



Legislative Fiscal Bureau

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Joint Committee on Finance

Paper #110

Division of Energy Services Transfer and Acceptance of Federal Funds (DOA -- Transfers from the Department and Public Service Commission)

[LFB 2009-11 Budget Summary: Page 40, #1; and Page 543, #4]

CURRENT LAW

The Department of Administration (DOA) administers two programs targeted to low-income households through the agency's Division of Energy Services. These programs are the low-income home energy assistance program (LIHEAP) and the low-income weatherization program. Both of these programs are funded through LIHEAP federal block grants, U.S. Department of Energy weatherization grants, and the segregated, state-operated public benefits fund. Monies in the public benefits fund derive from amounts remitted from electric and natural gas public utilities to DOA for the operation of programs previously administered by the utilities and from public benefits fees, which are collected from electric utility customers.

Low-Income Home Energy Assistance. The low-income home energy assistance program is established under s. 16.27 of the statutes. This program provides cash benefits and services in the form of heating assistance, crisis assistance and emergency furnace repair and replacement to low-income households.

Of the amounts provided from federal LIHEAP block grants, 15% must be transferred to the low-income weatherization program. A total of 47% of the low-income assistance funds received from federal LIHEAP funds, low-income public benefits revenues, and amounts forwarded to the state from municipal utilities and retail electric cooperatives must be transferred to the low-income weatherization programs.

The amounts deposited into the public benefits fund is comprised of the following: (a) amounts that utilities were expending on utility sponsored public benefits programs for low-income assistance as of 1998 (the amounts they were expending before 1999 Wisconsin Act 9

required DOA to operate public benefits programs instead of the utilities), generally referred to as the "transferred amounts"; (b) public benefits fees that are assessed to public utility customers; and (c) any amount remitted by municipal utilities and retail electric cooperatives (these utilities must collect fees but have the option of running their own program or opting into the state program by forwarding the amounts collected).

Annually, DOA must calculate the amount of funding that is needed for low-income assistance (defined as the "need target") based on a review of the number of low-income households and the heating costs of those households. In determining the amount that will be assessed in public benefits fees, the Department subtracts revenues received from the following offsets: (a) amounts charged by municipal utilities and retail electric cooperatives for low-income assistance; (b) all low-income heating assistance received from the federal government; and (c) the "transferred amounts" amounts paid to the public benefits fund by public utilities for low-income heating assistance. Currently, these fees cannot exceed the lesser of \$750 or 3% of the monthly billed amounts.

Municipal utilities and retail electric cooperatives must collect fees for low-income assistance programs and may opt to run low-income assistance programs on their own or in conjuncture with other such utilities or may opt into the state program. If they do not opt into the state program, they must provide reports and audits on their program activities. They must inform DOA on whether they will participate in the state low-income assistance program on a three year basis.

Low-Income Weatherization. The Department of Administration must administer federal funds made available for low-income weatherization (programs under 42 US Code 6861 to 6873). The Department must administer these funds in accordance with federal laws and regulations regarding low-income weatherization.

Currently, DOA must do the following relating to low-income assistance: (a) assist eligible low-income households in obtaining assistance under 42 US Code 8621 to 8629, which specifies the availability and eligibility of federal LIHEAP funds; (b) administer a low-income warm room program; (c) determine the total amount available for heating assistance payments; (d) submit expenditure plans to the Joint Committee on Finance when federal LIHEAP revenues are less than 90% of the amount received in the previous year; (e) by October 1 of each year, allocate funds made available in that fiscal year as well as remaining funds from prior fiscal years based on household income, family size, and household energy costs; (f) receive applications and determine eligibility for heating assistance; (g) adjust payments if applications substantially exceed the number anticipated; (h) transfer up to 15% of federal LIHEAP funds to low-income weatherization programs as modified above; (i) determine what constitutes a "crisis" for which LIHEAP crisis assistance funds may be provided; (j) provide information, upon request, to residential fuel providers about the availability of federal, state, or local programs that assist customers with paying heating bills; (k) promulgate rules for eligibility, application procedures, and method of estimating total low-income energy bills, average annual income of low-income households, and number of low-income households; (l) determine the low-income

need target; (m) based on competitive bids, contract with community action agencies, non-stock and nonprofit corporations, and local units of government for providing LIHEAP services; and (n) in consultation with the Council on Public Benefits, establish by rule, the public benefits fee.

The Department may expend \$1.1 million of federal LIHEAP receipts on state administration and \$2.9 million for expenses of local administering units.

County social service offices must collect and transmit information and receive applications for weatherization and LIHEAP and provide that data to DOA.

GOVERNOR

Delete \$46,863,800 FED and \$16,656,800 SEG in 2009-10 and \$93,727,500 FED and \$33,313,600 SEG and 28.8 FED and 6.0 SEG positions annually from the DOA. Provide \$46,568,900 FED and \$16,606,800 SEG in 2009-10 and \$93,137,700 FED and \$33,213,600 SEG and 20.8 FED and 4.0 SEG positions annually to PSC. The net result of the transfer of the programs to the PSC would be the deletion of \$294,900 FED and \$50,000 SEG in 2009-10 and \$589,800 FED and \$100,000 SEG in 2010-11 and 8.0 FED and 2.0 SEG positions annually, effective January 1, 2010.

Make other changes described below for the recalculation of amounts provided and collected for low-income weatherization and LIHEAP. Provisions of the bill become effective at various times as identified below.

Effective on Enactment

Specify that DOA may transfer funds from the *federal aid* appropriation to the *federal aid; local assistance* appropriation. Specify that the DOA may, after deducting the costs of administering the weatherization program, transfer up to 15% of federal LIHEAP funds to the state's low-income weatherization program.

Specify that not less than \$75,000,000 in 2009-10 is spent on weatherization and other energy conservation services. Specify that this amount would increase by the cost of living, as determined by DOA (by PSC after January 1, 2010) in 2010-11 and 2011-12, then repeal this change effective June 30, 2012, and return to current law requirements for the distribution of funds (but under PSC rather than DOA).

Specify that public benefits low-income assistance fees on utility bills may not exceed \$750 or the sum of the following, whichever is less: (a) 3% of the total of every other charge for which the customer is billed for that month; plus (b) the percentage of the total of every other charge for which the customer is billed for that month that is sufficient to generate the amount shown in the Chapter 20 appropriations schedule for the Department of Children and Families for maintenance of effort of Wisconsin Works (W2). Specify that the amounts assessed on customer bills for W2 (\$9,232,000 SEG annually under current law), would be included in the

total bill calculation and not be included under the 3% limitation. [The intent of the Governor was to allow DOA (then PSC) to assess public utility customers a fee sufficient to recover the amounts in the schedule for W-2 (currently \$9,232,000 SEG annually). The bill would need to be amended to allow this additional fee to be collected.]

Specify that funding received as part of the federal economic stimulus for LIHEAP would not be included in calculations for the public benefits fee for low-income heating assistance in 2009-10 and 2010-11. Require DOA to promulgate emergency rules by December 31, 2009, establishing the public benefits fee for 2009-10 and 2010-11. Specify that the Department could promulgate emergency rules without showing that it is necessary for the preservation of public peace, health, safety, or welfare.

Effective January 1, 2010

Transfer the administration of the LIHEAP and federal weatherization assistance program to the PSC. Recodify the current statutes to place the current law definitions under Chapter 196 of the statutes (the PSC statutes).

Create a FED-continuing appropriation in the PSC entitled *federal aid*, for all money received from the federal government not otherwise appropriated, as authorized by the Governor under statutes governing the acceptance of federal funds, to carry out purposes for which they are received. Provide an estimated \$1,568,900 in 2009-10 and \$3,137,700 in 2010-11 under this appropriation. The estimate is a reduction of \$294,900 FED in 2009-10 and \$589,800 FED in 2010-11 compared to DOA deletions related to this transfer. Reduce the number of positions assigned to PSC from federal funds from 28.8 classified positions under DOA to 20.8 classified positions under PSC.

Transfer the federal aid for low-income assistance (FED-continuing) appropriation to PSC and provide an estimated \$45,000,000 in 2009-10 and \$90,000,000 in 2010-11.

Transfer to the PSC the general program operations, for low-income assistance from utility public benefits appropriation (SEG-annual). Provide a total of \$6,356,800 SEG in 2009-10 and \$12,713,600 SEG in 2010-11. This would reduce the amounts provided under the appropriation for PSC by \$50,000 SEG and 1.0 classified and 1.0 unclassified positions in 2009-10 and \$100,000 SEG and 1.0 classified and 1.0 unclassified positions in 2010-11 compared to amounts that would be deleted in DOA.

Transfer to the PSC the low-income assistance grants appropriation (SEG-sum sufficient) for the payment of low-income assistance funds from public benefits revenues. Provide an estimated \$10,250,000 in 2009-10 and \$20,500,000 in 2010-11.

Re-title the general program operations and grants under the PSC to "Wireless 911 Program Operations and Grants."

Specify that PSC, rather than DOA, may expend \$1.1 million of federal LIHEAP receipts

on state administration and provide \$2.9 million for expenses of local administering units. Transfer the current law defined terms relating to low-income assistance and low-income energy assistance from Chapter 16 to Chapter 196 of the statutes. Also transfer current law requirements for utilities to assess customers for the public benefits fee and to remit those fees to the state.

Specify that municipal utilities and retail electric cooperatives would have to inform PSC rather than DOA on whether they will participate in the state low-income assistance program and collect audit and reports from those municipal utilities and electric cooperatives that operate their own programs.

Specify that county social service offices must collect and transmit information and receive applications for weatherization and LIHEAP and provide that data to PSC rather than DOA.

Transfer all of the following, relating to the Division of Energy Services, from DOA to PSC: (a) the assets and liabilities of DOA, as determined by the DOA Secretary; (b) except for the division administrator, any number of positions in DOA, as determined by the DOA Secretary, and all incumbent employees holding those positions for the performance of LIHEAP and weatherization programs; (c) tangible personal property, including records, as determined by the DOA Secretary; (d) all contracts, as determined by the DOA Secretary; (e) all rules and orders; and (f) all pending matters, as determined by the DOA Secretary. Specify that transferred employees would maintain the employment rights that they had immediately prior to being transferred. Specify that no employee transferred that had attained permanent status, would be required to serve a probationary period. The PSC would be required to carry out the contractual obligations under any contract entered into by DOA, until the contract is modified or rescinded to the extent allowed under the contract. Specify that rules and orders that are transferred would remain in effect until the rules or orders expire or are rescinded or modified by PSC. All materials submitted to, or actions taken by, DOA, with respect to pending matters, would be considered as having been submitted to or taken by PSC.

Effective June 30, 2012

Specify that PSC must ensure that 47% of the following is provided for weatherization and other energy conservation programs: (a) federal LIHEAP funds; (b) low-income programs that were established by public utilities as of 1998; (c) low-income assistance funds received from public benefits fees from public utilities; and (d) low-income assistance fees paid to the state from municipal utilities and retail electric cooperatives. Delete requirements created under the bill specifying that \$75,000,000 annually, along with cost of living increases in 2010-11 and 2011-12 would be provided for weatherization and energy conservation services.

DISCUSSION POINTS

Background

1. Because the amounts provided for Division of Energy Services appropriations are

dependant of federal funds and formula driven awards under FED-continuing and SEG-sum sufficient appropriations, the amounts in the appropriations schedule do not accurately reflect the actual amounts that will likely be spent for these purposes. The following table shows the amounts the Department expects to expend in 2008-09 by program and fund source. Segregated funds are from the public benefits fund. Federal funds are from federal LIHEAP and Department of Energy weatherization assistance grants to the state.

**Division of Energy Services
2008-09 Internal Budget**

	<u>FED</u>	<u>SEG</u>	<u>Total</u>
Weatherization	\$32,320,200	\$45,424,200	\$77,744,400
Weatherization Administration	1,189,200	2,847,700	4,036,900
Weatherization Training and Technical Assistance	1,220,300	0	1,220,300
Furnace Repair and Replacement	1,094,800	3,209,400	4,304,200
Low-Income Home Energy Assistance (LIHEAP)	100,800,300	34,800,400	135,600,700
Crisis Assistance	28,473,400	3,361,000	31,834,400
LIHEAP State Administration	1,556,400	1,251,600	2,808,000
LIHEAP Local Administration	<u>3,906,600</u>	<u>2,213,100</u>	<u>6,119,700</u>
 Total	 \$170,561,200	 \$93,107,400	 \$263,668,600

2. The State Budget Office indicates that it was the intent of the Governor to transfer all of the Division of Energy Services duties, which would also include monitoring the Midwest Low-Level Radioactive Waste Compact program and administration of the High Voltage Transmission Line Annual Impact Fee Distribution program to the PSC.

3. The Midwest Low-Level Radioactive Waste Compact is established under s. 16.11 through s. 16.12 of the statutes and specifies that Wisconsin work in conjuncture with other Midwest states in developing a means of disposing low-level radioactive waste. In adopting the policies of the Low-Level Radioactive Waste Policy Act and the Low-Level Radioactive Waste Policy Amendments Act of 1985, the state agrees to work with other Midwest states to provide sufficient facilities for the disposal of low-level radioactive waste, protect the health and safety of citizens of the region, encourage source reduction, ensure environmentally sound treatment of waste that is economical and secure, and reduce the overall number of facilities needed.

4. The Department must establish annual assessment to nuclear power plant operators for 75% of the costs of the Midwest Low-Level Radioactive Waste Commission. The other 25% must be assessed to other producers of low-level radioactive waste based on the volume and hazard of such waste.

5. There are two appropriations associated with this program. One is a GPR-continuing appropriation that is used to fund the state's share of costs associated with the disposal of low-level radioactive waste. The other is a PR-annual appropriation with base level funding of

\$5,000 annually for payment of membership dues and shared costs of the Commission. Amounts provided for these membership dues would be reduced by \$100 annually, as part of 1% across-the-board reductions. There were no expenditures from these appropriations in 2007-08.

6. The High Voltage Transmission Line Annual Impact Fee Distribution is established under s. 16.969(2) of the statutes, which requires DOA to promulgate rules that require a person who is issued a certificate of public convenience and necessity by the PSC to pay the following fees: (a) an annual fee of 0.3% if the cost of the high-voltage transmission line as determined by PSC; and (b) a one-time environmental impact fee of 5% of the cost of the high-voltage transmission line, as determined by PSC. These fees are paid to towns, villages and cities that are impacted by the high-voltage power lines. A high-voltage line is means of conducting electricity in excess of one mile that is designed to operate in excess of 100 kilovolts.

7. Under current law, there are two PR-continuing appropriations that are used to receive payments from the operators of high-voltage lines and make payments to towns, villages and cities; one for ongoing payments and one for one-time payments. Although there are no estimated expenditures in the Chapter 20 schedule, there have been revenues received from high-voltage transmission line operators and passed on to municipalities through these appropriations. In 2007-08, \$2,352,900 PR was provided to municipalities from the annual assessments, and \$11,125,700 PR was provided from the one-time environmental impact fees.

8. The Governor has requested that DOA's responsibilities relating to these duties, and the related appropriations, be transferred to PSC in addition to the amounts shown in the bill.

9. The Division of Energy Services administers low-income home heating assistance programs, including LIHEAP (which includes crisis assistance) and low-income weatherization. Funding for these programs comes from three sources; federal funds for low-income heating assistance, federal funds for low-income weatherization and the segregated public benefits fund.

Transfer of Energy Services Under AB 75

10. Assembly Bill 75 would transfer the remaining Division of Energy Services duties to PSC.

11. The Commission has yet to develop a means of incorporating the LIHEAP and low-income weatherization services program, but indicates that space for 24.8 positions is available at the current facility. Further, the PSC indicates that a plan for operating the program and determining which positions would be deleted (a total of 8.0 FED and 2.0 SEG positions) would be determined by January 1, 2010 (the transfer date under the bill).

12. Although the Governor's recommendation would transfer Division of Energy Services functions to PSC, the current unclassified administrator position would not be transferred or deleted. The Department indicates that the division administrator would be transferred to the proposed Division of Legal Services. The Division Administrator is funded under the public benefits fund administration appropriation. Under the bill, 1.0 unclassified position would be

transferred from this appropriation to the PSC. However, the bill would not reduce the number of authorized division administrators (currently 14 for DOA). The Committee may wish to consider whether it is appropriate to reassign this position from the Division of Energy Services to the Division of Legal Services. [More information about this position is presented in the Division of Legal Services Issue Paper.]

13. The Public Service Commission's major responsibility is the regulation of utilities, most significantly telecommunications and electric providing utilities. The Commission also has the responsibility of collecting or ensuring the collection of various fees assessed to these utilities, including the public benefits fees paid by electric utilities, demand-side management programs operated by retail electric cooperatives and municipal utilities, and the universal service fee paid by telecommunications providers.

14. At various points in its history, DOA has been viewed solely as an administrative agent of state government, which required the Department to offer services to state agencies, such as procurement, facilities management, transportation services, risk management (state self-insurance), appropriation and fund recordkeeping, and budget review on behalf of the Governor. More recently, the Governor and the Legislature have given the Department increased programmatic activity, where services are provided directly to individuals, businesses, or local units of government, such as operation of comprehensive planning, low-income heating assistance, energy efficiency and renewable resources, firefighter and emergency medical technician service awards, and telecommunications access.

15. The argument could be made that the LIHEAP program is largely administrative, in that funding is paid based a formula developed by DOA and eligible applicants have a portion of their bills paid. The low-income need formula may be better aligned with Office of Energy Independence and demographic and procurement services provided by DOA based on the need to collect data on the number of low-income households and estimating the amount that these households will be billed for energy services in the following year. [It should be noted that AB 75 would also transfer demographic service duties out of DOA.]

16. Alternatively, PSC has a role in ensuring adequate energy supplies and regulating the operation of utilities, including electric utilities. It could be argued that much of the current low-income heating assistance and energy efficiency and renewable resource programs are derived from PSC rate cases prior to *Reliability 2000*, which attempted to ensure that some low-income bill payment assistance was available and that costly additions to electric production could be delayed or avoided through reduced consumption.

17. The Commission states that while it has not adopted a formal plan to incorporate the Division of Energy Services into the PSC, it would have a plan in place by the date of the scheduled transfer (January 1, 2010). Further, the PSC is confident that the transfer could occur, without a reduction in services to the public.

18. The Committee should note that the Division of Energy Services is currently

operating with 7.0 vacancies. As a result, the position deletions under the bill (10.0 as of January 1, 2010) could be accomplished whether the transfer occurs or not. This would result in the deletion of 8.0 FED and 2.0 SEG positions, effective January 1, 2010 and the corresponding reduction to salaries and fringe benefits of -\$294,900 FED and -\$50,000 SEG in 2009-10 and -\$589,800 FED and -\$100,000 SEG in 2010-11.

Public Benefits Assessment

19. Under current law, the amounts assessed to individuals and businesses for public benefits may not exceed the lesser of \$750 or 3% of the total of all other charges. Under the bill, this language would be modified to specify that the fee could not exceed the lesser of \$750 or 3% of the total charges plus the amount assessed for Wisconsin Works (W2).

20. Currently, the Department of Children and Families (DCF) may expend up to \$9,232,000 SEG annually from the public benefits fund for maintenance of effort of the W2 program. The amounts expended by DCF must be taken from the amounts assessed for low-income heating assistance as determined by the low-income need formula.

21. While the language in the bill would allow for a change in the way the maximum payment could be calculated, the bill does not allow for the collection of public benefits fees for the W2 program. The State Budget Office indicates that it was the Governor's intent to assess utility customers the amounts in the Chapter 20 appropriation schedule for W2 payments from public benefits fund. The effect of this change would be to require an additional \$9,232,000 SEG-Rev be collected annually from utility assessments. If the amounts for this appropriation were modified, the amounts assessed to utility customers would automatically be modified by a corresponding amount.

22. It could be argued that this change is appropriate, since the effect of current law is to reduce the amounts that are assessed for low-income home energy assistance by the amounts provided from the same fund for W2. Current law, in essence, reduces amounts available for low-income heating assistance to households below 150% of the federal poverty level to fund W2 maintenance of effort which is for households of the same income level.

23. Alternatively, if the intent of the public benefits fund is to provide energy-related services, it might be inappropriate to assess utility customers specifically for W2 services.

ALTERNATIVES

1. Approve the Governor's recommendation to transfer the low-income home energy assistance program and the low-income weatherization program to the Public Service Commission. Modify the Governor's recommendation to also specify the transfer of the Department of Administration's duties and related appropriations to the Public Service Commission relating to: (a) the Low-Level Radioactive Waste Compact under ss. 16.11 through 16.12 of the statutes; and (b) the High-Voltage Transmission Lines Impact Fee Assessments under s. 16.969(2) of the statutes. Transfer \$4,900 PR annually from the Department of Administration to the Public Service

Commission relating to membership dues and shared costs of the Low-Level Radioactive Waste Commission. Modify the Governor's recommendation to require the Public Service Commission to assess electric utilities the amount in the schedule for public benefits support of Wisconsin Works maintenance of effort [s. 20.437(2)(s) of the statutes]. Increase the estimated assessments for the public benefits fund by \$9,232,000 SEG-Rev annually.

ALT 1	Change to Bill	
	Funding	
SEG-REV	\$18,464,000	

2. Delete the provision. Restore the following amounts to the Department of Administration: \$46,863,800 FED and \$16,656,800 SEG in 2009-10 and \$93,727,500 FED and \$33,313,600 SEG and 28.8 FED and 6.0 SEG positions annually. Delete the following amounts from the Public Service Commission: \$46,568,900 FED and \$16,606,800 SEG in 2009-10 and \$93,137,700 FED and \$33,213,600 SEG and 20.8 FED and 4.0 SEG positions annually to PSC.

ALT 2	Change to Bill	
	Funding	Positions
FED	\$884,700	8.00
SEG	<u>150,000</u>	<u>2.00</u>
Total	\$1,034,700	10.00

3. In addition to Alternative 2, delete the following from the Department of Administration: \$294,900 FED and \$50,000 SEG and 8.0 FED and 2.0 SEG positions in 2009-10 and \$589,800 FED and \$100,000 SEG and 8.0 FED and 2.0 SEG positions in 2010-11, which would specify the same net position and funding reductions as specified in the bill. Specify that the position reductions would become effective January 1, 2010.

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