

**1999 DRAFTING REQUEST**

**Bill**

Received: **09/24/98**

Received By: **kenneda**

Wanted: **As time permits**

Identical to LRB:

For: **Administration-Budget 7-7980**

By/Representing: **Geisler**

This file may be shown to any legislator: **NO**

Drafter: **kenneda**

May Contact: **Andy Forsaith (DHFS)**

Alt. Drafters: **malaigm**

Subject: **Health - miscellaneous  
Health - long-term care  
Children - day care**

Extra Copies: **TAY**

**Topic:**

DOA:.....Geisler - Background checks on child care, health care and long-term care providers

**Instructions:**

See Attached

**Drafting History:**

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Typed</u>	<u>Proofed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
/1	kenneda 10/28/98 malaigm 11/2/98	gilfokm 11/5/98	martykr 11/5/98	_____	lrb_docadmin 11/5/98		State
/2	kenneda 02/2/99	gilfokm 02/2/99	ismith 02/3/99	_____	lrb_docadmin 02/3/99		State

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/1	kenneda 10/28/98 malaigm 11/2/98	gilfokm 11/5/98 <i>12-2-2-99 kmg</i>	martykr 11/5/98 <i>IS 2/3/99</i>	_____ _____ <i>IS/WJ 2/8/99</i>	lrb_docadmin 11/5/98		State

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/?	kenneda			_____			

FE Sent For:

<END>

# DHFS

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*Department of Health and Family Services*  
**1999-2001 Biennial Budget Statutory Language Request**  
September 11, 1998

**Title: Caregiver Background Check Implementation**

**Current Language**

S. 48.685(8) and s. 50.065(8) authorize DHFS to charge a fee for background checks that the Department conducts on providers under s. 48.685(2)(am) or (3)(a) or s. 50.065(2)(am) or (3)(a).

**Proposed Change**

Amend ss. 48.685(8) and 50.065(8) to allow DHFS to also charge a fee for information that entities request from the state under s. 48.685(2)(b) and (3)(b) and s. 50.065(2)(b) and (3)(b).

Also amend ss. 48.685(8) and 50.065(8) to allow DHFS to also charge a fee to persons who request to demonstrate to the Department that they have been rehabilitated under ss. 48.685(5) and 50.065(5).

Amend s. 20.435(6)(jm) to allow the fees to be deposited and spent in that appropriation for the purposes under s. 48.685(2)(b), (3)(b), and (5), and s. 50.065(2)(b), (3)(b), and (5).

**Effect of the Change**

Under the caregiver background check statutes, the Department must perform background checks on child care, health care, and long term care providers, and those providers in turn must perform checks on their staff. Currently, DHFS can charge a fee only for the checks it performs on providers. The change would allow the Department to charge a fee to providers who request background searches on employees and other individuals covered by s. 48.685(2)(b) and (3)(b) and s. 50.065(2)(b) and (3)(b). The changes will also allow DHFS to charge a fee to individuals who request a waiver from the sanctions included in the caregiver background check legislation based on evidence of rehabilitation.

**Rationale for the Change**

Beginning in October 1999, providers will be able to conduct the mandated background checks on their staff by requesting searches of DOJ criminal, DHFS abuse registry, and DRL licensing databases through an automated computers system. Providers will submit requests to

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DOJ by mail and will receive responses either by mail, fax, or e-mail. DHFS will incur costs to maintain and operate the computer system and to return responses to the customer. The Department proposes a fee to pay those costs.

In addition, the Department will have staff costs and other expenses related to reviewing and issuing decisions on requests for waivers of the background check sanctions. The Department requests authority to charge a fee to pay a portion of those costs.

**Desired Effective Date:** Upon passage  
**Agency:** DHFS  
**Agency Contact:** Andy Forsaith  
**Phone:** 6-7684



State of Wisconsin  
1999 - 2000 LEGISLATURE

LRB-0333/1  
DAK&GMM.....  
Kmg, CMI

DOA:.....Geisler - Background checks on child care, health care and long-term care providers

FOR 1999-01 BUDGET — NOT READY FOR INTRODUCTION

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1 AN ACT ...; relating to: the budget.

Analysis by the Legislative Reference Bureau

✓ HEALTH AND HUMAN SERVICES

HEALTH ✓

Under current law, the department of health and family services (DHFS) may not license, certify, issue a certificate of approval to or register a person to operate an adult treatment facility, organization or service if DHFS knows that the person has been convicted of or has pending a charge for a serious crime; has been found to have abused or neglected a facility client or misappropriated client money; has abused or neglected a child; or is not sufficiently credentialed to provide adequate client care. An adult treatment facility, organization or service may not hire such a person if the person may have access to clients and may not allow him or her to reside as a nonclient at the facility. The prohibitions do not apply if the person demonstrates to DHFS by clear and convincing evidence and under specific procedures that he or she has been rehabilitated, unless the person has been convicted of certain offenses. DHFS must obtain specific personal background information, including that obtained from criminal history searches, about persons applying to operate facilities, organizations and services; in addition, DHFS must obtain the information every 4 years for all persons licensed to operate facilities, organizations and services and for nonclient facility residents. Every adult

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treatment facility, organization or service must obtain the same types of information about prospective employes or contractors or persons who seek to reside as nonclients in the facilities and must obtain the information every 4 years for employes or contractors. DHFS is authorized to charge a fee for the personal background information checks that it must conduct.

This bill authorizes DHFS to charge a fee for the costs of providing personal background information to an adult treatment facility, organization or service about an employe or contractor or prospective employe or contractor of the facility, organization or service. Additionally, the bill authorizes DHFS to charge a fee to persons for the costs incurred by DHFS under requests to demonstrate that the persons have been rehabilitated.

✓ **HEALTH AND HUMAN SERVICES**

**CHILDREN**

foster

Under current law, the department of health and human services (DHFS) may not license a person to operate a foster home, treatment home, group home, shelter care facility, child welfare agency or day care center (entity); a county department of human services or social services (county department) or a child welfare agency may not license a person to operate a foster home or treatment foster home; a county department may not certify a person as a day care provider; and a school board may not contract with a person to operate a day care program; if DHFS, the county department, the child welfare agency or the school board knows that the person has been convicted of or has pending a charge for a serious crime, as defined by DHFS by rule; has abused or neglected a client or has misappropriated the property of a client; has abused or neglected a child; or is not sufficiently credentialed to provide adequate care to a client. Current law also prohibits an entity from hiring, contracting with or permitting to reside at the entity as a nonclient such a person if the person is expected to have access to its clients. Current law, however, permits, subject to certain exceptions, such a person to be licensed or certified to operate, hired by or contracted with, or permitted to reside at, an entity if the person demonstrates to DHFS, the county department, the child welfare agency or the school board that the person has been rehabilitated. Current law requires DHFS, a county department, a child welfare agency and a school board to obtain, with respect to an operator or nonclient resident of an entity, and an entity to obtain, with respect to an employe or contractor of the entity, at the time of initial licensure, certification, hiring, contracting or residence and every 4 years after that, certain personal background information about the person, including a criminal history search, information contained in the client abuse registry maintained by DHFS, information maintained by DHFS regarding substantiated reports of child abuse or neglect and information maintained by the department of regulation and licensing (DORL) regarding the status of the person's credentials. Under current law, DHFS, a county department, a child welfare agency or a school board may charge a fee for obtaining this background information about an operator or nonclient resident of an entity.

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This bill permits DHFS, a county department, a child welfare agency or a school board to charge a fee for obtaining this background information about an employe



or contractor or prospective employe or contractor of an entity. The bill also permits DHFS, a county department, a child welfare agency or a school board to charge a fee to a person for the costs incurred in determining whether the person has been rehabilitated.

→ HFE-5

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

1 SECTION 1. 20.435 (6) (jm) of the statutes is amended to read:

2 20.435 (6) (jm) *Licensing and support services.* The amounts in the schedule  
3 for the purposes specified in ss. 48.685 (2) (am) and (b) 1., (3) (a) and (b) and (5) (a),  
4 50.02 (2), 50.025, 50.065 (2) (am) and (b) 1., (3) (a) and (b) and (5), 50.13, 50.135, 50.36  
5 (2), 50.49 (2) (b), 50.495, 50.52 (2) (a), 50.57 and 50.981 and subch. IV of ch. 50 and  
6 to conduct health facilities plan and rule development activities, for accrediting  
7 nursing homes, convalescent homes and homes for the aged, to conduct capital  
8 construction and remodeling plan reviews under ss. 50.02 (2) (b) and 50.36 (2) and  
9 for the costs of inspecting, licensing and approving facilities, issuing permits and  
10 providing technical assistance that are not specified under any other paragraph in  
11 this subsection. All moneys received under ss. 50.02 (2), 50.025, 50.065 (8), 50.13,  
12 50.36 (2), 50.49 (2) (b), 50.495, 50.52 (2) (a), 50.57, 50.93 (1) (c) and 50.981, all moneys  
13 received from fees for the costs of inspecting, licensing and approving facilities,  
14 issuing permits and providing technical assistance that are not specified under any  
15 other paragraph in this subsection, and all moneys received under 50.135 (2), less  
16 the amounts credited to the appropriation account under sub. (1) (gm), shall be  
17 credited to this appropriation account.

**History:** 1971 c. 125 ss. 138 to 155, 522 (1); 1971 c. 211, 215, 302, 307, 322; 1973 c. 90, 198, 243; 1973 c. 284 s. 32; 1973 c. 308, 321, 322, 333, 336; 1975 c. 39 ss. 153 to 173, 732 (1), (2); 1975 c. 41 s. 52; 1975 c. 82, 224, 292; 1975 c. 413 s. 18; 1975 c. 422, 423; 1975 c. 430 ss. 1, 2, 80; 1977 c. 29 ss. 236 to 273, 1657 (18); 1977 c. 112; 1977 c. 203 s. 106; 1977 c. 213, 233, 327; 1977 c. 354 s. 101; 1977 c. 359; 1977 c. 418 ss. 129 to 137, 924 (18) (d), 929 (53); 1977 c. 428 s. 115; 1977 c. 447; 1979 c. 32 s. 92 (11); 1979 c. 34, 48; 1979 c. 102 s. 237; 1979 c. 111, 175, 177; 1979 c. 221 ss. 118g to 133, 2202 (20); 1979 c. 238, 300, 331, 361; 1981 c. 20 ss. 301 to 356b, 2202 (20) (b), (d), (g); 1981 c. 93 ss. 3 to 8, 186; 1981 c. 298, 314, 317, 359, 390; 1983 a. 27 ss. 318 to 410, 2202 (20); 1983 a. 192, 199, 245; 1983 a. 333 s. 6; 1983 a. 363, 398, 410, 427; 1983 a. 435 ss. 2, 3, 7; 1983 a. 538; 1985 a. 24, 29, 56, 73, 120, 154, 176, 255, 281, 285, 332; 1987 a. 27, 339, 368, 398, 399, 402; 1987 a. 403 ss. 25, 256; 1987 a. 413; 1989 a. 31, 53; 1989 a. 56 ss. 13, 259; 1989 a. 102; 1989 a. 107 ss. 11, 13, 17 to 37; 1989 a. 120, 122, 173, 199, 202, 318, 336, 359; 1991 a. 6, 39, 189, 269, 275, 290, 315, 322; 1993 a. 16, 27, 76, 98, 99, 168, 183, 377, 437, 445, 446, 450, 469, 479, 490, 491; 1995 a. 27 ss. 806 to 961r, 9126 (19); 1995 a. 77, 98; 1995 a. 216 ss. 26, 27; 1995 a. 266, 276, 289, 303, 404, 417, 440, 448, 464, 468; 1997 a. 27 ss. 211, 214, 216, 217, 527 to 609; 1997 a. 35, 105, 231, 237, 280, 293.

1           **SECTION 2.** 48.685 (8) of the statutes is amended to read:

2           48.685 (8) The department, a county department, a child welfare agency or a  
3 school board may charge a fee for obtaining the information required under sub. (2)  
4 (am) or (3) (a). The fee or for providing information to an entity to enable the entity  
5 to comply with sub. (2) (b) 1. or (3) (b). The department, a county department, a child  
6 welfare agency or a school board may also charge a fee to a person who requests to  
7 demonstrate under sub. (5) (a) that the person has been rehabilitated. Fees charged  
8 under this subsection may not exceed the reasonable cost of obtaining the  
9 information. No fee may be charged to a nurse's assistant, as defined in s. 146.40 (1)  
10 (d), for obtaining or maintaining information if to do so would be inconsistent with  
11 federal law.

12 History: 1997 a. 27, 237, 281; s. 13.93 (2) (c).

13           **SECTION 3.** 50.065 (8) of the statutes is amended to read:

14           50.065 (8) The department may charge a fee for obtaining the information  
15 required under sub. (2) (am) or (3) (a). The fee or for providing information to an  
16 entity to enable the entity to comply with sub. (2) (b) 1. or (3) (b). The department  
17 may also charge a fee to a person who requests to demonstrate to the department  
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20 may be charged to a nurse's assistant, as defined in s. 146.40 (1) (d), for obtaining or  
maintaining the information if to do so would be inconsistent with federal law.

21 History: 1997 a. 27, 105, 237.

(END)



DOA:.....Geisler - Background checks on child care, health care and long-term care providers

FOR 1999-01 BUDGET — NOT READY FOR INTRODUCTION

1 AN ACT<sup>Don't Gen Act.</sup> relating to: the budget.

*Analysis by the Legislative Reference Bureau*

**HEALTH AND HUMAN SERVICES**

**HEALTH**

Under current law, the department of health and family services (DHFS) may not license, certify, issue a certificate of approval to or register a person to operate an adult treatment facility, organization or service if DHFS knows that the person has been convicted of or has pending a charge for a serious crime; has been found to have abused or neglected a facility client or misappropriated client money; has abused or neglected a child; or is not sufficiently credentialed to provide adequate client care. An adult treatment facility, organization or service may not hire such a person if the person may have access to clients and may not allow him or her to reside as a nonclient at the facility. The prohibitions do not apply if the person demonstrates to DHFS by clear and convincing evidence and under specific procedures that he or she has been rehabilitated, unless the person has been convicted of certain offenses. DHFS must obtain specific personal background information, including that obtained from criminal history searches, about persons applying to operate facilities, organizations and services; in addition, DHFS must obtain the information every four years for all persons licensed to operate facilities, organizations and services and for nonclient facility residents. Every adult

treatment facility, organization or service must obtain the same types of information about prospective employes or contractors or persons who seek to reside as nonclients in the facilities and must obtain the information every four years for employes or contractors. DHFS is authorized to charge a fee for the personal background information checks that it must conduct.

This bill authorizes DHFS to charge a fee for the costs of providing personal background information to an adult treatment facility, organization or service about an employe or contractor or prospective employe or contractor of the facility, organization or service. Additionally, the bill authorizes DHFS to charge a fee to persons for the costs incurred by DHFS under requests to demonstrate that the persons have been rehabilitated.

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This bill permits DHFS, a county department, a child welfare agency or a school board to charge a fee for obtaining this background information about an employe or contractor or prospective employe or contractor of an entity. The bill also permits

DHFS, a county department, a child welfare agency or a school board to charge a fee to a person for the costs incurred in determining whether the person has been rehabilitated.

For further information see the *state* 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. 20.435 (6) (jm) of the statutes is amended to read:

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9 for the costs of inspecting, licensing and approving facilities, issuing permits and  
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11 this subsection. All moneys received under ss. 48.685 (3), 50.02 (2), 50.025, 50.065 (8), 50.13,  
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17 credited to this appropriation account.

49.45 (47)

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48.685 (3)

(4)

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SECTION 2. 48.685 (8) of the statutes is amended to read:

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48.685 (8) The department, a county department, a child welfare agency or a school board may charge a fee for obtaining the information required under sub. (2) (am) or (3) (a). ~~The fee or for providing information to an entity to enable the entity to comply with sub. (2) (b) 1. or (3) (b). The department, a county department, a child welfare agency or a school board may also charge a fee to a person who requests to demonstrate under sub. (5) (a) that the person has been rehabilitated. Fees charged under this subsection~~ may not exceed the reasonable cost of obtaining the information. No fee may be charged to a nurse's assistant, as defined in s. 146.40 (1) (d), for obtaining or maintaining information if to do so would be inconsistent with federal law.

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**SECTION 3.** 50.065 (8) of the statutes is amended to read:

50.065 (8) The department may charge a fee for obtaining the information required under sub. (2) (am) or (3) (a). ~~The fee or for providing information to an entity to enable the entity to comply with sub. (2) (b) 1. or (3) (b). The department may also charge a fee to a person who requests to demonstrate to the department under sub. (5) that he or she has been rehabilitated. Fees charged under this subsection~~ may not exceed the reasonable cost of obtaining the information. No fee may be charged to a nurse's assistant, as defined in s. 146.40 (1) (d), for obtaining or maintaining the information if to do so would be inconsistent with federal law.

(END)

D-NOTE

Insert  
H-10

INSERT 3-17 ✓

STATE OF WISCONSIN - LEGISLATIVE REFERENCE BUREAU - LEGAL SECTION  
(608-266-3561)

\*\*\*\* NOTE : This is reconciled s. 20.435

(6)(jm). This paragraph has been affected by

drafts with the following LRB #'s: LRB-0028/6,

LRB-0321/5 and LRB-0333/1.

Insert 4-10 ✓

\*\*\*\* NOTE: This is reconciled s. 48.685(8).

This section has been affected by drafts with

the following LRB #'s: LRB-0333/1 and LRB-0492/6.

(attachment)



D-Note

Jeff Geisler and Jennifer Sajna:

This draft reconciles LRB-0333/1 and LRB-0492/6.

Both LRB-0333 and LRB-0492 should continue to appear  
~~in the~~

in the compiled bill.

GMM

~~D-NOTE~~ CONT 

To Jeff Geisler:

This draft reconciles LRB-0028/6, LRB-0321/5  
and LRB-0333/1. ~~LRB-0028, LRB-0321 and~~

LRB-0333 all should continue to appear in the  
compiled bill.

DAK

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**DRAFTER'S NOTE**  
**FROM THE**  
**LEGISLATIVE REFERENCE BUREAU**

LRB-0333/2dn  
DAK&GMM:kmg&cmh:ijs

February 3, 1999

Jeff Geisler and Jennifer Sajna:

This draft reconciles LRB-0333/1 and LRB-0492/6. Both LRB-0333 and LRB-0492 should continue to appear in the compiled bill.

Gordon M. Malaise  
Senior Legislative Attorney  
Phone: (608) 266-9738  
E-mail: Gordon.Malaise@legis.state.wi.us

To Jeff Geisler:

This draft reconciles LRB-0028/6, LRB-0321/5 and LRB-0333/1. LRB-0028, LRB-0321 and LRB-0333 all should continue to appear in the compiled bill.

Debora A. Kennedy  
Managing Attorney  
Phone: (608) 266-0137



State of Wisconsin  
1999 - 2000 LEGISLATURE

LRB-0333/2  
DAK&GMM:kmg&cmh:ijs

DOA:.....Geisler - Background checks on child care, health care and long-term care providers

FOR 1999-01 BUDGET — NOT READY FOR INTRODUCTION

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**HEALTH**

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This bill authorizes DHFS to charge a fee for the costs of providing personal background information to an adult treatment facility, organization or service about an employe or contractor or prospective employe or contractor of the facility, organization or service. Additionally, the bill authorizes DHFS to charge a fee to persons for the costs incurred by DHFS under requests to demonstrate that the persons have been rehabilitated.

## **HEALTH AND HUMAN SERVICES**

### **CHILDREN**

Under current law, the department of health and human services (DHFS) may not license a person to operate a foster home, treatment foster home, group home, shelter care facility, child welfare agency or day care center (entity); a county department of human services or social services (county department) or a child welfare agency may not license a person to operate a foster home or treatment foster home; a county department may not certify a person as a day care provider; and a school board may not contract with a person to operate a day care program; if DHFS, the county department, the child welfare agency or the school board knows that the person has been convicted of or has pending a charge for a serious crime, as defined by DHFS by rule; has abused or neglected a client or has misappropriated the property of a client; has abused or neglected a child; or is not sufficiently credentialed to provide adequate care to a client. Current law also prohibits an entity from hiring, contracting with or permitting to reside at the entity as a nonclient such a person if the person is expected to have access to its clients. Current law, however, permits, subject to certain exceptions, such a person to be licensed or certified to operate, to be hired by or contracted with, or to be permitted to reside at, an entity if the person demonstrates to DHFS, the county department, the child welfare agency or the school board that the person has been rehabilitated. Current law requires DHFS, a county department, a child welfare agency or a school board to obtain, with respect to an operator or nonclient resident of an entity, and an entity to obtain, with respect to an employe or contractor of the entity, at the time of initial licensure, certification, hiring, contracting or residence and every four years after that, certain personal background information about the person, including a criminal history search, information contained in the client abuse registry maintained by DHFS, information maintained by DHFS regarding substantiated reports of child abuse or neglect and information maintained by the department of regulation and licensing (DORL) regarding the status of the person's credentials. Under current law, DHFS, a county department, a child welfare agency or a school board may charge a fee for obtaining this background information about an operator or nonclient resident of an entity.

This bill permits DHFS, a county department, a child welfare agency or a school board to charge a fee for obtaining this background information about an employe or contractor or prospective employe or contractor of an entity. The bill also permits

DHFS, a county department, a child welfare agency or a school board to charge a fee to a person for the costs incurred in determining whether the person has been rehabilitated.

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

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

1           **SECTION 1.** 20.435 (6) (jm) of the statutes is amended to read:

2           20.435 (6) (jm) *Licensing and support services.* The amounts in the schedule  
3 for the purposes specified in ss. 48.685 (2) (am) and (b) 1., (3) (a) and (b) and (5) (a),  
4 49.45 (47), 50.02 (2), 50.025, 50.065 (2) (am) and (b) 1., (3) (a) and (b) and (5), 50.13,  
5 50.135, 50.36 (2), 50.49 (2) (b), 50.495, 50.52 (2) (a), 50.57 and 50.981 and subch. IV  
6 of ch. 50 and to conduct health facilities plan and rule development activities, for  
7 accrediting nursing homes, convalescent homes and homes for the aged, to conduct  
8 capital construction and remodeling plan reviews under ss. 50.02 (2) (b) and 50.36  
9 (2) and for the costs of inspecting, licensing and approving facilities, issuing permits  
10 and providing technical assistance that are not specified under any other paragraph  
11 in this subsection. All moneys received under ss. 48.685 (8), 50.02 (2), 50.025, 50.065  
12 (8), 50.13, 50.36 (2), 50.49 (2) (b), 50.495, 50.52 (2) (a), 50.57, 50.93 (1) (c) and 50.981,  
13 all moneys received from fees for the costs of inspecting, licensing and approving  
14 facilities, issuing permits and providing technical assistance that are not specified  
15 under any other paragraph in this subsection, and all moneys received under 50.135  
16 (2), less the amounts credited to the appropriation account under sub. ~~(4)~~ (4) (gm),  
17 shall be credited to this appropriation account.

\*\*\*\*NOTE: This is reconciled s. 20.435 (6) (jm). This paragraph has been affected by drafts with the following LRB numbers: LRB-0028/6, LRB-0321/5 and LRB-0333/1.

18           **SECTION 2.** 48.685 (8) of the statutes is amended to read:

