

State of Wisconsin
2009 - 2010 LEGISLATURE

LRB-2740/P1
MDK&MES&GMM:/.....

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PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION

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(before NOON)

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NUMBER

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

4 SECTION 1. 16.26 of the statutes is renumbered 16.26 (1). x
5 SECTION 2. 16.26 (2) of the statutes is created to read: A
6 16.26 (2) If the joint committee on finance approves a program under s.
7 196.3745 (3), the department shall prohibit by rule the performance of any work
8 under a contract entered into under sub. (1) by a contractor who is not included in
9 the list specified in s. 196.3745 (2) (e) 1., except that the department's rule shall allow

SECTION 2

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1 the performance of work by a contractor who does not satisfy the requirement under
2 s. 196.3745 (2) (e) 1. ~~f~~ if no contractor who satisfies the requirement is available to
3 perform the work. This subsection applies to contracts that are entered into,
4 extended, modified, or renewed on the effective date of the department's rule.

****NOTE: Unlike proposed s. 196.374 (2) (d), which allows the PSC to use an order or rule, the above requires DOA to promulgate a rule. I don't think that DOA has the same history as the PSC in using orders to accomplish statutory requirements. However, you may want to obtain DOA's input on this issue. Note that the draft contains a nonstatutory provision allowing DOA to use emergency rules, which would allow DOA to get rules in place rather quickly.

****NOTE: Do you also want to require the 25% place-of-business requirement described in s. 196.3745 (2) (e) 3.?

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

6 103.49 (3) (ar) In determining prevailing wage rates under par. (a) or (am), the
7 department may not use data from projects that are subject to this section, s. 66.0903,
8 103.50, 196.3745 (2) (e) 1. e., or 229.8275 or 40 USC 276a unless the department
9 determines that there is insufficient wage data in the area to determine those
10 prevailing wage rates, in which case the department may use data from projects that
11 are subject to this section, s. 66.0903, 103.50, 196.3745 (2) (e) 1. e., or 229.8275 or 40
12 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.

13 **SECTION 4.** 109.09 (1) of the statutes is amended to read:

14 109.09 (1) The department shall investigate and attempt equitably to adjust
15 controversies between employers and employees as to alleged wage claims. The
16 department may receive and investigate any wage claim which is filed with the
17 department, or received by the department under s. 109.10 (4), no later than 2 years
18 after the date the wages are due. The department may, after receiving a wage claim,
19 investigate any wages due from the employer against whom the claim is filed to any
20 employee during the period commencing 2 years before the date the claim is filed.

1 The department shall enforce this chapter and ss. 66.0903, 103.02, 103.49, 103.82,
2 104.12, 196.3745 (2) (e) 1. e., and 229.8275. In pursuance of this duty, the department
3 may sue the employer on behalf of the employee to collect any wage claim or wage
4 deficiency and ss. 109.03 (6) and 109.11 (2), and (3) shall apply to such actions.
5 Except for actions under s. 109.10, the department may refer such an action to the
6 district attorney of the county in which the violation occurs for prosecution and
7 collection and the district attorney shall commence an action in the circuit court
8 having appropriate jurisdiction. Any number of wage claims or wage deficiencies
9 against the same employer may be joined in a single proceeding, but the court may
10 order separate trials or hearings. In actions that are referred to a district attorney
11 under this subsection, any taxable costs recovered by the district attorney shall be
12 paid into the general fund of the county in which the violation occurs and used by that
13 county to meet its financial responsibility under s. 978.13 (2) (b) for the operation of
14 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.

15 **SECTION 5.** 111.322 (2m) (c) of the statutes is amended to read:

16 111.322 (2m) (c) The individual files a complaint or attempts to enforce a right
17 under s. 66.0903, 103.49, 196.3745 (2) (e) 1. e., or 229.8275 or testifies or assists in
18 any action or proceeding under s. 66.0903, 103.49, 196.3745 (2) (e) 1. e., or 229.8275.

19 **SECTION 6.** 196.374 (2) ([^]d) of the statutes is created to read:

20 196.374 (2) (d) *Contractors*. If the joint committee on finance approves a
21 program under s. 196.3745 (3), the commission shall prohibit, by order or rule, the
22 performance of any work under a contract under a program under par. (a) 1., (b) 1.
23 or 2., or (c) by a contractor who is not included in the list specified in s. 196.3745 (2)
24 (e) 1., except that the commission's order or rule shall allow the performance of work

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1 by a contractor who does not satisfy the requirement under s. 196.3745 (2) (e) 1. ~~f~~
2 if no contractor who satisfies the requirement is available to perform the work. This
3 paragraph applies to contracts that are entered into, extended, modified, or renewed
4 on the effective date of the commission's order or rule.

****NOTE: Do you also want to require the 25% place-of-business requirement described in s. 196.3745 (2) (e) 3.?

5 SECTION 7. 196.374 (4) (b) of the statutes is amended to read:

Subject to

6 196.374 (4) (b) An energy utility that provides financing under an energy
7 efficiency program under sub. (2) (b) 1. or 2. for installation, by a customer, of energy
8 efficiency or renewable resource processes, equipment, or appliances, or an affiliate
9 of such a utility, may not sell to or install for the customer those processes,
10 equipment, appliances, or related materials. ~~The~~ ~~except as provided in an order or~~ any
11 rule of the commission under sub. (2) (d), the customer shall acquire the installation
12 of the processes, equipment, appliances, or related materials from an independent
13 contractor of the customer's choice.

History: 1983 a. 27; 1999 a. 9; 2001 a. 30; 2005 a. 141; 2007 a. 17, 20.

14 SECTION 8. 196.3745 of the statutes is created to read:

15 **196.3745 Residential energy efficiency and renewable energy loan**
16 **program. (1) DEFINITIONS.** In this section:

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

****NOTE: As drafted, loans can be made for any residence of a customer or property owner. Is that okay, or do you want to limit loans to a customer's or property owner's "primary" residence?

20 (b) "Improvement or application" means an energy efficiency improvement or
21 renewable resource application.

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

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

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

~~energy efficiency~~ ~~renewable resource~~

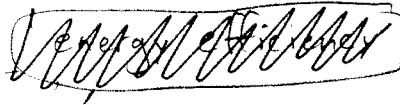
6 (2) PROPOSAL. (a) *Duty to submit.* The commission shall submit a proposal to
7 the joint committee on finance for a program allowing the commission to make grants
8 to utilities and political subdivisions for making loans to residential customers and
9 residential property owners for making or installing improvements or applications.
10 Participation in the program shall be at the discretion of a utility, political
11 subdivision, residential customer, or residential property owner and the commission
12 may not require that a utility, political subdivision, residential customer, or
13 residential property owner participate in the program. If a residential customer or
14 residential property owner participates in the program, it is the responsibility of the
15 customer or property owner to hire the contractor to perform the work for making or
16 installing the improvement or application, consistent with the requirements of the
17 program, and to repay the loan to the utility or political subdivision under the terms
18 agreed to by the parties to the loan.

19 (b) *Utilities.* A utility may participate in the program described under par. (a)
20 only if the utility files a tariff that is approved by the commission. The commission
21 may not approve a tariff filed by a utility unless the commission determines that the
22 tariff does all of the following:

23 1. Specifies terms and conditions for billing residential customers for utility
24 and nonutility service related to improvements or applications for which loans are
25 made.

~~energy efficiency~~

~~renewable resource~~



1 2. Requires a contract between the utility and an owner of property benefited
2 by an improvement or application that requires the owner to inform any property
3 lessees who are liable for utility service that the cost of the improvement or
4 application will appear on the lessees' utility bills.

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

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

11 (c) *Political subdivisions.* 1. A political subdivision may participate in the
12 program described under par. (a) by making loans to residents of the political
13 subdivision for making or installing improvements or applications as described
14 under par. (a).

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

20 3. A political subdivision that makes a loan under this paragraph may collect
21 the loan repayment as a special charge under s. 66.0627 and, notwithstanding the
22 limitations under s. 66.0627 (2), a county may use the procedure under s. 66.0627 to
23 collect such a repayment for a loan that is made under this paragraph.



1 Notwithstanding the provisions of s. 66.0627 (4), a special charge imposed under this
 2 subdivision may be collected in installments and may be included in the current or
 3 next tax roll for collection and settlement under ch. 74 even if the special charge is
 4 not delinquent.

5 (d) *Audits.* A residential customer or residential property owner is not eligible
 6 for a loan for an improvement or application under the program described in par. (a)
 7 unless an audit is performed that demonstrates that the energy savings resulting
 8 from the improvement or application are expected to be equal to or greater than the
 9 cost of the improvement or application. The proposal submitted by the commission
 10 shall specify the certification requirements that a person must satisfy in order to
 11 perform an audit required under this paragraph.

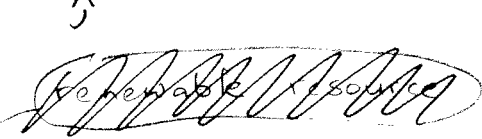
***NOTE: You indicated that the audits must be performed by a home performance consultant certified under PSC rules. However, I cannot find any reference to such consultants in the PSC's rules. Therefore, the above requires the PSC to specify the certifications requirements that an auditor must satisfy. Is that okay, or do you want the draft to specify the requirements?

***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 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?

12 (e) *Contractors.* 1. All work involved in making or installing an improvement
 13 or application under the program described in par. (a) shall be performed by a
 14 contractor that the commission has included on a list of approved contractors that
 15 the commission shall make available to residential customers and residential
 16 property owners upon request. The proposal shall include a procedure for the
 17 commission to approve a contractor for inclusion on the list and a contractor may be



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1 included only if the commission determines that the contractor satisfies all of the
2 following:

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

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

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

****NOTE: The reference to "contract specifications" is confusing. Does it refer to
the contract between the contractor and a property owner or customer? Is so, prior to
contracting, how would one know what those specifications are?

know ←

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

****NOTE: As noted above, the reference to "contract specifications" is confusing.

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

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

5 f. Agrees not to permit an employee working on an improvement or application
6 for which a loan is made under the program to use, possess, attempt to possess,
7 distribute, deliver, or be under the influence of a drug, as defined in s. 103.503 (1) (d),
8 or use or be under the influence of alcohol, while performing that work, to have in
9 place a written program for the prevention of substance abuse among those
10 employees in the same manner as a contractor performing work on a project of public
11 works that is subject to s. 66.0903 is required to have in place such a written program
12 under s. 103.503 (3), and otherwise to comply with s. 103.503 in the same manner
13 as a contractor performing work on a project of public works that is subject to s.
14 66.0903 is required to comply with s. 103.503.

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

21 h. Fully complies with all equal employment opportunity, affirmative action,
22 and other workforce participation requirements.

23 i. Provides the commission a detailed statement regarding related business
24 entities if, at any time in the *three* years prior to inclusion on the list, the contractor

SECTION 8

1 has controlled or has been controlled by another corporation, partnership, or other
2 business entity operating in the construction industry.

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

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

****NOTE: Is the above okay?

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L. Discloses to the commission whether in the ³three years prior to inclusion on
9 the list the contractor has had any type of business, contracting, or trade license,
10 certification, or registration revoked or suspended; been debarred by any federal
11 state, or local government agency; defaulted on any project; committed a willful
12 violation of federal or state safety law as determined by a final decision of a court or
13 government agency authority; or been found by a final decision of a court or
14 government agency to be in violation of any other law relating to its contracting
15 business, including wage and hour laws, prevailing wage laws, environmental laws,
16 antitrust laws, or tax laws, where the penalty for such violation resulted in the
17 imposition of a fine, back pay damages, or any other type of penalty, in an amount
18 of more than \$10,000.

19 m. Certifies to the commission that the contractor's application for inclusion
20 on the list has been executed by a principal or person employed by the applicant who
21 has sufficient knowledge to address all matters in the application, including an
22 attestation stating, under the penalty of perjury, that all information submitted is
23 true, complete, and accurate.

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

3. An improvement or application is not eligible for a loan under the program described in par. (a) unless at least 25 percent of the contractors who perform work on the improvement or application have a place of business in the political subdivision in which the work is performed.

****NOTE: Is the above okay?

(f) *Funding*. The proposal under par. (a) shall recommend options for funding the grants to utilities and political subdivisions for making loans under the program, including any moneys available under P.L. 111-5 or bonding authority under state law. In recommending funding options, the commission shall consider those options 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: How should the draft deal with the 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?

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

(4) UTILITIES. (a) A utility for which the commission approves a tariff under a program approved by the joint committee on finance under sub. (3) may include a separate line item on bills of a residential customer at a property benefited by an

the commission shall implement the program as approved or as modified and approved

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1 improvement or application made or installed under the program that offsets the
2 costs of the program borne by the customer with the energy savings resulting from
3 the improvement or application. Notwithstanding s. 218.04, a utility need not obtain
4 a license as a collection agency for this billing practice.

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

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

11 SECTION 9. 227.01 (13) (t) of the statutes is amended to read:

12 227.01 (13) (t) Ascertains and determines prevailing wage rates under ss.
13 66.0903, 103.49, 103.50, 196.3745 (2) (e) 1. e., and 229.8275, except that any action
14 or inaction which ascertains and determines prevailing wage rates under ss.
15 66.0903, 103.49, 103.50, 196.3745 (2) (e) 1. e., and 229.8275 is subject to judicial
16 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.

17 SECTION 10. 709.03 (form) C. 25m. of the statutes is created to read:

18 709.03 (form)

**** Note: The above is based on language requested by the PSC, but I think it is unclear. Can the PSC propose an alternative that is clearer? **

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

resource

or 196.3745 (2)(e) 1.e.

SECTION 11. 946.15 (1) of the statutes is amended to read:

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

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 12. 946.15 (2) of the statutes is amended to read:

or 196.3745 (2) (e) 1.e.

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.

16 **SECTION 13.** 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.

or 196.3745 (2)(e) i.e.

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.

SECTION 14. 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.

13 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 15. Nonstatutory provisions

Administration

14 (1) Using the procedure under section 227.24 of the statutes, the department
15 of administration may promulgate rules required under section 16.26 (2) of the
16 statutes, as created by this act, for the period before the effective date of the
17 permanent rules promulgated under that ^{sub}section, but not to exceed the period
18 authorized under section 227.24 (1) (c) and (2) of the statutes. Notwithstanding
19 section 227.24 (1) (a), (2) (b), and (3) of the statutes, the department is not required
20 to provide evidence that promulgating a rule under this subsection as an emergency
21 rule is necessary for the preservation of ^{the} public peace, health, safety, or welfare and
22 is not required to provide a finding of ^{an} emergency for a rule promulgated under this
23 subsection.

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SECTION 16. Initial applicability

Other

fix component

fix component

DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-2740/P1dn

MDK:f:...

ejs

Rep. Mason:

Please review this draft to make sure it achieves your intent. I included NOTES in the draft that raise questions about particular provisions of the draft. ✓

In addition, you indicated that the contractor requirements of the draft should also apply to other energy efficiency and weatherization programs for which work is contracted under current law. Therefore, the draft imposes those requirements on programs under ss. 16.26 ✓ and 196.374 (2) (a), ✓ (b), ✓ and (c). ✓ Are there additional programs under current law that are relevant to this issue? You may want to obtain the input of DOA or the PSC on this issue. ✓

Mark D. Kunkel
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**DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU**

LRB-2740/P1dn
MDK:cjs:md

April 23, 2009

Rep. Mason:

Please review this draft to make sure it achieves your intent. I included NOTES in the draft that raise questions about particular provisions of the draft.

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State of Wisconsin
2009 - 2010 LEGISLATURE

LRB-2740/P1

MDK/MES/GMM:cjs:md

O-NOTE

Stays

P2

SOON

PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION

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1 AN ACT *to renumber* 16.26; *to amend* 103.49 (3) (ar), 109.09 (1), 111.322 (2m)
 2 (c), 196.374 (4) (b), 227.01 (13) (t), 946.15 (1), 946.15 (2), 946.15 (3) and 946.15
 3 (4); and *to create* 16.26 (2), 196.374 (2) (d), 196.3745 and 709.03 (form) C. 25m.
 4 of the statutes; **relating to:** creating a loan program for residential energy
 5 efficiency improvements and renewable energy applications and providing an
 6 exemption 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 state of Wisconsin, represented in senate and assembly, do enact as follows:

7 SECTION 1. 16.26 of the statutes is renumbered 16.26 (1).
 8 SECTION 2. 16.26 (2) of the statutes is created to read:
 9 16.26 (2) If the joint committee on finance approves a program under s.
 10 196.3745 (3), the department shall prohibit by rule the performance of any work

1 under a contract entered into under sub. (1) by a contractor who is not included in
2 the list specified in s. 196.3745 (2) (e) 1., except that the department's rule shall allow
3 the performance of work by a contractor who does not satisfy the requirement under
4 s. 196.3745 (2) (e) 1. g. if no contractor who satisfies the requirement is available to
5 perform the work. This subsection applies to contracts that are entered into,
6 extended, modified, or renewed on the effective date of the department's rule.

****NOTE: Unlike proposed s. 196.374 (2) (d), which allows the PSC to use an order or rule, the above requires DOA to promulgate a rule. I don't think that DOA has the same history as the PSC in using orders to accomplish statutory requirements. However, you may want to obtain DOA's input on this issue. Note that the draft contains a nonstatutory provision allowing DOA to use emergency rules, which would allow DOA to get rules in place rather quickly.

****NOTE: Do you also want to require the 25% place-of-business requirement described in s. 196.3745 (2) (e) 3.?

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

8 103.49 (3) (ar) In determining prevailing wage rates under par. (a) or (am), the
9 department may not use data from projects that are subject to this section, s. 66.0903,
10 103.50, 196.3745 (2) (e) 1. e., or 229.8275 or 40 USC 276a unless the department
11 determines that there is insufficient wage data in the area to determine those
12 prevailing wage rates, in which case the department may use data from projects that
13 are subject to this section, s. 66.0903, 103.50, 196.3745 (2) (e) 1. e., or 229.8275 or 40
14 USC 276a.

15 **SECTION 4.** 109.09 (1) of the statutes is amended to read:

16 109.09 (1) The department shall investigate and attempt equitably to adjust
17 controversies between employers and employees as to alleged wage claims. The
18 department may receive and investigate any wage claim which is filed with the
19 department, or received by the department under s. 109.10 (4), no later than 2 years
20 after the date the wages are due. The department may, after receiving a wage claim,

1 investigate any wages due from the employer against whom the claim is filed to any
2 employee during the period commencing 2 years before the date the claim is filed.
3 The department shall enforce this chapter and ss. 66.0903, 103.02, 103.49, 103.82,
4 104.12, 196.3745 (2) (e) 1. e., and 229.8275. In pursuance of this duty, the department
5 may sue the employer on behalf of the employee to collect any wage claim or wage
6 deficiency and ss. 109.03 (6) and 109.11 (2), and (3) shall apply to such actions.
7 Except for actions under s. 109.10, the department may refer such an action to the
8 district attorney of the county in which the violation occurs for prosecution and
9 collection and the district attorney shall commence an action in the circuit court
10 having appropriate jurisdiction. Any number of wage claims or wage deficiencies
11 against the same employer may be joined in a single proceeding, but the court may
12 order separate trials or hearings. In actions that are referred to a district attorney
13 under this subsection, any taxable costs recovered by the district attorney shall be
14 paid into the general fund of the county in which the violation occurs and used by that
15 county to meet its financial responsibility under s. 978.13 (2) (b) for the operation of
16 the office of the district attorney who prosecuted the action.

17 **SECTION 5.** 111.322 (2m) (c) of the statutes is amended to read:

18 111.322 **(2m)** (c) The individual files a complaint or attempts to enforce a right
19 under s. 66.0903, 103.49, 196.3745 (2) (e) 1. e., or 229.8275 or testifies or assists in
20 any action or proceeding under s. 66.0903, 103.49, 196.3745 (2) (e) 1. e., or 229.8275.

21 **SECTION 6.** 196.374 (2) (d) of the statutes is created to read:

22 196.374 **(2)** (d) *Contractors.* If the joint committee on finance approves a
23 program under s. 196.3745 (3), the commission shall prohibit, by order or rule, the
24 performance of any work under a contract under a program under par. (a) 1., (b) 1.
25 or 2., or (c) by a contractor who is not included in the list specified in s. 196.3745 (2)

1 (e) 1., except that the commission's order or rule shall allow the performance of work
2 by a contractor who does not satisfy the requirement under s. 196.3745 (2) (e) 1. g.
3 if no contractor who satisfies the requirement is available to perform the work. This
4 paragraph applies to contracts that are entered into, extended, modified, or renewed
5 on the effective date of the commission's order or rule.

****NOTE: Do you also want to require the 25% place-of-business requirement
described in s. 196.3745 (2) (e) 3.?

6 **SECTION 7.** 196.374 (4) (b) of the statutes is amended to read:

7 196.374 (4) (b) An energy utility that provides financing under an energy
8 efficiency program under sub. (2) (b) 1. or 2. for installation, by a customer, of energy
9 efficiency or renewable resource processes, equipment, or appliances, or an affiliate
10 of such a utility, may not sell to or install for the customer those processes,
11 equipment, appliances, or related materials. The Subject to any order or rule of the
12 commission under sub. (2) (d), the customer shall acquire the installation of the
13 processes, equipment, appliances, or related materials from an independent
14 contractor of the customer's choice.

15 **SECTION 8.** 196.3745 of the statutes is created to read:

16 **196.3745 Residential energy efficiency and renewable energy loan**
17 **program. (1) DEFINITIONS.** In this section:

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

****NOTE: As drafted, loans can be made for any residence of a customer or property
owner. Is that okay, or do you want to limit loans to a customer's or property owner's
"primary" residence?

21 (b) "Improvement or application" means an energy efficiency improvement or
22 renewable resource application.

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

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

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

6 (2) PROPOSAL. (a) *Duty to submit.* The commission shall submit a proposal to
7 the joint committee on finance for a program allowing the commission to make grants
8 to utilities and political subdivisions for making loans to residential customers and
9 residential property owners for making or installing improvements or applications.
10 Participation in the program shall be at the discretion of a utility, political
11 subdivision, residential customer, or residential property owner and the commission
12 may not require that a utility, political subdivision, residential customer, or
13 residential property owner participate in the program. If a residential customer or
14 residential property owner participates in the program, it is the responsibility of the
15 customer or property owner to hire the contractor to perform the work for making or
16 installing the improvement or application, consistent with the requirements of the
17 program, and to repay the loan to the utility or political subdivision under the terms
18 agreed to by the parties to the loan.

X 19 (b) *Utilities.* A utility may participate in the program described under par. (a)
20 only if the utility files a tariff that is approved by the commission. The commission
21 may not approve a tariff filed by a utility unless the commission determines that the
22 tariff does all of the following:

X 23 ~~(1)~~ (a.) Specifies terms and conditions for billing residential customers for utility
24 and nonutility service related to improvements or applications for which loans are
25 made.

INCEPT 6-10

1 Requires a contract between the utility and an owner of property benefited
2 by an improvement or application that requires the owner to inform any property
3 lessees who are liable for utility service that the cost of the improvement or
4 application will appear on the lessees' utility bills.

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

10 Includes any other term or condition required by the commission.

11 (c) *Political subdivisions.* 1. A political subdivision may participate in the
12 program described under par. (a) by making loans to residents of the political
13 subdivision for making or installing improvements or applications as described
14 under par. (a).

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

20 3. A political subdivision that makes a loan under this paragraph may collect
21 the loan repayment as a special charge under s. 66.0627 and, notwithstanding the
22 limitations under s. 66.0627 (2), a county may use the procedure under s. 66.0627 to
23 collect such a repayment for a loan that is made under this paragraph.

1 Notwithstanding the provisions of s. 66.0627 (4), a special charge imposed under this
2 subdivision may be collected in installments and may be included in the current or
3 next tax roll for collection and settlement under ch. 74 even if the special charge is
4 not delinquent.

5 (d) *Audits.* A residential customer or residential property owner is not eligible
6 for a loan for an improvement or application under the program described in par. (a)
7 unless an audit is performed that demonstrates that the energy savings resulting
8 from the improvement or application are expected to be equal to or greater than the
9 cost of the improvement or application. The proposal submitted by the commission
10 under par. (a) shall specify the certification requirements that a person must satisfy
11 in order to perform an audit required under this paragraph.

****NOTE: You indicated 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. Therefore, the above requires the PSC to specify the certifications requirements that an auditor must satisfy. Is that okay, or do you want the draft to specify the requirements?

****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 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?

12 (e) *Contractors.* 1. All work involved in making or installing an improvement
13 or application under the program described in par. (a) shall be performed by a
14 contractor that the commission has included on a list of approved contractors that
15 the commission shall make available to residential customers and residential
16 property owners upon request. The proposal shall include a procedure for the
17 commission to approve a contractor for inclusion on the list and a contractor may be

1 included only if the commission determines that the contractor satisfies all of the
2 following:

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

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

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

****NOTE: The reference to "contract specifications" is confusing. Does it refer to
the contract between the contractor and a property owner or customer? Is so, prior to
contracting, how would one know what those specifications are?

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

****NOTE: As noted above, the reference to "contract specifications" is confusing.

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

Except as provided in subd. 205

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

5 f. Agrees not to permit an employee working on an improvement or application
6 for which a loan is made under the program to use, possess, attempt to possess,
7 distribute, deliver, or be under the influence of a drug, as defined in s. 103.503 (1) (d),
8 or use or be under the influence of alcohol, while performing that work, to have in
9 place a written program for the prevention of substance abuse among those
10 employees in the same manner as a contractor performing work on a project of public
11 works that is subject to s. 66.0903 is required to have in place such a written program
12 under s. 103.503 (3), and otherwise to comply with s. 103.503 in the same manner
13 as a contractor performing work on a project of public works that is subject to s.
14 66.0903 is required to comply with s. 103.503.

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

21 h. Fully complies with all equal employment opportunity, affirmative action,
22 and other workforce participation requirements.

23 i. Provides the commission a detailed statement regarding related business
24 entities if, at any time in the 3 years prior to inclusion on the list, the contractor has

1 controlled or has been controlled by another corporation, partnership, or other
2 business entity operating in the construction industry.

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

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

****NOTE: Is the above okay?

8 L. Discloses to the commission whether in the 3 years prior to inclusion on the
9 list the contractor has had any type of business, contracting, or trade license,
10 certification, or registration revoked or suspended; been debarred by any federal
11 state, or local government agency; defaulted on any project; committed a willful
12 violation of federal or state safety law as determined by a final decision of a court or
13 government agency authority; or been found by a final decision of a court or
14 government agency to be in violation of any other law relating to its contracting
15 business, including wage and hour laws, prevailing wage laws, environmental laws,
16 antitrust laws, or tax laws, where the penalty for such violation resulted in the
17 imposition of a fine, back pay damages, or any other type of penalty, in an amount
18 of more than \$10,000.

19 m. Certifies to the commission that the contractor's application for inclusion
20 on the list has been executed by a principal or person employed by the applicant who
21 has sufficient knowledge to address all matters in the application, including an
22 attestation stating, under the penalty of perjury, that all information submitted is
23 true, complete, and accurate.

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

7 3. An improvement or application is not eligible for a loan under the program
8 described in par. (a) unless at least 25 percent of the contractors who perform work
9 on the improvement or application have a place of business in the political
10 subdivision in which the work is performed.

****NOTE: Is the above okay?

11 (f) *Funding*. The proposal under par. (a) shall recommend options for funding
12 the grants to utilities and political subdivisions for making loans under the program,
13 including any moneys available under P.L. 111-5 or bonding authority under state
14 law. In recommending funding options, the commission shall consider those options
15 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: How should the draft deal with the 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?

16 **(3) PROGRAM APPROVAL.** If the joint committee on finance approves, or approves
17 with modifications, a program described in a proposal under sub. (2) (a) the
18 commission shall implement the program as approved or as modified and approved.

19 **(4) UTILITIES.** (a) A utility for which the commission approves a tariff under
20 a program approved by the joint committee on finance under sub. (3) may include a
21 separate line item on bills of a residential customer at a property benefited by an

1 improvement or application made or installed under the program that offsets the
2 costs of the program borne by the customer with the energy savings resulting from
3 the improvement or application. Notwithstanding s. 218.04, a utility need not obtain
4 a license as a collection agency for this billing practice.

****NOTE: The above is based on language requested by the PSC, but I think it is
unclear. Can the PSC propose an alternative that is clearer?

5 (b) Any costs that a utility incurs to administer, fund, or provide administrative
6 services for a loan made in accordance with a tariff described in par. (a) are in
7 addition to the amounts the commission requires the energy utility to spend under
8 s. 196.374 (3) (b) 2.

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

11 **SECTION 9.** 227.01 (13) (t) of the statutes is amended to read:

12 227.01 (13) (t) Ascertain and determines prevailing wage rates under ss.
13 66.0903, 103.49, 103.50, 196.3745 (2) (e) 1. e., and 229.8275, except that any action
14 or inaction which ascertain and determines prevailing wage rates under ss.
15 66.0903, 103.49, 103.50, 196.3745 (2) (e) 1. e., and 229.8275 is subject to judicial
16 review under s. 227.40.

17 **SECTION 10.** 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 resource 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 11.** 946.15 (1) of the statutes is amended to read:

9 946.15 (1) Any employer, or any agent or employee of an employer, who induces
10 any person who seeks to be or is employed pursuant to a public contract, as defined
11 in s. 66.0901 (1) (c), or who seeks to be or is employed on a project on which a
12 prevailing wage rate determination has been issued by the department of workforce
13 development under s. 66.0903 (3), 103.49 (3), 103.50 (3), 196.3745 (2) (e) 1. e., or
14 229.8275 (3) or by a local governmental unit, as defined in s. 66.0903 (1) (d), under
15 s. 66.0903 (6) or 196.3745 (2) (e) 1. e. to give up, waive, or return any part of the
16 compensation to which that person is entitled under his or her contract of
17 employment or under the prevailing wage rate determination issued by the
18 department or local governmental unit, or who reduces the hourly basic rate of pay
19 normally paid to an employee for work on a project on which a prevailing wage rate
20 determination has not been issued under s. 66.0903 (3) or (6), 103.49 (3), 103.50 (3),
21 196.3745 (2) (e) 1. e., or 229.8275 (3) during a week in which the employee works both
22 on a project on which a prevailing wage rate determination has been issued and on
23 a project on which a prevailing wage rate determination has not been issued, is guilty
24 of a Class I felony.

25 **SECTION 12.** 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) or 196.3745
6 (2) (e) 1. e. who gives up, waives, or returns to the employer or agent of the employer
7 any part of the compensation to which the employee is entitled under his or her
8 contract of employment or under the prevailing wage determination issued by the
9 department or local governmental unit, or who gives up any part of the compensation
10 to which he or she is normally entitled for work on a project on which a prevailing
11 wage rate determination has not been issued under s. 66.0903 (3) or (6), 103.49 (3),
12 103.50 (3), 196.3745 (2) (e) 1. e., or 229.8275 (3) during a week in which the person
13 works 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.

16 **SECTION 13.** 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) or 196.3745 (2) (e) 1. e. to permit any part
23 of the wages to which that person is entitled under the prevailing wage rate
24 determination issued by the department or local governmental unit to be deducted
25 from the person's pay is guilty of a Class I felony, unless the deduction would be

1 permitted under 29 CFR 3.5 or 3.6 from a person who is working on a project that is
2 subject to 40 USC 276c.

3 **SECTION 14.** 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) or 196.3745
8 (2) (e) 1. e. who permits any part of the wages to which that person is entitled under
9 the prevailing wage rate determination issued by the department or local
10 governmental unit to be deducted from his or her pay is guilty of a Class C
11 misdemeanor, unless the deduction would be permitted under 29 CFR 3.5 or 3.6 from
12 a person who is working on a project that is subject to 40 USC 276c.

13 **SECTION 9101. Nonstatutory provisions; Administration.**

14 (1) Using the procedure under section 227.24 of the statutes, the department
15 of administration may promulgate rules required under section 16.26 (2) of the
16 statutes, as created by this act, for the period before the effective date of the
17 permanent rules promulgated under that subsection, but not to exceed the period
18 authorized under section 227.24 (1) (c) and (2) of the statutes. Notwithstanding
19 section 227.24 (1) (a), (2) (b), and (3) of the statutes, the department is not required
20 to provide evidence that promulgating a rule under this subsection as an emergency
21 rule is necessary for the preservation of the public peace, health, safety, or welfare
22 and is not required to provide a finding of emergency for a rule promulgated under
23 this subsection.

24 **SECTION 9357. Initial applicability; Other.**

qualifications and resources from subcontractors whom the PSC has included on the list; 2) possesses all valid and effective licenses, registrations, and certificates required under federal, state, and local law; 3) meets bonding and insurance requirements; 4) agrees to comply with prevailing wage and substance abuse prevention requirements that apply to certain public works projects; 5) fully complies with equal employment opportunity, affirmative action, and other workforce participation requirements; 6) certifies that employees are not improperly classified as independent contractors in violation of federal or state law; and 7) discloses certain past violations of federal or state law. In addition, the PSC must determine that a contractor has agreed to sponsor an apprenticeship program administered by the Department of Workforce Development. However, the bill allows work to be performed by a contractor who does not sponsor such a program, but only if contractors who sponsor such a program are not available to perform the work.

The bill also does all of the following:

1. Specifies that an energy efficiency improvement or renewable resource application is not eligible for a loan unless at least 25 percent of the contractors who perform work on the improvement or application have a place of business in the political subdivision in which the work is performed.

2. Requires the PSC to implement the program described in the proposal only if JFC approves the proposal. In addition, if JFC modifies the proposal, the PSC must implement the proposal as modified.

3. Requires a tariff filed by a utility that participates in the program to include contracts between the utility and an owner of property benefited by an energy efficiency improvement or renewable resource application. The contracts must require the owner to do the following: a) inform lessees that are liable for utility service that the cost of the improvement or application 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 or application, and that such costs will appear on utility bills for the property.

4. Allows a utility that participates in the program to include a separate line item on customer bills that offsets certain costs of the program with energy savings resulting from an energy efficiency improvement or renewable resource application made under the program.

5. Prohibits a utility that participates in the program from recovering from ratepayers any bad debt related to nonutility services provided under the program.

6. Requires an owner of residential property to make a disclosure about an energy efficiency improvement or renewable resource application made under the program on the real estate conditions report that is required for property transfers.

7. Requires the PSC to promulgate a rule or issue an order that prohibits any work under contracts under energy efficiency and renewable resource programs administered by the PSC under current law from being performed by contractors who are not included on the list described above. However, the rule or order must allow performance of work by contractors who do not satisfy the apprenticeship

requirements only if contractors who do satisfy the requirements are not available to perform the work.

8. Requires DOA to promulgate a rule similar to the rule described above that applies to work under contracts under a federal weatherization program administered by DOA under current law.

✓

INSERT 6-10:

2. A utility may make the loans from grants issued by the commission or, with the approval of the commission, 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: The above is similar to proposed s. 196.3745 (2) (c) 2. If you make any changes to the above, we should consider whether comparable changes should be made to proposed s. 196.3745 (2) (c) 2.

✓ ✓ ✓ ✓ ✓

✓

DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-2740/P2dn

MDK: f:....

gjs

- date -

Rep. Mason:

This version is identical to the previous version, except for the following: ✓

1. An analysis is added.
2. In the previous version, I neglected to allow utilities to use other sources of funding for the loans. To correct this mistake, this version includes proposed s. 196.3745 (2) (b) 2. ✓
3. In proposed s. 196.3745 (2) (e) 1. g., I included the phrase "except as provided in subd. 2.," which was mistakenly omitted in the previous version. ✓

I understand that you may not want to move forward on this draft at this time. However, I wanted to make sure that the above corrections were made in the event that you choose to move forward on the draft in the future. Note that the draft includes the same NOTES that were included in the previous version. ✓

Mark D. Kunkel
Senior Legislative Attorney
Phone: (608) 266-0131
E-mail: mark.kunkel@legis.wisconsin.gov

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

LRB-2740/P2dn
MDK:cjs:md

April 29, 2009

Rep. Mason:

This version is identical to the previous version, except for the following:

1. An analysis is added.
2. In the previous version, I neglected to allow utilities to use other sources of funding for the loans. To correct this mistake, this version includes proposed s. 196.3745 (2) (b) 2.
3. In proposed s. 196.3745 (2) (e) 1. g., I included the phrase "except as provided in subd. 2.," which was mistakenly omitted in the previous version.

I understand that you may not want to move forward on this draft at this time. However, I wanted to make sure that the above corrections were made in the event that you choose to move forward on the draft in the future. Note that the draft includes the same NOTES that were included in the previous version.

Mark D. Kunkel
Senior Legislative Attorney
Phone: (608) 266-0131
E-mail: mark.kunkel@legis.wisconsin.gov

Kunkel, Mark

From: Kunkel, Mark
Sent: Thursday, October 01, 2009 4:27 PM
To: Kunkel, Mark; Mueller, Eric; Shovers, Marc
Subject: RE: MDK notes from meeting with Rep. Mason today

Also re: item 4, include the bill's 25% requirement regarding local businesses. Mason may revise later.

From: Kunkel, Mark
Sent: Thursday, October 01, 2009 4:25 PM
To: Kunkel, Mark; Mueller, Eric; Shovers, Marc
Subject: MDK notes from meeting with Rep. Mason today

Redraft LRB-2965/P2:

1. Check Act 2 - allows munis to make loans to customers for energy improvements? Turns out the actual act is Act 11. Review and determine whether it allows a water utility to make loans for energy improvements. Other than water utility angle and item 5 below, probably should delete all political subdivision parts of bill?
2. As for PSC and utilities, delete requirement for PSC to submit proposal to JCF. Instead, make whatever changes that allow utilities to do their own programs and get reimbursed via rates. The concern is that utilities want to capitalize the costs of improvements, and receive charges from customers to reimburse capitalization? At the meeting, Mason provided language prepared by WE Energies.
3. Also allow utilities to get RPS credit (i.e., 196.378 requirements). See language from WE Energies.
4. Make sure contractor certification (and prequalification?) requirements include everything in material provided by Mason at meeting.
5. Determine from DOA (contact Dan Schoof) on what federal money is available to political subdivisions and utilities and whether we need to specify an agency that doles out the money to the political subdivisions and utilities. Does federal law require DOA or PSC to be in charge of distributing federal money, or does state have leeway on which agency can dole out money? In general, what is the federal law on this topic? What grant money is at issue?

Chris Patton - Gov's office
266-1212
Stimulus money

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)

obtained from Rep Mason

Contractor Certification for Focus on Energy Programs

I. Definitions.

1. "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 journeyperson 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 journeyperson status within the indenture period.

II. Prequalification Requirement.

As a condition of performing work to receive any form of funding from Focus on Energy, a contractor shall first be prequalified by Focus on Energy in accordance with the provisions of this Policy. This shall apply to general contractors, prime contractors and subcontractors of any tier.

III. 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.

N.A.

IV. Prequalification Term.

Once a contractor's prequalification application is approved under this Policy, it shall remain valid for a period of two years to expire on January 31, unless suspended or revoked pursuant to this Policy.

V. 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 Policy. 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 and debarment from Focus on Energy Programs for a period of up to three years.

VI. Prequalification Approval.

Focus on Energy shall review contractor prequalification applications and approve applications that comply with the requirements of this Policy. If Focus on Energy determines that the contractor fails to meet the prequalification requirements under this Policy, they will notify and discuss the determination with the contractor prior to issuing any notice of non-qualification.

VII. Prequalification List

Focus on Energy 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.

VIII. Prequalification Review.

Focus on Enefty shall review the performance of contractors prequalified according to this Policy periodically, but at least upon request of a reasonable charge of failure to comply with this Policy, to determine whether contractors are performing satisfactorily. This review shall examine all relevant areas of contractor performance, including but not limited to the required

prequalification standards. For good cause shown, Focus on Energy 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 Focus on Energy.

IX. Required Certifications.

Prequalification applications submitted pursuant to this ordinance shall include all information as determined necessary and appropriate by Focus on Energy. Such applications shall, at a minimum, require a sworn certification by the applicant attesting to the facts specified in this Policy. In submitting a prequalification application, the applicant shall certify that for any project it seeks to perform under Focus on Energy 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 that complies with Wis. Stat. sec. 103.503.
6. Pay all craft employees that it employs the wage rates and benefits required under applicable State prevailing wage law.
7. 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, Focus on Energy 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. 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.
9. 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 Focus on Energy of any disclosures under this subsection, and Focus on Energy shall determine if such incidents are of such a nature as to disqualify the applicant.
10. 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.

11. Understand that in performing under Focus on Energy projects, it will be required to use as subcontractors only those entities that have been properly prequalified in accordance with the requirements of this Policy.

X. Conditional Approval

Focus on Energy may issue conditional approvals of any application for prequalification and shall set out the conditions thereof in writing.

XI. Effective Date

This ordinance applies to any Focus on Energy Program, on or after October 1, 2009.

Obtained from Rep Mason

SUGGESTED REVISIONS TO WISC. STAT 196.374

Wisc. Stat. § 196.374. Energy efficiency and renewable resource programs

§ 196.374 (2) ENERGY EFFICIENCY AND RENEWABLE RESOURCE PROGRAMS.

(b) *Utility-administered programs.* 1. An energy utility may, with commission approval, administer or fund one or more energy efficiency programs that is limited to, as determined by the commission, large commercial, industrial, institutional, or agricultural customers in its service territory. An energy utility shall pay for a program under this subdivision with a portion of the amount required under sub. (3)(b)2., as approved by the commission. The commission may not order an energy utility to administer or fund a program under this subdivision.

2. An energy utility may, with commission approval, ~~administer or~~ fund or otherwise implement an energy efficiency or renewable resource program that is in addition to the programs required under par. (a) or authorized under subd. 1. The commission may not order an energy utility to ~~administer or~~ fund or otherwise implement a program under this subdivision.

3. An energy utility that administers or funds a program under subd. 1. or 2. or an ordered program may request, and the commission may approve, to modify or discontinue, in whole or in part, the ordered program. An energy utility may request the establishment, modification, or discontinuation of a program under subd. 1. or 2. at any time and shall request the modification or discontinuation of an ordered program as part of a proceeding under sub. (3)(b)1.

§ 196.374 (5) COST RECOVERY.

(a) *Rate-making orders.* 1. The commission shall ensure in rate-making orders that an energy utility recovers from its ratepayers the amounts the energy utility spends for programs under sub. (2)(a)1 and sub.(2)(b)1.

2. The commission shall ensure in rate-making orders that an energy utility recovers the amounts the energy utility spends for programs under sub. (2)(b)2 and is allowed to earn a return equal to the utility's overall authorized return on such amounts if the commission determines that a proposed program is cost-effective. The cost of such programs will be recovered from amounts collected under sub. 3 (b) 2, to the extent that those collections exceed 1.2% of revenues.

COUNTING EFFICIENCY TOWARD RPS

196.374(3)

(f) Rules. The commission shall promulgate rules to establish all of the following:

1. Procedures for energy utilities to collectively contract with program administrators for administration of statewide programs under sub. (2) (a) 1. and to receive contributions from municipal utilities and retail electric cooperatives under sub. (7) (b) 2.

2. Procedures and criteria for commission review and approval of contracts for administration of statewide programs under sub. (2) (a) 1., including criteria for the selection of program administrators under sub. (2) (a) 1.

3. Procedures and criteria for commission review and approval of utility-administered programs under sub. (2) (b) 1. and 2., customer programs under sub. (2) (c), and requests under sub. (2) (b) 3.

4. Minimum requirements for energy efficiency and renewable resource programs under sub. (2) (a) 1. and customer energy efficiency programs under sub. (2) (c).

5. Procedures and standards for defining and measuring electricity savings that result from utility-administered programs implemented under 196.374(2)(b)(2) [as that section has been modified above].

196.378(4)

~~(4) Rules. The commission may promulgate rules that designate a resource, except for a conventional resource, as a renewable resource in addition to the resources specified in sub. (1) (h) 1. and 1m~~

(4) Rules. The commission shall promulgate rules to establish all of the following:

1. Designate a resource, except for a conventional resource, as a renewable resource in addition to the resources specified in sub. (1) (h) 1. and 1m.

2. Designates as a renewable resource electricity savings that result from utility-administered programs implemented under 196.374(2)(b)(2) [as that section has been modified above].

Kunkel, Mark

From: Kunkel, Mark
Sent: Tuesday, October 27, 2009 5:22 PM
To: Selkove, Vicky
Subject: RE: latest draft of WISE bill?

Vicky:

I think you'll get a new version by Thursday am. I will have some questions in a drafter's note, and I think they are probably easier to resolve when you receive the new version.

I have not heard back from Chris Patton. As for the Energy Efficiency and Conservation Block Grants, please see page 12 of an outline prepared by Trane Engineering, located here: <http://www.traneengineers.com/Files/states/ARRA-WI.pdf>

The outline states that the grants are "allocated directly to cities and counties. States also receive funding to fund cities that are not allocated funds directly (smaller cities will not receive direct funding). Each state must pass not less than 60% of its allocation on to cities and counties within the state that are ineligible for direct formula grants from the DOE. Each state decides how to award these sub-grants." I haven't found the federal law requirements upon which the outline is based, but if the outline is correct, the state may have limited ability to decide how to award the grants.

-- Mark

From: Selkove, Vicky
Sent: Tuesday, October 27, 2009 4:04 PM
To: Kunkel, Mark
Subject: RE: latest draft of WISE bill?

Hi Mark –

Thanks for your response. Did you get the info you needed from Chris Patton? I believe the answer is the energy efficiency & conservation block grants.

Please keep me posted on your timeline in making those revisions to the bill and let me know if you have additional questions.

Vicky

Vicky Selkove
Office of State Representative Cory Mason
62nd Assembly District
Room 321 East, State Capitol
PO Box 8953, Madison, WI 53708
Phone: (608) 266-0634
Toll-free: (888) 534-0062

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From: Kunkel, Mark
Sent: Monday, October 26, 2009 2:53 PM
To: Selkove, Vicky
Subject: RE: latest draft of WISE bill?

Vicky:

My apologies for the delay in getting back to you, as I was out of the office on Friday.

I've been very busy and am just now starting to work on this request. I don't think that I will have a new version of the bill finished by Wed. am. The earliest would be Wednesday pm or Thursday am.

There is one issue on which I may need more guidance. Rep. Mason asked for me to determine whether any statutory changes are necessary to use federal money under the American Recovery and Reinvestment Act (ARRA) for the loans made by utilities under the bill or by cities, villages, counties and towns under s. 66.0627 (8), which was created by 2009 Act 11. Do you know which money under ARRA is available for the loans? According to a US Dept. of Energy website, Wisconsin has or will receive funding under the following programs under ARRA: Weatherization, State Energy Program, Energy Efficiency and Conservation Block Grant Program, Wind, Appliance Rebates, State and Local, and Clean Cities Program. See <http://www.energy.gov/wisconsin.htm> I'm not sure which of the foregoing programs is relevant. I contacted Dan Schoof's office, and his office directed me to Chris Patton in the governor's office. I left him a message this afternoon.

-- Mark

From: Selkove, Vicky
Sent: Thursday, October 22, 2009 6:02 PM
To: Kunkel, Mark
Subject: latest draft of WISE bill?

Hi Mark –

Rep. Mason is having a meeting with the Speaker's office next Wednesday about this legislation and would like to have the most recent draft prior to that. Can you just give me an update on where you're at with it, whether you need additional information to finish the draft, whether you have questions, etc.?

Thanks much,
Vicky

Vicky Selkove
Office of State Representative Cory Mason
62nd Assembly District
Room 321 East, State Capitol
PO Box 8953, Madison, WI 53708
Phone: (608) 266-0634
Toll-free: (888) 534-0062

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