

2009 DRAFTING REQUEST

Bill

Received: **04/21/2009**

Received By: **mkunkel**

Wanted: **As time permits**

Identical to LRB:

For: **Cory Mason (608) 266-0634**

By/Representing: **himself**

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

Drafter: **mkunkel**

May Contact:

Adl. Drafters: **mshovers
gmalaise**

Subject: **Public Util. - energy**

Extra Copies:

Submit via email: **YES**

Requester's email: **Rep.Mason@legis.wisconsin.gov**

Carbon copy (CC:) to:

Pre Topic:

No specific pre topic given

Topic:

Energy efficiency loan program

Instructions:

See attached

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FE Sent For: "12" @ intro. 2/17/10

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10/10
9/22

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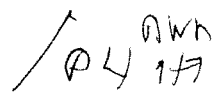
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Handwritten notes and signatures:

- Handwritten "MD" and "PJK" initials.
- Handwritten date "10/29" with a horizontal line underneath.
- Handwritten signature "CJS" followed by "10/29" and "09".

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<END>

- where does money come from?

allow not regulate?

Representative Mason

PUBLIC SERVICE COMMISSION

Wisconsin Saves Energy Program

Motion:

water utils fund energy off? Yes - not water

no approval by PSC for muni programs?

what is energy eff. improvement?

Move to allow municipalities, energy utilities, and water utilities to create a Wisconsin Saves Energy program, under which the municipality or utility would make loans to property owners for energy efficiency improvements to their properties, and authorize the municipality or utility creating the program to administer, fund, or provide administrative services for the program. Authorize the PSC to approve applications by an energy or water utility to create such a program, and prohibit an energy utility or a water utility from operating such a program unless it has obtained the Commission's approval. Provide that municipalities may bill a property owner for the cost of an improvement on the tax bill for the property as a special charge, payable in a single installment or in multiple installments, as determined by the municipality. Require the energy or water utility to file a tariff specifying the terms and conditions of utility and nonutility service provided to customers for whom improvements are made under the program and prohibit the tariff from taking effect until approved by the Commission. Require tariffs to include:

MES

- a. The terms and conditions for billing customers for utility and nonutility service related to improvements benefiting the customers; ✓
- b. A contract between the utility and an owner of property benefited by an improvement requiring the owner to inform any property lessees who are liable for utility service that the cost of the improvement will appear on their utility bills; ✓
- c. A contract between the utility and an owner of property benefited by an improvement requiring the owner to inform any purchaser of the property that the purchaser, or any other person who is liable for utility service at the property, is liable for the unpaid cost of the improvement and that such unpaid cost will appear on utility bills for the property; and ✓
- d. Any other term or condition required by the Commission. ✓

same as 1805/p

If the PSC has approved a tariff, permit the utility to include a separate line item on bills of a customer at a property benefited by an improvement made under the program that offsets the costs of the program borne by the customer with the energy savings resulting from the improvement. Provide that a utility need not obtain a license as a collection agency for this billing practice. Specify that any costs incurred by a utility to administer, fund, or provide administrative services for the program are in addition to the amounts required under the energy efficiency and renewable resource programs authorized under current law. Prohibit a utility from recovering from ratepayers any bad debt related to nonutility services provided under the program.

same as 1895/p

Require municipalities and utilities operating a Wisconsin Saves Energy program to maintain a list of certified contractors who are eligible to make improvements under the program, to distribute the list to property owners upon their request, and to limit improvements under the program to certified contractors. Require municipalities and utilities to develop a procedure for certifying contractors which, at a minimum, requires contractors to: (a) possess technical qualifications and resources, including equipment, personnel, and financial resources necessary to perform the required work or to obtain the same through the use of responsible, prequalified subcontractors; (b) possess all valid, effective licenses, registrations, and certificates required for the contractor or its employees by federal, state, county, or local law necessary for the type of work they seek to perform, including, but not limited to, licenses, registrations, or certificates for any type of trade or specialty work; (c) meet all bonding requirements required by law or contract specifications; (d) meet all insurance requirements as required by law or contract specifications, including general liability insurance, workers compensation insurance, and unemployment insurance requirements; (e) maintain a substance abuse policy for employees that complies with state law; (f) pay all craft employees that they employ the wage rates and benefits required under an applicable prevailing wage law; (g) participate in a Class A apprenticeship program for each separate trade or classification in which they employ craft employees; (h) fully abide by the equal employment opportunity and affirmative action requirements of all applicable laws, including municipal ordinances; (i) provide a detailed statement regarding related companies if, at any time in the last three years, the contractor has controlled or has been controlled by another corporation, partnership, or other business entity operating in the construction industry; (j) certify that the contractor prequalification application has been executed by a principal or person employed by the applicant who has sufficient knowledge to address all matters in the prequalification application including an attestation stating, under the penalty of perjury, that all information submitted is true, complete, and accurate; (k) understand that in performing under a program contract, they will be required to use as subcontractors only those entities that have been properly prequalified in accordance with these requirements; and (l) disclose if in the past three years the contractor has:

- had any type of business, contracting, or trade license, certification, or registration revoked or suspended,
- been debarred by any federal, state, or local government agency;
- defaulted on any project;
- committed a willful violation of federal or state safety law as determined by a final decision of a court or government agency authority; and
- been found by a final decision of a court or government agency in violation of any other law relating to its contracting business including wage and hour laws, prevailing wage laws, environmental laws, antitrust laws, or tax laws where the penalty for such violation resulted in the imposition of fine, back pay damages, or any other type of penalty in the amount of more than \$10,000.

Create a new statement on the real estate condition report, which property owners must furnish to prospective buyers, that reads, "I am aware that an improvement has been made to the property under a Wisconsin Saves Energy program and that utility or tax bills for the property will include unpaid costs of the improvement." Specify that the provision regarding the real estate

PSC maintains subcontractor list to not hire 25% from municipalities

subcontractors?

provide service so each municipality does its own certification?

SO municipalities & utilities can impose additional req's?

why req?

and choice? agree?

refer to subcontractors who are on list?

circle?

e-h → GMM

provide to municipalities?

disclose to who?

why req?

Same as - 1895/14

condition report first applies to reports furnished on the effective date of the bill and that the provision creating the program first applies to programs for which applications are made on the effective date of the bill.

Note:

The motion would allow investor-owned electric or natural gas public utilities and water utilities, upon approval by the PSC, and municipalities to administer, fund, or provide administrative services for a program that invests in energy efficiency improvements to properties of customers or taxpayers. Municipalities would bill taxpayers for improvements through a special charge on the property's tax bill, and utilities would bill customers for improvements on their utility bills. If the PSC authorizes such a program, the energy utility would have to file a tariff specifying the terms and conditions of utility and nonutility service provided to customers for improvements under the program. A tariff would have to include terms and conditions for billing customers, as well as contracts between an energy utility and an owner of property that is benefited by an improvement that require the owner to do the following: (a) inform lessees that are liable for utility service that the cost of the improvement will appear on the lessees' utility bills; and (b) inform a purchaser of the property that the purchaser, or any other person who is liable for utility service at the property, is liable for the unpaid costs of the improvement and that such costs will appear on utility bills for the property.

The motion would also do the following: (a) allow an energy or water utility to include a separate line item on customer bills that offsets certain costs of the program with energy savings resulting from an improvement made under the program; (b) prohibit an energy or water utility from recovering from ratepayers any bad debt related to nonutility services provided under a program; (c) require an owner of residential property to make a disclosure about an improvement made under a program on the real estate conditions report that is required for property transfers; and (d) require utilities and municipalities to maintain a list of contractors meeting certain specified qualifications and limit improvements under the program to contractors on the list.

- *None*
- *eligible program (auditing?)*
- *certification process - who is in charge?*

(b) WSA 66.0627 Special Charges for current services

(i) Source of Authority

(1) WSA 66.0627(2) allows a municipality to impose a special charge against real property for current services rendered by allocating all or part of the cost of the service to the property served.

(2) "service" includes many examples such as snow and ice removal, sidewalk repair, recycling.

a) Examples given do not limit statute's application but merely highlight possible uses. The special charge need only provide a service, not a benefit to the property owner. *Rusk v. City of Milwaukee, 2007 WI App 7, 298 Wis. 2d 407, 727 N.W.2d 358, 05-2630.*

(3) WSA 66.0627(4): special charge is not payable in installments [emphasis added].

(4) WSA 66.0627(4): a special charge that is not paid is delinquent and becomes a lien on the property; the delinquent special charge shall be included in the next tax roll for collection under Ch. 74.

(ii) Method of Establishment

(1) 66.0627 (2): the governing body of a city, village or town may impose a special charge against real property for current services rendered by allocating all or part of the cost of the service to the property served. The authority under this section is in addition to any other method provided by law.

(iii) Private Beneficiaries

(1) The enumerated examples of "services" in WSA 66.0627(2) include soil conservation work and snow removal on private property. Thus, a city may perform a "service" for a private property owner and recoup the cost through a special charge pursuant to this statute. If a "Berkeley FIRST" style program to finance EERE improvements is a "service" under this statute, then a city can recoup the cost under this statute.

(iv) Existence of Opt-in Feature

(1) There is no express opt-in feature, but the property to be charged has to receive the "service", so the opt-in is implicit since not all property will receive

the EERE financing “service”. All or part of the EERE financing “service” may be allocated to the property serviced, so the special charges can be specific to each property for the amount financed.

(v) Bond Authority

(1) The statute does not provide for bonds to be issued in relation to the special charges to be collected.

(2) WSA 66.0627(4): A special charge is not payable in installments.

a) This prohibition on installment payments will have to be amended if this statute is to be used to finance EERE improvements.

(vi) Miscellaneous

(1) COWS suggested amendments:

a) Revise WSA 66.0627(1) to include EERE financing as an example of “services” by adding to the list of “service” examples in WSA 66.0627(1), between the words “... recycling” and “... storm”

i) “... conservation and efficiency efforts to improve energy, water, storm water, and sewer use, assistance in installing renewable energy systems...”

b) Add a new subsection that allows the payment over time for EERE, and explicitly states that they are not subject to the prohibition of installment payments in WSA 66.0627(4) between current subsections (5) and (6):

i) “Special charges related to conservation, efficiency, or renewable energy systems, may be used to recover, over time, the cost of property improvements related to such services. Charges so imposed shall not be considered installment payments under sub. (4)”.

(2) Other suggested amendments:

a) Add a new subsection(s) that provides for bonding authority related to the EERE special charges, and the inclusion of direct and indirect costs in the bond amount. This could be done by a cross reference to the special assessment bonding statute, WSA 66.0713, or by using substantially the same language as is contained in WSA 66.0713. Please see the proposed language below.

i) Proposed new WSA 66.0627(8): “For the purpose of anticipating the collection of special charges payable in installments as provided in this subsection, and after the installments have been determined, the governing body may issue special assessment B bonds as provided under 66.0713(4).”

ii) Proposed new WSA 66.0627(9): “The cost of any work or improvement to be paid in whole or in part by special charge on property under this subsection may include the direct and indirect cost, the resulting damages, the interest on bonds or notes issued in anticipation of the collection of the special charges, a reasonable charge for the services of the administrative staff of the city, town or village and the cost of any architectural, engineering and legal services, and any other item of direct or indirect cost that may reasonably be attributed to the proposed work or improvement. The amount to be charged against all property for the proposed work or improvement shall be apportioned among the individual parcels in the manner designated by the governing body.” [Note: This is substantially the same language as WSA 66.0703(2)]

BEST VALUE CONTRACTING

I. Policy

When entering into contracts for work done under the Stimulus Package under Wis. Stat. sec. 62.15, the State of Wis. requires bidders to prequalify pursuant to the provisions of Wis. Stat. sec. 66.0901, and procedures adopted by the State. The State of Wis. finds that using the Best Value Contracting procedures set forth in this ordinance will provide the State with the best value for its public construction while also meeting requirements that contracts be awarded to the lowest responsible bidder, and that the requirements of this Bill are for the protection and welfare of the public in the performance of public contracts.

II. Definitions.

1. "Contractor" means a person, corporation, partnership or any other business entity that performs work on a public works contract as a general contractor, prime contractor or (subject to the limitations for subcontractors in secs. X(3). and (4). and XII of this ordinance) subcontractor at any tier.
2. "Class A Apprenticeship Program" means an apprenticeship program that is currently approved by the U.S. Department of Labor or a state apprenticeship agency and has graduated apprentices to journeyman status for three (3) years. In addition, a new apprenticeship program that has been registered with the federal or state government within the last three (3) years will be considered a Class A Apprenticeship Program, provided that such new program graduates apprentices to journeyman status within the indenture period.
3. "Engineer" or "City Engineer" means the City of Madison City Engineer.
4. "Public works contract" means a contract for the City of Madison for the construction, alteration, execution, repair, remodeling or improvement of a public work or building, where the contract is required to be bid pursuant to Wis. Stat. sec. 62.15.
5. "BVC Contract" is a public works contract where the value of the contract is more than the amount determined in any year pursuant to Wis. Stat. sec. 66.0903(5).

III. Prequalification Requirement.

As a condition of performing work on a public works contract for the City of Madison, a contractor shall first be prequalified by the City in accordance with the provisions of this ordinance and other policies of the City as adopted by the Board of Public Works. This section shall apply to general contractors, prime contractors and (subject to the limitations for subcontractors in secs. X(3). and (4). and XII of this ordinance) subcontractors of any tier.

IV. Additional Qualification Information.

In addition to information specified in this ordinance, the City Engineer may request, in prequalification applications or separately on a project by project basis, any other information he or she determines necessary to ensure that prospective contractors meet the contractor responsibility standards established by this ordinance and otherwise possess sufficient qualifications and capabilities in all respects to successfully qualify for and perform public works contracts.

V. Prequalification Term.

1. Any contractor or subcontractor that has prequalified under standards applicable on or after the effective date of this ordinance shall remain prequalified until January 31, 2008.
2. For any public works contracts advertised for bid on or after January 1, 2008, a contractor or subcontractor must be prequalified under this ordinance.
3. Once a contractor's prequalification application is approved by the City Engineer under this ordinance, it shall remain valid for a period of two years to expire on January 31, unless suspended or revoked pursuant to this section.

VI. Renewal and Disclosure.

It shall be the obligation of the contractor to timely renew its prequalification and to report information regarding any material changes to its business or operations that are relevant to its prequalification application, including information that would affect its ability to make the certifications required by this ordinance. Any such information must be reported within fifteen (15) days of the contractor's knowledge of the information. Failure to report information under this subsection may result in suspension or revocation of the contractor's prequalification, debarment from City contracts for a period of up to three years and other sanctions available under applicable law.

VII. Prequalification Approval.

The City Engineer shall review contractor prequalification applications and approve applications that comply with the requirements of this ordinance and other applicable standards developed by the City Engineer. If a contractor has been certified by the City as a DBE, MBE, SBE or WBE, and the City Engineer determines that the contractor fails to meet the prequalification requirements under this ordinance, the City Engineer will notify and discuss the determination with the Affirmative Action Division prior to issuing any notice of non-qualification.

VIII. Prequalification List

The City Engineer shall publicly post a list of prequalified contractors which shall include the names, addresses and prequalification numbers of contractors and applicable dates of prequalification approval. This list shall be updated on a monthly basis.

IX. Prequalification Review.

The City Engineer shall review the performance of contractors prequalified according to this section periodically, but at least once a year, to determine whether contractors are performing satisfactorily. This review shall examine all relevant areas of contractor performance, including but not limited to project cost and schedule, compliance with plans and specifications, quality of workmanship and compliance with applicable laws and regulations. For good cause shown, the Engineer may suspend or revoke a contractor's prequalification status at any time after providing the contractor with notice and the opportunity to be heard by the City Engineer.

X. Prequalification Enforcement. The City Engineer shall:

1. Take the necessary actions to ensure that all contractors and subcontractors on public works contracts and BVC contracts are properly prequalified in accordance with the requirements of this ordinance;
2. Require general contractors or prime contractors to verify their prequalification as a condition of submitting bids on public works contracts and BVC contracts;
3. Further require general contractors or prime contractors to submit a list of the subcontractors they intend to use in the performance of the contract with the names and prequalification numbers of such subcontractors. This information for subcontractors may be submitted at the time of the bid and must be submitted by the time specified in sub. (1). Firms identified on the subcontractor list may be substituted only for good cause shown and with the written approval of the City Engineer.
4. Notify subcontractors that they may apply for prequalification under this ordinance.

XI. Required Certifications.

Prequalification applications submitted pursuant to this ordinance shall include all information as determined necessary and appropriate by the City Engineer. Such applications shall, at a minimum, require a sworn certification by the applicant attesting to the facts specified in this subsection. In submitting a prequalification application, the applicant shall certify that for any project it seeks to perform for the City during the term of its prequalification, it shall:

1. Possess all technical qualifications and resources, including equipment, personnel and financial resources, necessary to perform the work required for the project or will obtain same through the use of responsible, prequalified subcontractors.

2. Possess all valid, effective licenses, registrations or certificates required for the contractor or its employees by federal, state, county or local law necessary for the type of work it seeks to perform, including, but not limited to, licenses, registrations or certificates for any type of trade work or specialty work.
3. Meet all bonding requirements as required of it by applicable law or contract specifications.
4. Meet all insurance requirements as required of it by applicable law or contract specifications, including general liability insurance, workers compensation insurance and unemployment insurance requirements.
5. Maintain a substance abuse policy for employees hired for public works contracts that complies with Wis. Stat. sec. 103.503.
6. Pay all craft employees that it employs on public works projects the wage rates and benefits required under applicable prevailing wage law, sec. 23.01, MGO.
7. With respect to BVC contracts only, participate in a Class A Apprenticeship Program for each separate trade or classification in which it employs craft employees and continue to participate in such program or programs for the duration of the project. In applying this requirement, the City Engineer shall apply it to all crafts in the same manner as the State of Wisconsin applies the requirements of Wisconsin Executive Order 108 (June 29, 2005).
8. Fully abide by the equal employment opportunity and affirmative action requirements of all applicable laws, including City ordinances.
9. Provide in its prequalification application a detailed statement regarding related companies if, at any time during the past three (3) years, the contractor has controlled or has been controlled by another corporation, partnership or other business entity operating in the construction industry. This statement shall be included in prequalification application and shall explain the nature of the contractor relationship.
10. Disclose, whether for the past three years:
 - a. It has had any type of business, contracting or trade license, certification or registration revoked or suspended.
 - b. It has been debarred by any federal, state or local government agency.
 - c. It has defaulted on any project in the past three years;
 - d. It has committed a willful violation of federal or state safety laws as determined by a final decision of a court or government agency authority.
 - e. It has been found by a final decision of a court or government agency in violation of any other law relating to its contracting business, including, but not limited to wage and hour laws, prevailing wage laws, environmental laws, antitrust laws or tax laws, where the penalty for such violation resulted in the imposition of fine, back pay damages or any other type of penalty in the amount of more than \$10,000. The applicant shall provide an explanation to the City Engineer of any disclosures under this subsection, and the City Engineer shall determine if such incidents are of such a nature as to disqualify the applicant.
11. Certify that the contractor prequalification application has been executed by a principal or person employed by the applicant who has sufficient knowledge to address all matters in the prequalification application and shall include an attestation stating, under the penalty of perjury, that all information submitted is true, complete and accurate.
12. Understand that in performing under any City public works contract, it will be required to use as subcontractors only those entities that have been properly prequalified in accordance with the requirements of this ordinance.

XII. Subcontractors

Subcontractors may, but are not required to, apply for and obtain prequalification status under this ordinance. At least ten (10) days prior to commencing work under any City of Madison Public Works Contract, a subcontractor, the value of whose work exceeds the single-trade minimum of Wis. Stat. sec. 66.0903(5), shall submit the information required under this ordinance to be qualified, and no such subcontractor may begin work on a City of

Madison Public Works Project until the City Engineer determines that such subcontractor meets the qualification requirements herein.

XIII. Conditional Approval

The City Engineer may issue conditional approvals of any application for prequalification and shall set out the conditions thereof in writing.

XIV. Best Value Contracting in City Supported Projects

In order to achieve the goals set out in this ordinance, it shall be a condition of any City financial support of a development project, in the form of TIF financing, Capital Revolving Loan funds, industrial development bonds, or other City or CDA assistance as designated by the Common Council in the resolution granting such assistance, in an amount that meets the requirements of sub. (7) (b)5., that the developer utilize for construction those firms that have met the prequalification requirements of this ordinance. This provision will be included as a developer obligation in any agreement between the City and the developer.

XV. Appeal

Any applicant, contractor, or subcontractor aggrieved by a determination of the City Engineer under this ordinance has the right to appeal the City Engineer's determination to the Board of Public Works. The appeal shall be taken by delivery of a letter to the City Engineer within fifteen (15) days of the determination to be appealed. The Board of Public Works will schedule a hearing on the appeal promptly.

XVI. Report by City Engineer

After this ordinance shall have been in effect for two years, the City Engineer shall prepare a report to the Common Council on the effects of the ordinance.

XVII. Effective Date

This ordinance applies to any Public Works Contract advertised for bid, and any contracts under sec. XIV entered into, on or after January 1, 2008.

Kunkel, Mark

From: Kunkel, Mark
Sent: Wednesday, April 22, 2009 4:56 PM
To: Kunkel, Mark
Subject: Drafting instructions for 09-2740

Yesterday I met with Rep. Mason and Marc Shoves to get additional instructions for the above draft.

Rep. Mason wants to do the following:

- Require PSC to develop the program, but make implementation contingent on Jt. Finance active (not passive) approval.
- Funding recommendation must be lowest interest rate possible for loans.
- Funding recommendation must include bonding.
- Allow customers and property owners to apply for loans and require audits as precondition for loan. Audits should be performed by certified home performance consultants mentioned in PSC rules. (Note: I could not find this reference in PSC rules.)
- Local governments and utility involvement is limited to making loans and accepting repayment. Also allow them to use their own funds for the program.
- Loans must be allowed for energy efficiency and renewable resources at residences (not businesses, etc.).
- PSC must establish list of certified contractors.
- Contractors with DWD approved apprenticeship programs must get preference for work. This means that contractors without such programs can do work only if contractors with such programs are not available.
- Contractors must comply with independent contractor requirements. Rep. Mason directed us to contact Dan Schoof of DOA about this. I contacted him yesterday and he advised that the concern is that a contractor must treat its employees like employees, and cannot treat them as independent contractors in order to avoid requirements that apply to employer/employee relationship. Although I think that Rep. Mason indicated at the meeting that the independent contractor requirement should apply to contractors without apprenticeship programs, I think I might have been mistaken, as the requirement should probably apply to all contractors.
- Require other energy efficiency and weatherization programs under current law that involve contracting to also comply with the contractor requirements under the bill. Rep. Mason directed us to contact Sara Hynek of DOA about the other programs. I spoke with her yesterday, and she advised that the other programs are probably those under ss. 16.26 and 196.374 (2). She said the program under s. 16.27 does not involve contractors.



PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION

Marc:
Please review.
- Mark

1 AN ACT ...; **relating to:** creating a loan program for residential energy efficiency
2 improvements and renewable energy applications and providing an exemption
3 from emergency rule procedures.

Analysis by the Legislative Reference Bureau

This is a preliminary draft. An analysis will be provided in a later version.
For further information see the **state and local** fiscal estimate, which will be
printed as an appendix to this bill.

The people of the state² of Wisconsin, represented in senate and assembly, do enact as follows:

SECTION 1. 196.3745 of the statutes is created to read:

196.3745 Residential energy efficiency and renewable energy loan program. (1) DEFINITIONS. In this section:

(a) "Energy efficiency improvement" means an improvement to residential premises that reduces the usage of energy, or increases the efficiency of energy usage, at the premises.

Should there be some concept of it being a "primary residence"?

Check uses of "proposal" & "program" for consistency.

SECTION 1

1 (b) "Improvement or application" means an energy efficiency improvement or
2 renewable resource application.

3 (c) "Political subdivision" means a city, village, town, or county.

4 (d) "Renewable resource application" means the application of a renewable
5 resource, as defined in s. 196.374 (1) (j), at residential premises.

6 (e) "Utility" means a public utility that furnishes electricity, natural gas, or
7 water service to residential customers.

8 (2) PROPOSAL. (a) *Duty to submit.* The commission shall submit a proposal to
9 the joint committee on finance for a program allowing the commission to make grants
10 to utilities and political subdivisions for making loans to residential customers and
11 residential property owners for making or installing improvements or applications.
12 Participation in the program shall be at the discretion of a utility or political
13 subdivision and the commission may not require that a utility or political subdivision
14 participate in the program or that a residential customer or residential property
15 owner obtain a loan under the program. *participate in* *XNSJ-15, NO #*

16 (b) *Utilities.* ~~The proposal under par. (a) shall allow a utility to participate in~~
17 *described under par. (a)* the program *may* only if the utility files a tariff that is approved by the commission. The
18 commission may not approve a tariff filed by a utility unless the commission
19 determines that the tariff does all of the following:

20 1. Specifies terms and conditions for billing residential customers for utility
21 and nonutility service related to improvements or applications for which loans are
22 made.

23 2. Requires a contract between the utility and an owner of property benefited
24 by an improvement or application that requires the owner to inform any property

1 lessees who are liable for utility service that the cost of the improvement or
2 application will appear on the lessees' utility bills.

3 3. Requires a contract between the utility and an owner of property benefited
4 by an improvement or application that requires the owner to inform any purchaser
5 of the property that the purchaser, or any other person who is liable for utility service
6 at the property, is liable for the unpaid cost of the improvement or application and
7 that such unpaid cost will appear on utility bills for the property.

8 4. Includes any other term or condition required by the commission.

9 (c) *Political subdivisions.* (M&ES insertion?) INS 3-9; NO #

10 (d) *Audits.* The proposal under par. (a) shall require that a residential customer
11 or residential property owner is not eligible for a loan for an improvement or
12 application unless an audit demonstrates that the energy savings resulting from the
13 improvement or application are expected to be equal to or greater than the cost of the
14 improvement or application.

****NOTE: The instructions indicate that the audits must be performed by a home performance consultant certified under PSC rules. However, I cannot find any reference to such consultants in the PSC's rules. Who should be eligible to conduct the audits?

****NOTE: I added the requirement regarding savings and costs. Is that okay? If not, what must an audit show in order for an improvement or application to be eligible?

****NOTE: You mentioned that you want to audits before and after an improvement or application is made or installed. The above applies only to audits before an improvement or application is made or installed. What requirements should apply to audits made after an improvement or application is made or installed? What consequences should follow from the results of such an audit?

****NOTE: How do you want to address audit costs? For example, who pays for an audit if the audit shows that an improvement or application does not qualify for a loan?

15 (e) *Contractors.* 1. The proposal under par. (a) shall require that all work in
16 making or installing an improvement or application is performed by a contractor that
17 the commission has included on a list of approved contractors that the commission
18 shall make available to residential customers and residential property owners upon

SECTION 1

1 request. The proposal shall include a procedure for the commission to approve a
2 contractor for inclusion on the list ^{and the contractor may be included} only if the commission determines that the
3 contractor satisfies all of the following:

4 a. Possesses the technical qualifications and resources, including equipment,
5 personnel, and financial resources, necessary to perform the required work or
6 obtains such qualifications and resources through the use of responsible
7 subcontractors who are approved by the commission for inclusion on the list.

8 b. Possesses all valid and effective licenses, registrations, and certificates that
9 are required under federal, state, and local law for the type of work that the
10 contractor performs.

11 c. Meets all bonding requirements required by law or contract specifications.

***NOTE: Why is it necessary to refer to contract specifications?

12 d. Meets all insurance requirements as required by law or contract
13 specifications, including general liability insurance, workers compensation
14 insurance, and unemployment insurance requirements.

***NOTE: Why is it necessary to refer to contract specifications?

15 e. Maintains a substance abuse policy for employees that complies with state
16 law.

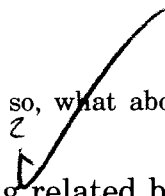
17 f. Except as provided in subd. 2., participates in a class A apprenticeship
18 program for each separate trade or classification in which the contractor employs
19 craft employees.

20 g. Pays all craft employees the wage rates and benefits required under an
21 applicable prevailing wage law.

22 h. Fully abides by the equal employment opportunity and affirmative action
23 requirements of all applicable laws, including municipal ordinances.

****NOTE: Is it necessary to refer t municipal ordinances? If so, what about counties?

change "municipal" to "local" ?



1 i Provides the commission a detailed statement regarding related business
2 entities if, at any time in the three years prior to inclusion on the list, the contractor
3 has controlled or has been controlled by another corporation, partnership, or other
4 business entity operating in the construction industry.

5 j. Certifies to the commission that the contractor understands that, in
6 performing work under the program, the contractor will be required to use as
7 subcontractors only those entities that are also included on the list.

8 k. Certifies to the commission that employees are not improperly classified as
9 independent contractors in violation of federal or state law.

****NOTE: Is the above okay?

10 L. Discloses to the commission whether ~~the~~ in the three years prior to inclusion
11 on the list the contractor has had any type of business, contracting, or trade license,
12 certification, or registration revoked or suspended; been debarred by any federal
13 state, or local government agency; defaulted on any project; committed a willful
14 violation of federal or state safety law as determined by a final decision of a court or
15 government agency authority; or been found by a final decision of a court or
16 government agency ^{to be} in violation of any other law relating to its contracting business,
17 including wage and hour laws, prevailing wage laws, environmental laws, antitrust
18 laws, or tax laws, where the penalty for such violation resulted in the imposition of
19 ^a fine, back pay damages, or any other type of penalty, in ^{an} ~~the~~ amount of more than
20 \$10,000.

21 m. Certifies to the commission that the contractor's application for inclusion
22 on the list has been executed by a principal or person employed by the applicant who
23 has sufficient knowledge to address all matters in the application, including an

SECTION 1

1 attestation stating, under the penalty of perjury, that all information submitted is
2 true, complete, and accurate.

3 2. The proposal under par. (a) shall allow the commission to include on the list
4 required under subd. 1. a contractor who does not satisfy the requirement under
5 subd. 1. f., but the proposal shall ensure that a contractor who does not satisfy ^{the} such
6 requirement is not allowed to perform work on an improvement or application for ✓
7 which a loan is made under the program unless no contractor who satisfies ^{the} such
8 requirement is available to perform the work.

9 3. ~~The proposal under par. (a) shall ensure that an improvement or application~~
10 is not eligible for a loan under the program, ^{described under par. (a)} unless at least 25% ^{percent} of the contractors who
11 perform work on the improvement or application have a place of business in the
12 political subdivision in which the work is performed.

****NOTE: Is the above okay?

13 (f) *Funding*. The proposal under par. (a) shall recommend options for funding
14 the grants to utilities and political subdivisions for making loans under the program,
15 including any moneys available under P.L. 111-5 or bonding authority under state
16 law. In recommending funding options, the commission shall consider those options
17 that result in the lowest interest rates for the loans.

****NOTE: Is it necessary to refer to specific appropriations as the source for the grants, or are federal appropriations under current law okay? ✓

****NOTE: Is the last sentence okay, or is there a better way to talk about the low interest requirement?

****NOTE: ^{should the bill} How ^{the} deal with repayment of loans by customers and property owners to utilities and political subdivisions who receive the grants for the loans? Must the utilities and political subdivisions repay the grants when the loans are repaid?

✓ ****NOTE: Must also allow political subdivisions and utilities to use their own funds (i.e., not grants) if they want to. How incorporate that into the draft?

1 **(3) PROGRAM APPROVAL.** The commission may not implement a program
2 described in the proposal under sub. (2) (a) unless the program has been approved,
3 or approved as modified, by the joint committee on finance.

 ****NOTE: Do I need to add additional procedures or requirements for joint finance
involvement?

4 **(4) UTILITIES.** (a) A utility for which the commission approves a tariff under
5 a program approved by the joint committee on finance under sub. (3) may include a
6 separate line item on bills of a residential customer at a property benefited by an
7 improvement or application made or installed under the program that offsets the
8 costs of the program borne by the customer with the energy savings resulting from
9 the improvement or application. Notwithstanding s. 218.04, a utility need not obtain
10 a license as a collection agency for this billing practice.

*this is a
little
confusing
The line item
offsets the
costs borne
by the
customer*

11 (b) Any costs that a utility incurs to administer, fund, or provide administrative
12 services for a loan made in accordance with a tariff described in par. (a) are in
13 addition to the amounts the commission shall require the energy utility to spend
14 under s. 196.374 (3) (b) 2.

15 (c) A utility may not recover from ratepayers any bad debt related to nonutility
16 services provided under a tariff described in par. (a).

17 **SECTION 2.** 709.03 (form) C. 25m. of the statutes is created to read:

18 709.03 (form)

1 C.25m. I am aware that an energy efficiency improve-
2 ment or renewable energy application has
3 been made or installed to the property under
4 a program authorized under s. 196.3745 and
5 that utility bills for the property will include
6 unpaid costs of the improvement or applica-
7 tion.

8 **SECTION 3. Nonstatutory provisions.**

9 (1) If the public service commission determines that rules are necessary to
10 implement a program approved or ~~modified~~ *amended* under section 196.3745 (3) of the
11 statutes, as created by this act, the commission may promulgate emergency rules
12 under s. 227.24 for such implementation for the period before the effective date of any
13 permanent rules promulgated for such implementation, but not to exceed the period
14 authorized under s. 227.24 (1) (c) and (2). Notwithstanding s. 227.24 (1) (a), (2) (b),
15 and (3), the commission is not required to provide evidence that promulgating a rule
16 under this subsection as an emergency rule is necessary for the preservation of the
17 public peace, health, safety, or welfare and is not required to provide a finding of
18 emergency for a rule promulgated under this subsection.

****NOTE: Will the PSC promulgate rules for the program? If not, the above is not
necessary.

19 **SECTION 4. Initial applicability.**

20 (1) The treatment of section 709.03 (form) C. 25m. of the statutes first applies
21 to original real estate condition reports that are furnished on the effective date of this
22 subsection.

****NOTE: Need to impose contractor requirements (certification and
apprenticeships) on work performed under current law under energy efficiency and

weatherization programs. Does this also apply to the 25% rule? Contact Dan Schooff (DOA), Sara Hynek (DOA), or Nate Zolik (PSC) about this?

****NOTE: Hynek says contractors are used under programs under ss. 16.27 and 196.374. I need to revise draft to incorporate contracting requirements. However, s. 196.374 is tricky because there are 3 types of programs under s. 196.374 (2) (statewide, utility-administered, and large energy customer) and s. 196.374 (4) imposes competition and discrimination requirements, including a requirement that services are subject to a customer's choice. Not sure if that is inconsistent with contracting requirements.

****NOTE: Is it clear that a residential property owner or customer engages a contractor to do the work, pays the contractor with a loan made by a utility or political subdivision, and then repays the utility or political subdivision? In other words, does the draft properly reflect intent the limited role of utilities and political subdivisions?

1

(END)

I think it's OK, but
maybe better to
add 1 or 2 more
explicit sentences
in sub. (a) (a) - p. 2, ll. 8-15.

See my
IMS 2-15

**2009-2010 DRAFTING INSERT
FROM THE
LEGISLATIVE REFERENCE BUREAU**

LRB-2740/P1ins
MDK&MES.....MES

INS 2-15

If a residential customer or residential property owner participates in the program, it is the responsibility of the customer or property owner to hire the contractor to perform the improvement or application, consistent with the requirements of the program, and to repay the loan to the utility or political subdivision under the terms agreed to by the parties to the loan.

INS 3-9

1. A political subdivision may participate in the program approved by the joint committee on finance under sub. (3) by making loans to residents of the political subdivision for making or installing improvements or applications as described under par. (a).

2. A political subdivision may make the loans from grants issued by the commission or from any other appropriate funding source. If the source of the loan funds is not from a grant issued by the commission, all of the other relevant provisions of this section apply as if the source of the loan funds is a grant issued by the commission.

****NOTE: You indicated that some political subdivisions had funds available to make loans under the program. Is the language under subd. 2. sufficient for them to access these funds or is there a more specific reference that you'd like me to use?

3. A political subdivision that makes a loan under this paragraph may collect the loan repayment as a special charge under s. 66.0627 and, notwithstanding the limitations under s. 66.0627 (2), a county may use the procedure under s. 66.0627 to collect such a repayment for a loan that is made under this paragraph. Notwithstanding the provisions of s. 66.0627 (4), a special charge imposed under this subdivision may be collected in installments and may be included in the current or

next tax roll for collection and settlement under ch. 74 even if the special charge is not delinquent.



PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION

Gordon:
Take a look at
p 3 l. 15 to p 6 l. 12
- Mark

1 **AN ACT ...; relating to:** creating a loan program for residential energy efficiency
2 improvements and renewable energy applications and providing an exemption
3 from emergency rule procedures.

Analysis by the Legislative Reference Bureau

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

ENCL
1-4

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

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5 **196.3745 Residential energy efficiency and renewable energy loan**
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7 (a) "Energy efficiency improvement" means an improvement to residential
8 premises that reduces the usage of energy, or increases the efficiency of energy usage,
9 at the premises.

1 (b) "Improvement or application" means an energy efficiency improvement or
2 renewable resource application.

3 (c) "Political subdivision" means a city, village, town, or county.

4 (d) "Renewable resource application" means the application of a renewable
5 resource, as defined in s. 196.374 (1) (j), at residential premises.

6 (e) "Utility" means a public utility that furnishes electricity, natural gas, or
7 water service to residential customers.

8 (2) PROPOSAL. (a) *Duty to submit.* The commission shall submit a proposal to
9 the joint committee on finance for a program allowing the commission to make grants
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11 residential property owners for making or installing improvements or applications.
12 Participation in the program shall be at the discretion of a utility or political
13 subdivision and the commission may not require that a utility or political subdivision
14 participate in the program or that a residential customer or residential property
15 owner obtain a loan under the program.

16 (b) *Utilities.* The proposal under par. (a) shall allow a utility to participate in
17 the program only if the utility files a tariff that is approved by the commission. The
18 commission may not approve a tariff filed by a utility unless the commission
19 determines that the tariff does all of the following:

20 1. Specifies terms and conditions for billing residential customers for utility
21 and nonutility service related to improvements or applications for which loans are
22 made.

23 2. Requires a contract between the utility and an owner of property benefited
24 by an improvement or application that requires the owner to inform any property

1 lessees who are liable for utility service that the cost of the improvement or
2 application will appear on the lessees' utility bills.

3 3. Requires a contract between the utility and an owner of property benefited
4 by an improvement or application that requires the owner to inform any purchaser
5 of the property that the purchaser, or any other person who is liable for utility service
6 at the property, is liable for the unpaid cost of the improvement or application and
7 that such unpaid cost will appear on utility bills for the property.

8 4. Includes any other term or condition required by the commission.

9 (c) *Political subdivisions.* [MES insertion?]

10 (d) *Audits.* The proposal under par. (a) shall require that a residential customer
11 or residential property owner is not eligible for a loan for an improvement or
12 application unless an audit demonstrates that the energy savings resulting from the
13 improvement or application are expected to be equal to or greater than the cost of the
14 improvement or application.

****NOTE: The instructions indicate that the audits must be performed by a home performance consultant certified under PSC rules. However, I can find any reference to such consultants in the PSC's rules. Who should be eligible to conduct the audits?

****NOTE: I added the requirement regarding savings and costs. Is that okay? If not, what must an audit show in order for an improvement or application to be eligible?

****NOTE: You mentioned that you want to audits before and after an improvement or application is made or installed. The above applies only to audits before an improvement or application is made or installed. What requirements should apply to audits made after an improvement or application is made or installed? What consequences should follow from the results of such an audit?

****NOTE: How do you want to address audit costs? For example, who pays for an audit if the audit shows that an improvement or application does not qualify for a loan?

involve d

15 (e) *Contractors.* 1. The proposal under par. (a) shall require that all work in
16 making or installing an improvement or application is performed by a contractor that
17 the commission has included on a list of approved contractors that the commission
18 shall make available to residential customers and residential property owners upon

SECTION 1

1 request. The proposal shall include a procedure for the commission to approve a
2 contractor for inclusion on the list only if the commission determines that the
3 contractor satisfies all of the following:

4 a. Possesses the technical qualifications and resources, including equipment,
5 personnel, and financial resources, necessary to perform the required work or
6 obtains ^{those} ~~such~~ qualifications and resources through the use of responsible
7 subcontractors who are approved by the commission for inclusion on the list.

8 b. Possesses all valid and effective licenses, registrations, and certificates that
9 are required under federal, state, and local law for the type of work that the
10 contractor performs.

11 c. Meets all bonding requirements required by law or contract specifications.

***NOTE: Why is it necessary to refer to contract specifications?

What contract?
Between contractor & home owner

12 d. Meets all insurance requirements as required by law or contract
13 specifications, including general liability insurance, workers compensation
14 insurance, and unemployment insurance requirements.

Between contractor &
utility?

***NOTE: Why is it necessary to refer to contract specifications?

15 e. Maintains a substance abuse policy for employees that complies with state
16 law.

17 f. ~~Except as provided in subd. 2., participates in a class A apprenticeship~~
18 ~~program for each separate trade or classification in which the contractor employs~~
19 ~~craft employees.~~

that are applicable to the contractor under any
federal, state, or local law, regulation, rule, or ordinance

20 g. ~~Pays all craft employees the wage rates and benefits required under an~~
21 ~~applicable prevailing wage law.~~

22 h. Fully ~~abides by the~~ equal employment opportunity and affirmative action
23 requirements of all applicable laws, including municipal ordinances.

complies with all

, and other workforce
participation

22
23
insert
4-21

****NOTE: Is it necessary to refer t municipal ordinances? If so, what about counties?

1 i Provides the commission a detailed statement regarding related business
2 entities if, at any time in the three years prior to inclusion on the list, the contractor
3 has controlled or has been controlled by another corporation, partnership, or other
4 business entity operating in the construction industry.

5 j. Certifies to the commission that the contractor understands that, in
6 performing work under the program, the contractor will be required to use as
7 subcontractors only those entities that are also included on the list.

8 k. Certifies to the commission that employees are not improperly classified as
9 independent contractors in violation of federal or state law.

****NOTE: Is the above okay?

10 L. Discloses to the commission whether the in the three years prior to inclusion
11 on the list the contractor has had any type of business, contracting, or trade license,
12 certification, or registration revoked or suspended; been debarred by any federal
13 state, or local government agency; defaulted on any project; committed a willful
14 violation of federal or state safety law as determined by a final decision of a court or
15 government agency authority; or been found by a final decision of a court or
16 government agency in violation of any other law relating to its contracting business,
17 including wage and hour laws, prevailing wage laws, environmental laws, antitrust
18 laws, or tax laws, where the penalty for such violation resulted in the imposition of
19 fine, back pay damages, or any other type of penalty, in the amount of more than
20 \$10,000.

21 m. Certifies to the commission that the contractor's application for inclusion
22 on the list has been executed by a principal or person employed by the applicant who
23 has sufficient knowledge to address all matters in the application, including an

SECTION 1

1 attestation stating, under the penalty of perjury, that all information submitted is
2 true, complete, and accurate.

3 2. The proposal under par. (a) shall allow the commission to include on the list
4 required under subd. 1. a contractor who does not satisfy the requirement under
5 subd. 1. f., but the proposal shall ensure that a contractor who does not satisfy such
6 requirement is not allowed to perform work on an improvement or application for
7 which a loan is made under the program unless no contractor who satisfies such
8 requirement is available to perform the work.

9 3. The proposal under par. (a) shall ensure that an improvement or application
10 is not eligible for a loan under the program unless at least 25% of the contractors who
11 perform work on the improvement or application have a place of business in the
12 political subdivision in which the work is performed.

****NOTE: Is the above okay?

13 (f) *Funding.* The proposal under par. (a) shall recommend options for funding
14 the grants to utilities and political subdivisions for making loans under the program,
15 including any moneys available under P.L. 111-5 or bonding authority under state
16 law. In recommending funding options, the commission shall consider those options
17 that result in the lowest interest rates for the loans.

****NOTE: Is it necessary to refer to specific appropriations as the source for the grants, or are federal appropriations under current law okay?

****NOTE: Is the last sentence okay, or is there a better way to talk about the low interest requirement?

****NOTE: How deal with repayment of loans by customers and property owners to utilities and political subdivisions who receive the grants for the loans? Must the utilities and political subdivisions repay the grants when the loans are repaid?

****NOTE: Must also allow political subdivisions and utilities to use their own funds (i.e., not grants) if they want to. How incorporate that into the draft?

1 **(3) PROGRAM APPROVAL.** The commission may not implement a program
2 described in the proposal under sub. (2) (a) unless the program has been approved,
3 or approved as modified, by the joint committee on finance.

 ****NOTE: Do I need to add additional procedures or requirements for joint finance
involvement?

4 **(4) UTILITIES.** (a) A utility for which the commission approves a tariff under
5 a program approved by the joint committee on finance under sub. (3) may include a
6 separate line item on bills of a residential customer at a property benefited by an
7 improvement or application made or installed under the program that offsets the
8 costs of the program borne by the customer with the energy savings resulting from
9 the improvement or application. Notwithstanding s. 218.04, a utility need not obtain
10 a license as a collection agency for this billing practice.

11 (b) Any costs that a utility incurs to administer, fund, or provide administrative
12 services for a loan made in accordance with a tariff described in par. (a) are in
13 addition to the amounts the commission shall require the energy utility to spend
14 under s. 196.374 (3) (b) 2.

15 (c) A utility may not recover from ratepayers any bad debt related to nonutility
16 services provided under a tariff described in par. (a).

SECTION 2. 709.03 (form) C. 25m. of the statutes is created to read:

709.03 (form)

17
18
Insert
7-16

SECTION 2

1 C.25m. I am aware that an energy efficiency improve-

2 ment or renewable energy application has

3 been made or installed to the property under

4 a program authorized under s. 196.3745 and

5 that utility bills for the property will include

6 unpaid costs of the improvement or applica-

7 tion.

6
Insert
8-7-09

SECTION 3. Nonstatutory provisions.

9 (1) If the public service commission determines that rules are necessary to

10 implement a program approved ~~or notified~~ under section 196.3745 (3) of the

11 statutes, as created by this act, the commission may promulgate emergency rules

12 under s. 227.24 for such implementation for the period before the effective date of any

13 permanent rules promulgated for such implementation, but not to exceed the period

14 authorized under s. 227.24 (1) (c) and (2). Notwithstanding s. 227.24 (1) (a), (2) (b),

15 and (3), the commission is not required to provide evidence that promulgating a rule

16 under this subsection as an emergency rule is necessary for the preservation of the

17 public peace, health, safety, or welfare and is not required to provide a finding of

18 emergency for a rule promulgated under this subsection.

****NOTE: Will the PSC promulgate rules for the program? If not, the above is not necessary.

SECTION 4. Initial applicability.

19 (1) The treatment of section 709.03 (form) C. 25m. of the statutes first applies

20 to original real estate condition reports that are furnished on the effective date of this

21 subsection.

22

****NOTE: Need to impose contractor requirements (certification and apprenticeships) on work performed under current law under energy efficiency and

weatherization programs. Does this also apply to the 25% rule? Contact Dan Schooff (DOA), Sara Hynek (DOA), or Nate Zolik (PSC) about this?

***NOTE: Hynek says contractors are used under programs under ss. 16.27 and 196.374. I need to revise draft to incorporate contracting requirements. However, s. 196.374 is tricky because there are 3 types of programs under s. 196.374 (2) (statewide, utility-administered, and large energy customer) and s. 196.374 (4) imposes competition and discrimination requirements, including a requirement that services are subject to a customer's choice. Not sure if that is inconsistent with contracting requirements.

***NOTE: Is it clear that a residential property owner or customer engages a contractor to do the work, pays the contractor with a loan made by a utility or political subdivision, and then repays the utility or political subdivision? In other words, does the draft properly reflect intent the limited role of utilities and political subdivisions?

**2009-2010 DRAFTING INSERT
FROM THE
LEGISLATIVE REFERENCE BUREAU**

LRB-2740/P1insgm
GMM.....

(INSERT 1-4)

1 **SECTION 1.** ~~103.49~~ (3) (ar) of the statutes is amended to read:

2 ~~103.49~~ (3) (ar) In determining prevailing wage rates under par. (a) or (am), the
3 department may not use data from projects that are subject to this section, s. 66.0903,
4 103.50, 196.3745 (2) (e) 1. e., or 229.8275 or 40 USC 276a unless the department
5 determines that there is insufficient wage data in the area to determine those
6 prevailing wage rates, in which case the department may use data from projects that
7 are subject to this section, s. 66.0903, 103.50, 196.3745 (2) (e) 1. e., or 229.8275 or 40
8 USC 276a.

History: 1983 a. 27; 1985 a. 159; 1985 a. 332 ss. 141, 142, 253; 1987 a. 403 s. 256; 1989 a. 228; 1993 a. 112; 1995 a. 27, 215, 225; 1997 a. 35; 1999 a. 70; 1999 a. 150 ss. 628, 672; 1999 a. 167; 2001 a. 16, 30; 2005 a. 335.

9 **SECTION 2.** 109.09 (1) of the statutes is amended to read:

10 ~~109.09~~ (1) The department shall investigate and attempt equitably to adjust
11 controversies between employers and employees as to alleged wage claims. The
12 department may receive and investigate any wage claim which is filed with the
13 department, or received by the department under s. 109.10 (4), no later than 2 years
14 after the date the wages are due. The department may, after receiving a wage claim,
15 investigate any wages due from the employer against whom the claim is filed to any
16 employee during the period commencing 2 years before the date the claim is filed.
17 The department shall enforce this chapter and ss. 66.0903, 103.02, 103.49, 103.82,
18 104.12, 196.3745 (2) (e) 1. e., and 229.8275. In pursuance of this duty, the department
19 may sue the employer on behalf of the employee to collect any wage claim or wage
20 deficiency and ss. 109.03 (6) and 109.11 (2), and (3) shall apply to such actions.
21 Except for actions under s. 109.10, the department may refer such an action to the
22 district attorney of the county in which the violation occurs for prosecution and
23 collection and the district attorney shall commence an action in the circuit court

1 having appropriate jurisdiction. Any number of wage claims or wage deficiencies
 2 against the same employer may be joined in a single proceeding, but the court may
 3 order separate trials or hearings. In actions that are referred to a district attorney
 4 under this subsection, any taxable costs recovered by the district attorney shall be
 5 paid into the general fund of the county in which the violation occurs and used by that
 6 county to meet its financial responsibility under s. 978.13 (2) (b) for the operation of
 7 the office of the district attorney who prosecuted the action.

History: 1975 c. 380; 1979 c. 32 s. 92 (9); 1985 a. 29, 220; 1989 a. 113; 1991 a. 146; 1993 a. 86, 453; 1995 a. 227; 1997 a. 27, 237; 1999 a. 9; 1999 a. 150 s. 672; 1999 a. 167; 2001 a. 10; 2003 a. 63; 2005 a. 434.

8 **SECTION 3.** 111.322 (2m) (c) of the statutes is amended to read:

9 **111.322 (2m) (c)** The individual files a complaint or attempts to enforce a right
 10 under s. 66.0903, 103.49, 196.3745 (2) (e) 1. e., or 229.8275 or testifies or assists in
 11 any action or proceeding under s. 66.0903, 103.49, 196.3745 (2) (e) 1. e., or 229.8275.

History: 1981 c. 334; 1989 a. 228, 359; 1997 a. 237; 1999 a. 150 s. 672; 1999 a. 167, 176; 2009 a. 3.

(END OF INSERT)

(INSERT 4-21)

12 e. Agrees to pay all employees working on an improvement or application for
 13 which a loan is made under the program who would be entitled to receive the
 14 prevailing wage rate under s. 66.0903 and who would not be required or permitted
 15 to work more than the prevailing hours of labor, as defined in s. 103.49 (1) (c), if the
 16 improvement or application were a project of public works under s. 66.0903, not less
 17 than the prevailing wage rate determined under s. 66.0903 (3) or (6) and not to
 18 require or permit those employees to work more than the prevailing hours of labor,
 19 except as permitted under s. 66.0903 (4) (a); to keep and permit inspection of records
 20 in the same manner as a contractor performing work on a project of public works that
 21 is subject to s. 66.0903 is required to keep and permit inspection of records under s.

1 66.0903 (10); and otherwise to comply with s. 66.0903 in the same manner as a
2 contractor performing work on a project of public works that is subject to s. 66.0903
3 is required to comply with s. 66.0903.

4 f. Agrees not to permit an employee working on an improvement or application
5 for which a loan is made under the program to use, possess, attempt to possess,
6 distribute, deliver, or be under the influence of a drug, as defined in s. 103.503 (1) (d),
7 or use or be under the influence of alcohol, while performing that work, to have in
8 place a written program for the prevention of substance abuse among those
9 employees in the same manner as a contractor performing work on a project of public
10 works that is subject to s. 66.0903 is required to have in place such a written program
11 under s. 103.503 (3), and otherwise to comply with s. 103.503 in the same manner
12 as a contractor performing work on a project of public works that is subject to s.
13 66.0903 is required to comply with s. 103.503.

14 g. Agrees, if the contractor employs employees in trades that are
15 apprenticeable under subch. I of ch. 106, to sponsor an apprenticeship training
16 program that is approved by the department of workforce development for each of
17 those trades and to employ in each of those trades the maximum ratio of apprentices
18 to journeymen that are permitted under standards adopted, recognized, or approved
19 by that department.

(END OF INSERT)

(INSERT 7-16)

20 SECTION 4. 227.01 (13) (t) of the statutes is amended to read:

21 227.01 (13) (t) Ascertains and determines prevailing wage rates under ss.
22 66.0903, 103.49, 103.50, 196.3745 (2) (e) 1. e., and 229.8275, except that any action

1 or inaction which ascertains and determines prevailing wage rates under ss.
2 66.0903, 103.49, 103.50, 196.3745 (2) (e) 1. e., and 229.8275 is subject to judicial
3 review under s. 227.40.

History: 1985 a. 182; 1987 a. 27, 119, 395, 399, 403; 1989 a. 31, 56, 335, 341; 1991 a. 39, 254, 269, 309, 315; 1993 a. 16, 123, 237, 349, 364, 419, 442, 481, 491; 1995 a. 27, 215, 227, 289, 363; 1997 a. 27, 35, 231, 237; 1999 a. 9, 70; 1999 a. 150 s. 672; 1999 a. 167; 2001 a. 38, 109; 2003 a. 33 ss. 2364, 2813; 2005 a. 217, 418; 2007 a. 20; 2009 a. 2.

(END OF INSERT)

(INSERT 8-7)

4 **SECTION 5.** 946.15 (1) of the statutes is amended to read:
5 ~~946.15 (1)~~ Any employer, or any agent or employee of an employer, who induces
6 any person who seeks to be or is employed pursuant to a public contract, as defined
7 in s. 66.0901 (1) (c), or who seeks to be or is employed on a project on which a
8 prevailing wage rate determination has been issued by the department of workforce
9 development under s. 66.0903 (3), 103.49 (3), 103.50 (3), 196.3745 (2) (e) 1. e., or
10 229.8275 (3) or by a local governmental unit, as defined in s. 66.0903 (1) (d), under
11 s. 66.0903 (6) to give up, waive, or return any part of the compensation to which that
12 person is entitled under his or her contract of employment or under the prevailing
13 wage rate determination issued by the department or local governmental unit, or
14 who reduces the hourly basic rate of pay normally paid to an employee for work on
15 a project on which a prevailing wage rate determination has not been issued under
16 s. 66.0903 (3) or (6), 103.49 (3), 103.50 (3), 196.3745 (2) (e) 1. e., or 229.8275 (3) during
17 a week in which the employee works both on a project on which a prevailing wage
18 rate determination has been issued and on a project on which a prevailing wage rate
19 determination has not been issued, is guilty of a Class I felony.

History: 1979 c. 269; 1995 a. 27 s. 9138 (4); 1995 a. 215; 1997 a. 3; 1999 a. 150, 167; 2001 a. 30, 109.

20 **SECTION 6.** 946.15 (2) of the statutes is amended to read:

1 946.15 (2) Any person employed pursuant to a public contract, as defined in s.
2 66.0901 (1) (c), or employed on a project on which a prevailing wage rate
3 determination has been issued by the department of workforce development under
4 s. 66.0903 (3), 103.49 (3), 103.50 (3), 196.3745 (2) (e) 1. e., or 229.8275 (3) or by a local
5 governmental unit, as defined in s. 66.0903 (1) (d), under s. 66.0903 (6) who gives up,
6 waives, or returns to the employer or agent of the employer any part of the
7 compensation to which the employee is entitled under his or her contract of
8 employment or under the prevailing wage determination issued by the department
9 or local governmental unit, or who gives up any part of the compensation to which
10 he or she is normally entitled for work on a project on which a prevailing wage rate
11 determination has not been issued under s. 66.0903 (3) or (6), 103.49 (3), 103.50 (3),
12 196.3745 (2) (e) 1. e., or 229.8275 (3) during a week in which the person works
13 part-time on a project on which a prevailing wage rate determination has been
14 issued and part-time on a project on which a prevailing wage rate determination has
15 not been issued, is guilty of a Class C misdemeanor.

History: 1979 c. 269; 1995 a. 27 s. 9130 (4); 1995 a. 215; 1997 a. 3; 1999 a. 150, 167; 2001 a. 30, 109.

SECTION 7. 946.15 (3) of the statutes is amended to read:

17 946.15 (3) Any employer or labor organization, or any agent or employee of an
18 employer or labor organization, who induces any person who seeks to be or is
19 employed on a project on which a prevailing wage rate determination has been issued
20 by the department of workforce development under s. 66.0903 (3), 103.49 (3), 103.50
21 (3), 196.3745 (2) (e) 1. e., or 229.8275 (3) or by a local governmental unit, as defined
22 in s. 66.0903 (1) (d), under s. 66.0903 (6) to permit any part of the wages to which that
23 person is entitled under the prevailing wage rate determination issued by the
24 department or local governmental unit to be deducted from the person's pay is guilty

1 ✓ of a Class I felony, unless the deduction would be permitted under 29 CFR 3.5 or 3.6
2 from a person who is working on a project that is subject to 40 USC 276c.

3 **History:** 1979 c. 269; 1995 a. 27 s. 9130 (4); 1995 a. 215; 1997 a. 3; 1999 a. 150, 167; 2001 a. 30, 109.

3 **SECTION 8.** 946.15 (4) of the statutes is amended to read:

4 946.15 (4) Any person employed on a project on which a prevailing wage rate
5 determination has been issued by the department of workforce development under
6 s. 66.0903 (3), 103.49 (3), 103.50 (3), 196.3745 (2)(e) 1. e., or 229.8275 (3) or by a local
7 governmental unit, as defined in s. 66.0903 (1) (d), under s. 66.0903 (6) who permits
8 any part of the wages to which that person is entitled under the prevailing wage rate
9 determination issued by the department or local governmental unit to be deducted
10 from his or her pay is guilty of a Class C misdemeanor, unless the deduction would
11 be permitted under 29 CFR 3.5 or 3.6 from a person who is working on a project that
12 is subject to 40 USC 276c.

History: 1979 c. 269; 1995 a. 27 s. 9130 (4); 1995 a. 215; 1997 a. 3; 1999 a. 150, 167; 2001 a. 30, 109.

(END OF INSERT)

DOA:.....Hynek, BB – Milwaukee energy efficiency program

FOR 2009-11 BUDGET – NOT READY FOR INTRODUCTION

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

Analysis by the Legislative Reference Bureau

STATE GOVERNMENT

PUBLIC UTILITY REGULATION

This bill allows an investor-owned electric or natural gas public utility (energy utility) to apply to the PSC for authorization to administer, fund, or provide administrative services for a program that invests in energy efficiency improvements for customers in which the costs borne by a customer for such an improvement are offset by the energy savings resulting from the improvement. If the PSC authorizes such a program, the energy utility must file a tariff specifying the terms and conditions of utility and nonutility service provided to customers for improvements under the program. A tariff must include terms and conditions for billing customers, as well as contracts between an energy utility and an owner of property that is benefited by an improvement that require the owner to do the following: 1) inform lessees that are liable for utility service that the cost of the improvement will appear on the lessees' utility bills; and 2) inform a purchaser of the property that the purchaser, or any other person who is liable for utility service at the property, is liable for the unpaid costs of the improvement and that such costs will appear on utility bills for the property.

The bill also does the following: 1) allows an energy utility to include a separate line item on customer bills that offsets certain costs of the program with energy savings resulting from an improvement made under the program; 2) prohibits an

energy utility from recovering from ratepayers any bad debt related to nonutility services provided under a program; and 3) requires an owner of residential property to make a disclosure about an improvement made under a program on the real estate conditions report that is required for property transfers.

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

1 **SECTION 1.** 196.374 (2) (d) of the statutes is created to read:

2 196.374 (2) (d) *Immediate savings energy efficiency programs.* 1. The
3 commission may, upon application by an energy utility, authorize the energy utility
4 to administer, fund, or provide administrative services for an immediate savings
5 energy efficiency program that invests in energy efficiency improvements for utility
6 customers in which the costs borne by a customer for an improvement are offset by
7 the energy savings resulting from the improvement.

8 2. An energy utility for which an immediate savings energy efficiency program
9 is authorized under subd. 1. shall file a tariff specifying the terms and conditions of
10 utility and nonutility service provided to customers for whom improvements are
11 made under the program. A tariff filed under this subdivision shall have no effect
12 until approved by the commission. A tariff filed by an energy utility under this
13 subdivision shall include all of the following:

14 a. Terms and conditions for billing customers for utility and nonutility service
15 related to improvements benefiting the customers.

16 b. A contract between the energy utility and an owner of property benefited by
17 an improvement that requires the owner to inform any property lessees who are
18 liable for utility service that the cost of the improvement will appear on the lessees'
19 utility bills.

1 c. A contract between the energy utility and an owner of property benefited by
2 an improvement that requires the owner to inform any purchaser of the property
3 that the purchaser, or any other person who is liable for utility service at the property,
4 is liable for the unpaid cost of the improvement and that such unpaid cost will appear
5 on utility bills for the property.

6 d. Any other term or condition required by the commission.

7 3. An energy utility for which a tariff is approved under subd. 2. for an
8 immediate savings energy efficiency program may include a separate line item on
9 bills of a customer at a property benefited by an improvement made under the
10 program that offsets the costs of the program borne by the customer with the energy
11 savings resulting from the improvement. Notwithstanding s. 218.04, an energy
12 utility need not obtain a license as a collection agency for this billing practice.

13 4. Any costs that an energy utility incurs to administer, fund, or provide
14 administrative services for an immediate savings energy efficiency program are in
15 addition to the amounts the commission shall require the energy utility to spend
16 under sub. (3) (b) 2.

17 5. An energy utility may not recover from ratepayers any bad debt related to
18 nonutility services provided under an immediate savings energy efficiency program.

19 **SECTION 2.** 709.03 (form) C. 25m. of the statutes is created to read:

20 709.03 (form)

1 C.25m. I am aware that an improvement has been
2 made to the property under an immediate
3 savings energy efficiency program authorized
4 under s. 196.374 (2) (d) and that utility bills
5 for the property will include unpaid costs of
6 the improvement.

7 **SECTION 9341. Initial applicability; Public Service Commission.**

8 (1) IMMEDIATE SAVINGS ENERGY EFFICIENCY PROGRAMS.

9 (a) The treatment of section 709.03 (form) C. 25m. of the statutes first applies
10 to original real estate condition reports that are furnished on the effective date of this
11 paragraph.

12 (b) The treatment of section 196.374 (2) (d) of the statutes first applies to
13 programs for which applications are made on the effective date of this paragraph.

14 (END)