

2001 ASSEMBLY BILL 302

April 6, 2001 – Introduced by Representatives ZIEGELBAUER, HOVEN, ALBERS, GROTHMAN, GUNDRUM, LADWIG, F. LASEE, NASS, REYNOLDS, RYBA and TOWNSEND, cosponsored by Senators HARSDFORF, ROESSLER, SCHULTZ, WELCH and ZIEN. Referred to Committee on Energy and Utilities.

1 **AN ACT to repeal** 15.107 (17), 16.957, 16.958, 20.505 (10) (q), (r) and (s), 20.505
2 (11), 25.17 (1) (ai), 25.17 (1) (xm), 25.96, 25.97, 76.28 (1) (eg), 76.28 (1) (gr), 76.48
3 (1g) (dm), 76.48 (1g) (fm), 77.54 (44), 196.374 (3) and (4), 196.86 and 285.48; **to**
4 **amend** 76.28 (1) (d) and 76.48 (1g) (d); **to repeal and recreate** 196.374 (1) and
5 196.374 (2); and **to create** 20.155 (1) (a), 20.505 (10) (a), 196.374 (2g) and
6 196.374 (2r) of the statutes; **relating to:** low-income energy assistance, energy
7 conservation and efficiency, renewable energy resources, and commitment to
8 community programs, public benefits fees, and nitrogen oxide emission
9 reductions.

Analysis by the Legislative Reference Bureau

Under current law, the department of administration (DOA) is required to establish programs for providing energy assistance to low-income households, for conservation and efficiency services, and for encouraging the development and use of renewable energy resources. These programs are funded from public benefits fees that DOA collects from nonmunicipal electric public utilities, which must charge the public benefits fees to their customers.

Current law also requires municipal electric public utilities and retail electric cooperatives (municipal utilities and cooperatives) to charge a public benefits fee to

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their customers or members. A municipal utility or cooperative must elect to contribute all or a specified portion of the public benefits fees to DOA for the programs. A municipal utility or cooperative that does not elect to contribute all of the public benefits fees to DOA must spend specified portions of the fees on its own “commitment to community programs,” which are defined as low-income energy assistance and energy conservation programs. DOA deposits all public benefits fees received from nonmunicipal electric public utilities, municipal utilities, and cooperatives into the utility public benefits fund. In addition, DOA must encourage customers and members of nonmunicipal electric public utilities, municipal utilities, and cooperatives to make voluntary contributions for the programs that DOA establishes. The voluntary contributions are also deposited into the utility public benefits fund.

The programs that DOA establishes are also funded by contributions that are required to be made by gas and electric utilities (required contributions). Under current law, the public service commission (PSC) is required to determine the amount that a gas or electric utility spent on low-income energy assistance, energy conservation, renewable energy resources, and environmental research and development programs in 1998. Each year, a gas or electric utility must spend a decreasing portion of the amount spent on each type of program and make an increasing portion of such amount as a required contribution to the PSC for deposit in the utility public benefits fund.

This bill eliminates the requirements for DOA to establish the programs described above and for municipal utilities and cooperatives to establish commitment to community programs. Under the bill, nonmunicipal electric public utilities, municipal utilities, and cooperatives must refund to their customers and members any public benefits fees and voluntary contributions that they have not yet paid to DOA.

The bill also transfers the unencumbered balance in the utility public benefits fund to the general fund. Of the amount that is transferred, the PSC must determine how much is attributable to required contributions by each electric and gas utility and pay that amount to the electric and gas utility. The bill requires electric and gas utilities to spend at least 0.5% of their total annual operating revenues on programs designed to promote and accomplish energy conservation. However, the PSC may require them to spend a lesser or greater percentage if, after a hearing, the PSC finds such spending in the public interest. An electric or gas utility may use the amount that it is paid by PSC under the bill only for spending on energy conservation programs.

Also under the bill, from the general fund, DOA must pay to electric public utilities, municipal utilities, and cooperatives an amount equal to the difference between: 1) the unencumbered balance in the utility public benefits fund that is transferred to the general fund; and 2) the amount described above that the PSC determines is attributable to required contributions by electric and gas utilities. The amount that is paid to each electric public utility, municipal utility, and cooperative is based on its percentage of the total deposits of public benefits fees and voluntary contributions into the utility public benefits fund.

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Finally, under current law, certain provisions apply only if the department of natural resources (DNR) is required under the federal Clean Air Act to issue a state implementation plan for the control of atmospheric ozone in another state that requires electric generating facilities in the western portion of the state to reduce nitrogen oxide emissions. The provisions include requirements for each of the following: 1) limiting the amount of reductions that DNR may require for different types of nonutility and mobile air emissions sources and electric generating facilities in different portions of the state; 2) establishing an air quality improvement fund from which DOA makes grants to electric providers in the western portion of the state for complying with the reductions; 3) requiring the PSC to make assessments against electric utility affiliates of holding companies in the eastern portion of the state; and 4) requiring the PSC to deposit any such assessments into the air quality improvement fund. DNR has not been required to issue the state implementation plan described above and this bill eliminates all of the foregoing provisions.

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.** 15.107 (17) of the statutes is repealed.

2 **SECTION 2.** 16.957 of the statutes is repealed.

3 **SECTION 3.** 16.958 of the statutes is repealed.

4 **SECTION 4.** 20.155 (1) (a) of the statutes is created to read:

5 20.155 **(1)** (a) *Utility contribution refunds.* A sum sufficient equal to the
6 aggregate amount that the commission has determined for all utilities under 2001
7 Wisconsin Act (this act), section 26 (3) (a), for the purpose of making payments to
8 utilities under 2001 Wisconsin Act (this act), section 26 (3) (b).

9 **SECTION 5.** 20.505 (10) (a) of the statutes is created to read:

10 20.505 **(10)** (a) *Public benefits fee and contribution refunds.* A sum sufficient
11 equal to the difference between the amount transferred to the general fund under
12 2001 Wisconsin Act (this act), section 27 (1), and the aggregate amount that the
13 commission has determined for all utilities under 2001 Wisconsin Act (this act),

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1 section 26 (3) (a), for the purpose of making payments to electric utilities, municipal
2 utilities, and retail electric cooperatives under 2001 Wisconsin Act (this act),
3 section 26 (2) (b).

4 **SECTION 6.** 20.505 (10) (q), (r) and (s) of the statutes are repealed.

5 **SECTION 7.** 20.505 (11) of the statutes is repealed.

6 **SECTION 8.** 25.17 (1) (ai) of the statutes is repealed.

7 **SECTION 9.** 25.17 (1) (xm) of the statutes is repealed.

8 **SECTION 10.** 25.96 of the statutes is repealed.

9 **SECTION 11.** 25.97 of the statutes is repealed.

10 **SECTION 12.** 76.28 (1) (d) of the statutes is amended to read:

11 76.28 (1) (d) “Gross revenues” for a light, heat and power company other than
12 a qualified wholesale electric company or a transmission company means total
13 operating revenues as reported to the public service commission except revenues for
14 interdepartmental sales and for interdepartmental rents as reported to the public
15 service commission and deductions from the sales and use tax under s. 77.61 (4),
16 except that the company may subtract from revenues either the actual cost of power
17 purchased for resale, as reported to the public service commission, by a light, heat
18 and power company, except a municipal light, heat and power company, that
19 purchases under federal or state approved wholesale rates more than 50% of its
20 electric power from a person other than an affiliated interest, as defined in s. 196.52
21 (1), if the revenue from that purchased electric power is included in the seller’s gross
22 revenues or the following percentages of the actual cost of power purchased for
23 resale, as reported to the public service commission, by a light, heat and power
24 company, except a municipal light, heat and power company that purchases more
25 than 90% of its power and that has less than \$50,000,000 of gross revenues: 10% for

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1 the fee assessed on May 1, 1988, 30% for the fee assessed on May 1, 1989, and 50%
2 for the fee assessed on May 1, 1990, and thereafter. For a qualified wholesale electric
3 company, “gross revenues” means total business revenues from those businesses
4 included under par. (e) 1. to 4. For a transmission company, “gross revenues” means
5 total operating revenues as reported to the public service commission, except
6 revenues for transmission service that is provided to a public utility that is subject
7 to the license fee under sub. (2) (d), to a public utility, as defined in s. 196.01 (5), or
8 to a cooperative association organized under ch. 185 for the purpose of providing
9 electricity to its members only. ~~For an electric utility, as defined in s. 16.957 (1) (g),~~
10 ~~“gross revenues” does not include public benefits fees collected by the electric utility~~
11 ~~under s. 16.957 (4) (a) or (5) (a). For a generator public utility, “gross revenues” does~~
12 ~~not include any grants awarded to the generator public utility under s. 16.958 (2) (b).~~
13 ~~For a wholesale supplier, as defined in s. 16.957 (1) (w), “gross revenues” does not~~
14 ~~include any public benefits fees that are received from a municipal utility or retail~~
15 ~~electric cooperative or under a joint program established under s. 16.957 (5) (f). For~~
16 ~~a municipal utility, “gross revenues” does not include public benefits fees received by~~
17 ~~the municipal utility from a municipal utility or retail electric cooperative under a~~
18 ~~joint program established under s. 16.957 (5) (f).~~

19 **SECTION 13.** 76.28 (1) (eg) of the statutes is repealed.

20 **SECTION 14.** 76.28 (1) (gr) of the statutes is repealed.

21 **SECTION 15.** 76.48 (1g) (d) of the statutes is amended to read:

22 76.48 **(1g)** (d) “Gross revenues” means total operating revenues, except
23 revenues for interdepartmental sales and for interdepartmental rents, less
24 deductions from the sales and use tax under s. 77.61 (4) and, in respect to any electric
25 cooperative that purchases more than 50% of the power it sells, less the actual cost

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1 of power purchased for resale by an electric cooperative, if the revenue from that
2 purchased electric power is included in the seller's gross revenues or if the electric
3 cooperative purchased more than 50% of the power it sold in the year prior to
4 January 1, 1988, from a seller located outside this state. ~~For an electric cooperative,~~
5 ~~“gross revenues” does not include grants awarded to the electric cooperative under~~
6 ~~s. 16.958 (2) (b). For a retail electric cooperative, “gross revenues” does not include~~
7 ~~public benefits fees collected by the retail electric cooperative under s. 16.957 (5) (a),~~
8 ~~public benefits fees received by the retail electric cooperative from a retail electric~~
9 ~~cooperative or municipal utility under a joint program established under s. 16.957~~
10 ~~(5) (f). For a wholesale supplier, as defined in s. 16.957 (1) (w), “gross revenues” does~~
11 ~~not include any public benefits fees that are received from a municipal utility, as~~
12 ~~defined in s. 16.957 (1) (q), or retail electric cooperative or under a joint program~~
13 ~~established under s. 16.957 (5) (f).~~

14 **SECTION 16.** 76.48 (1g) (dm) of the statutes is repealed.

15 **SECTION 17.** 76.48 (1g) (fm) of the statutes is repealed.

16 **SECTION 18.** 77.54 (44) of the statutes is repealed.

17 **SECTION 19.** 196.374 (1) of the statutes is repealed and recreated to read:

18 196.374 **(1)** In this section, “utility” means a Class A gas or electric utility, as
19 defined by the commission.

20 **SECTION 20.** 196.374 (2) of the statutes is repealed and recreated to read:

21 196.374 **(2)** Except as provided in sub. (2g), each utility shall spend annually
22 at least 0.5% of its total annual operating revenues on programs designed to promote
23 and accomplish energy conservation.

24 **SECTION 21.** 196.374 (2g) of the statutes is created to read:

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1 196.374 **(2g)** The commission may require a utility to spend annually under
2 sub. (2) an amount that is more or less than 0.5% of its annual operating revenues
3 if, after notice and hearing, the commission finds that the expenditure of such
4 amount is in the public interest.

5 **SECTION 22.** 196.374 (2r) of the statutes is created to read:

6 196.374 **(2r)** The commission may prescribe all or part of any program that is
7 funded under sub. (2). The commission may require that a utility establish a
8 program funded under sub. (2) that is applicable only to a group of consumers,
9 including low-income utility customers, specified under guidelines established by
10 the commission if the commission determines that the group has special energy
11 conservation needs.

12 **SECTION 23.** 196.374 (3) and (4) of the statutes are repealed.

13 **SECTION 24.** 196.86 of the statutes is repealed.

14 **SECTION 25.** 285.48 of the statutes is repealed.

15 **SECTION 26. Nonstatutory provisions.**

16 (1) DEFINITIONS. In this SECTION:

17 (a) “Commission” means the public service commission.

18 (b) “Department” means the department of administration.

19 (c) “Electric utility” has the meaning given in section 16.957 (1) (g), 1999 stats.

20 (d) “Municipal utility” has the meaning given in section 16.957 (1) (q), 1999
21 stats.

22 (e) “Retail electric cooperative” has the meaning given in section 16.957 (1) (t),
23 1999 stats.

24 (f) “Utility” has the meaning given in section 196.374 (1) (c), 1999 stats.

25 (2) PUBLIC BENEFITS FEE AND CONTRIBUTION REFUNDS.

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1 (a) Each electric utility, municipal utility, and retail electric cooperative that
2 has collected public benefits fees from customers or members under section 16.957
3 (4) (a), 1999 stats., or section 16.957 (5) (a), 1999 stats., or received contributions from
4 customers or members under section 16.957 (2) (c) 4., 1999 stats., or section 16.957
5 (2) (d) 2., 1999 stats., and that has not paid the fees or contributions to the
6 department shall, no later than the first day of the 3rd month beginning after the
7 effective date of this paragraph, refund the fees or contributions to the customers or
8 members.

9 (b) The department shall determine the percentage of public benefits fees and
10 contributions that each electric utility, municipal utility, and retail electric
11 cooperative has paid to the department under section 16.957 (4) (a), 1999 stats., or
12 section 16.957 (5) (a), 1999 stats., or section 16.957 (2) (c) 4., 1999 stats., or section
13 16.957 (2) (d) 2., 1999 stats. From the appropriation under section 20.505 (10) (a) of
14 the statutes, as created by this act, the department shall, no later than the first day
15 of the 3rd month beginning after the effective date of this paragraph, pay to each
16 electric utility, municipal utility, and retail electric cooperative an amount equal to
17 the percentage determined under this paragraph multiplied by the difference
18 between the amount transferred to the general fund under SECTION 27 (1) of this act
19 and the aggregate amount that the commission has determined for all utilities under
20 subsection (3) (a). No later than the first day of the 6th month beginning after the
21 effective date of this paragraph, each electric utility, municipal utility, and retail
22 electric cooperative shall refund to its customers and members the amount that it is
23 paid by the department under this paragraph.

24 (3) UTILITY CONTRIBUTION REFUNDS.

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1 (a) The commission shall determine the amount transferred to the general fund
2 under SECTION 27 (1) of this act that is attributable to contributions by each utility
3 under section 196.374 (3), 1999 stats.

4 (b) From the appropriation under section 20.155 (1) (a) of the statutes, as
5 created by this act, the commission shall, no later than the first day of the 3rd month
6 beginning after the effective date of this paragraph, pay to each utility the amount
7 that the commission has determined under paragraph (a) is attributable to the
8 utility. A utility that receives a payment under this paragraph may use the payment
9 only for purposes of complying with section 196.374 (2) of the statutes, as affected by
10 this act.

11 **SECTION 27. Appropriation changes.**

12 (1) UTILITY PUBLIC BENEFITS FUND. On the effective date of this subsection, the
13 unencumbered balance in the utility public benefits fund immediately prior to the
14 effective date of this subsection is transferred to the general fund.

15 **(END)**