that at least 47% of the total
18 funding is used for the programs specified in par. (b) 4. and s. 16.39.

19 (d) Biennially, determine the amount of resources and types of programs
20 necessary to meet the energy needs of low-income households.

21 (e) In consultation with the advisory body required under 42 USC 6864 (b) (1)
22 and based on a determination under par. (d), recommend additional energy programs
23 and, if necessary, additional funding sources and amounts, that are required to meet
24 the needs of low-income households. The board shall also recommend, based on a
25 determination under par. (d), whether any adjustments to the percentages of total

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1 funding specified in par. (c) 1. and 2. are required to meet the needs of low-income
2 households.

3 (f) Annually, on or before May 1, submit to the governor, and to the chief clerk
4 of each house of the legislature for distribution to the legislature under s. 13.172 (2),
5 a report that evaluates the effectiveness of the programs under pars. (a) and (b) and
6 that includes the results of the determination under par. (d) and the
7 recommendations under par. (e).

8 (3) Notwithstanding sub. (2) (b), the board may contract with a community
9 action agency described in s. 46.30 (2) (a) 1., a nonstock, nonprofit corporation
10 organized under ch. 181, a county or a city to administer the programs specified in
11 sub. (2) (b). In each fiscal year, the board may not encumber funds from the
12 appropriation under s. 20.505 (4) (t) for administrative expenses if the amounts
13 encumbered in that fiscal year for administrative expenses exceed 5% of the total
14 expenditures from the appropriation for the fiscal year.

15 (4) The board shall promulgate rules to implement and administer this section.

16 **SECTION 3.** 16.395 of the statutes is created to read:

17 **16.395 Low-income energy board programs.** Except for programs that are
18 subject to a contract under s. 16.006 (3), the division of housing shall administer the
19 programs under s. 16.006 (2) (b).

20 **SECTION 4.** 20.505 (4) (t) of the statutes is created to read:

21 20.505 (4) (t) *Low-income energy fund.* From the low-income energy fund, a
22 sum sufficient for the administrative expenses of the low-income energy board and
23 for the establishment and administration of the programs under s. 16.006 (2) (b).

24 **SECTION 5.** 25.17 (1) (jx) of the statutes is created to read:

25 25.17 (1) (jx) Low-income energy fund (s. 25.96);

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1 **SECTION 6.** 25.96 of the statutes is created to read:

2 **25.96 Low-income energy fund.** There is established a separate
3 nonlapsible trust fund designated as the low-income energy fund, consisting of the
4 fee collected under s. 168.12 (1c), the contributions collected under s. 196.378 (2) and
5 the assessments paid under the rules promulgated under s. 196.378 (4m) (a).

6 **SECTION 7.** 168.01 (1m) of the statutes is created to read:

7 **168.01 (1m)** "Heating oil" means liquid propane or a number 2 technical grade
8 of fuel oil.

9 **SECTION 8.** 168.01 (2) of the statutes, as created by 1997 Wisconsin Act 27, is
10 amended to read:

11 **168.01 (2)** "Supplier" includes a person who imports, or acquires immediately
12 upon import, petroleum products or heating oil by pipeline or marine vessel from a
13 state, territory or possession of the United States or from a foreign country into a
14 terminal and who is registered under 26 USC 4101 for tax-free transactions in
15 gasoline. "Supplier" also includes a person who produces in this state; or imports into
16 a terminal or bulk plant; or acquires immediately upon import by truck, railcar or
17 barge into a terminal; alcohol or alcohol derivative products. "Supplier" also includes
18 a person who produces, manufactures or refines petroleum products or heating oil
19 in this state. "Supplier" also includes a person who acquires petroleum products or
20 heating oil pursuant to an industry terminal exchange agreement. "Supplier" does
21 not include a retail dealer or wholesaler who merely blends alcohol with gasoline
22 before the sale or distribution of the product and does not include a terminal operator
23 who merely handles in a terminal petroleum products consigned to the terminal
24 operator.

25 **SECTION 9.** 168.12 (1c) of the statutes is created to read:

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1 168.12 (1c) (a) Except as provided in subs. (1g) and (1r), the department shall
2 impose a heating oil fee on all heating oil that is received for sale in this state or for
3 sale for export to this state. The fee shall be sufficient to generate in each fiscal year
4 an amount equal to 17% of the difference between \$105,000,000 and all moneys
5 received under 42 USC 8621 to 8629 and 42 USC 6861 to 6873 in that fiscal year.

6 (b) The department of revenue shall determine when heating oil is received
7 under this subsection in the same manner that it determines under s. 78.07 when
8 motor vehicle fuel is received. The requirements for payment of the motor vehicle
9 fuel tax under s. 78.12 (5) apply to the fee under this subsection.

10 **SECTION 10.** 168.12 (1g) of the statutes is amended to read:

11 168.12 (1g) The fee under ~~sub.~~ subs. (1) and (1c) is not imposed on petroleum
12 products ~~that are~~ or heating oil shipped from storage at a refinery, marine terminal,
13 pipeline terminal, pipeline tank farm or place of manufacture to a person for storage
14 at another refinery, marine terminal, pipeline terminal, pipeline tank farm or place
15 of manufacture.

16 **SECTION 11.** 168.12 (1r) of the statutes is amended to read:

17 168.12 (1r) The fee under ~~sub.~~ subs. (1) and (1c) is not imposed on petroleum
18 products or heating oil exported from this state by a person who is licensed under sub.
19 (7) or s. 78.09.

20 **SECTION 12.** 168.12 (5) of the statutes is amended to read:

21 168.12 (5) No fee may be charged on a commingled or blended petroleum
22 product or heating oil when such commingling or blending is approved by the
23 inspector as a satisfactory means of disposing of contaminated or substandard
24 products.

25 **SECTION 13.** 168.12 (8) (a), (c) and (d) of the statutes are amended to read:

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1 168.12 (8) (a) To protect the revenues of this state, the department of revenue
2 may require any person who is liable to that department for the fee under sub. (1)
3 or (1c) to place with it security in the amount that that department determines. The
4 department of revenue may increase or decrease the amount of the security, but that
5 amount may not exceed 3 times the person's average monthly liability for the fee
6 ~~under sub. (1)~~ as estimated by that department. If any person fails to provide that
7 security, the department of revenue may refuse to issue a license under sub. (7) or
8 s. 78.09 or may revoke the person's license under sub. (7) or s. 78.09. If any taxpayer
9 is delinquent in the payment of the fee ~~under sub. (1)~~, the department of revenue
10 may, upon 10 days' notice, recover the fee, interest, penalties, costs and
11 disbursements from the person's security. The department of revenue may not pay
12 interest on any security deposit.

13 (c) The surety of a bond under par. (b) may conditionally cancel the bond by
14 filing written notice with the person who is liable for the fee under sub. (1) or (1c) and
15 with the department of revenue. A surety who files that notice is not discharged from
16 any liability that has accrued or from any liability that accrues within 60 days after
17 the filing. If the person who is liable for the fee ~~under sub. (1)~~ does not, within 60 days
18 after receiving the notice, file with the department of revenue a new bond that is
19 satisfactory to that department, that department shall revoke the person's license
20 under sub. (7) or s. 78.09. If the person furnishes a new bond, the department of
21 revenue shall cancel and surrender the old bond when it is satisfied that all liability
22 under the old bond has been discharged.

23 (d) If the liability on the bond is discharged or reduced or if the department of
24 revenue determines that the bond is insufficient, that department shall require
25 additional surety or new bonds. If any person who is liable for the fee under sub. (1)

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1 or (1c) fails to file that additional bond within 5 days after the department of revenue
2 provides written notice, that person's license under sub. (7) or s. 78.09 is revoked.

3 **SECTION 14.** 168.12 (9) of the statutes is amended to read:

4 168.12 (9) Sections 78.65 to 78.74 and 78.79 to 78.81 as they apply to the taxes
5 under ch. 78 apply to the fee fees under ~~sub.~~ subs. (1) and (1c).

6 **SECTION 15.** 168.125 of the statutes is amended to read:

7 **168.125 Reports; payment.** Persons who are liable for the fee under ~~this~~
8 ~~chapter~~ s. 168.12 shall state the number of gallons of petroleum products on which
9 the fee is due and the amount of their liability for the fee in the reports under s. 78.12
10 (1) to (3). The requirements for payment of the motor vehicle fuel tax under s. 78.12
11 (5) apply to the fee under ~~this chapter~~ s. 168.12.

12 **SECTION 16.** 168.13 of the statutes is amended to read:

13 **168.13 Required records.** Every person receiving petroleum products and
14 heating oil in this state shall keep books and records of all petroleum products and
15 oil so received, together with bills of lading, waybills and other pertinent documents.
16 Such books and records and other papers and documents shall, at all times during
17 business hours of the day, be subject to inspection by the department and its
18 inspectors, and are subject to inspection by the department of revenue in regard to
19 the fee under s. 168.12 (1) and (1c). Such books, records and other papers and
20 documents shall be preserved for not less than 4 years, unless the department, in
21 writing, authorizes their destruction or disposal at an earlier date.

22 **SECTION 17.** 168.15 of the statutes is amended to read:

23 **168.15 Penalty.** Every person who violates any provision of this chapter that
24 is not related to the fee under s. 168.12 (1) or (1c) shall forfeit not less than \$10 nor

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1 more than \$100 for each violation. Each day a person fails to comply with any
2 provision of this chapter is a separate violation.

3 **SECTION 18.** 168.17 of the statutes is amended to read:

4 **168.17 Attorney general and district attorney to prosecute.** Upon
5 request of the department, the attorney general or proper district attorney shall
6 prosecute any action to enforce this chapter except the fee that is imposed under s.
7 168.12 (1) or (1c).

8 **SECTION 19.** 196.374 (2) of the statutes is amended to read:

9 196.374 (2) The commission may prescribe all or part of any program to be
10 funded under sub. (1). The commission may require that a utility establish a
11 program funded under sub. (1) which is applicable only to a group of consumers
12 specified by the commission because the group has special energy conservation
13 needs. Such a group may include, but is not limited to, low-income utility
14 consumers, under guidelines established by the commission. The commission may
15 reduce the amount that a utility is required to spend on a program under this
16 subsection by the amount of the contribution that a utility is required to make under
17 s. 196.378 (2) in a fiscal year.

18 **SECTION 20.** 196.378 of the statutes is created to read:

19 **196.378 Low-income energy fund contributions. (1)** In this section:

20 (a) "Electric or gas provider" means a public utility that is involved in the
21 generation, distribution or sale of electricity or gas or a cooperative association
22 organized under ch. 185 for the purpose of generating, distributing or furnishing
23 electricity or gas at retail or wholesale to its members only.

24 (b) "End user" means the ultimate user of electricity or gas that is generated,
25 distributed or sold by an electric or gas provider.

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1 **(2)** The commission shall require each electric or gas provider to contribute to
2 the low-income energy fund each fiscal year.

3 **(3)** The commission shall designate the method by which contributions under
4 sub. (2) shall be calculated and collected. The method shall ensure each of the
5 following:

6 (a) That, in each fiscal year, the contributions are sufficient to generate an
7 amount equal to 83% of the difference between \$105,000,000 and all moneys received
8 under 42 USC 8621 to 8629 and 42 USC 6861 to 6873 for that fiscal year.

9 (b) That 41.5% of the difference specified in par. (a) is generated from
10 contributions from electric or gas providers that generate, distribute, furnish or sell
11 electricity.

12 (c) That 41.5% of the difference specified in par. (a) is generated from
13 contributions from electric or gas providers that generate, distribute, furnish or sell
14 gas.

15 (d) That the total amount that an electric or gas provider is required to
16 contribute in a fiscal year is calculated on the basis of the total number of the
17 provider's end users in the fiscal year.

18 **(4)** An electric or gas provider shall charge an access fee to each class of end
19 users for the purpose of recovering the entire amount of its contributions required
20 under sub. (2). An access fee under this subsection shall be uniform within each class
21 of end users and may not be based on the volume of gas or electricity used by an end
22 user. An electric or gas provider may recover no more than 80% of the contributions
23 that it is required to make under sub. (2) from end users who use electricity or gas
24 for residential purposes and no more than 20% of the contributions from end users
25 who use electricity or gas for nonresidential purposes.

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1 **(4m)** The commission shall promulgate rules establishing requirements and
2 procedures for each of the following:

3 (a) If the contribution collected from an electric or gas provider in a fiscal year
4 is less than the amount that the electric or gas provider recovered in access fees in
5 the fiscal year, requiring the electric or gas provider to pay an assessment equal to
6 the difference in a subsequent fiscal year.

7 (b) If the contribution collected from an electric or gas provider in a fiscal year
8 is more than the amount that the electric or gas provider recovered in access fees in
9 the fiscal year, reducing the contribution required of the electric or gas provider in
10 a subsequent fiscal year by an amount equal to the difference.

11 **(5)** An electric or gas provider may not state a surcharge on the bill of an end
12 user for an access fee that is charged under sub. (4).

SECTION 21. Nonstatutory provisions.

13 (1) INITIAL APPOINTMENTS. Notwithstanding the length of the term specified in
14 section 15.105 (27) (b) (intro.) of the statutes, as created by this act, the initial
15 members of the low-income energy board shall be appointed for the following terms:
16

17 (a) Two of the members under section 15.105 (27) (b) 1. of the statutes, as
18 created by this act, one of the members under section 15.105 (27) (b) 2. of the statutes,
19 as created by this act, and 2 of the members under section 15.105 (27) (b) 3. of the
20 statutes, as created by this act, for terms expiring on May 1, 2002.

21 (b) One of the members under section 15.105 (27) (b) 1. of the statutes, as
22 created by this act, one of the members under section 15.105 (27) (b) 2. of the statutes,
23 as created by this act, and 2 of the members under section 15.105 (27) (b) 3. of the
24 statutes, as created by this act, for terms expiring on May 1, 2003.

