



State of Wisconsin
2009 - 2010 LEGISLATURE

LRB-2740/P2
MDK/MES/GMM:cjs:md

O-NOTE

stays P3

PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION

*Thursday
10-29
2 PM*

*RM has been
run*

*and granting
rule-making
authority*

gen cat

*allowing certain
utilities to
administer*

SAV

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) (l), 196.3745 and 709.03 (form) C. 25m.
4 of the statutes; *relating to:* ~~creating a loan~~ ^{investment} program for residential energy
5 efficiency improvements and renewable energy applications ~~and providing an~~
6 ~~exemption from emergency rule procedures~~

allows
Analysis by the Legislative Reference Bureau
This bill ~~requires~~ the Public Service Commission (PSC) to ~~submit a proposal to~~
~~the Joint Committee on Finance (JCF) for a program that allows the PSC to make~~
~~grants to cities, villages, towns, and counties (political subdivisions) for making~~
~~loans to residential property owners to make or install energy efficiency~~
~~improvements and renewable resource applications~~ The bill defines "energy
efficiency improvement" as an improvement that reduces the usage of energy or
increases the efficiency of energy usage at residential premises, and the bill defines
"renewable resource application" as the application of specified renewable energy
resources, such as, for example, solar or wind power, at residential premises. ~~The~~
~~proposal must also allow the PSC to make grants to electric, natural gas, and water~~
~~utilities for making the same type of loans to their residential customers.~~ The bill
prohibits the PSC from requiring that ~~political subdivisions~~ utilities ~~or residential~~
~~property owners or customers~~ participate in the program.

*at
residential
premises of
customers*

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The bill also requires the PSC's proposal to recommend funding options for the grants for the loans, including any moneys available under the federal American Recovery and Reinvestment Act of 2009, as well as bonding authority under state law. In recommending funding options, the PSC must consider options that result in the lowest interest rates for the loans. In addition, the bill allows political subdivisions and utilities to use other appropriate funding sources for the loans.

The bill also specifies that a residential property owner or customer that participates in the program must hire a contractor to perform the work for the energy efficiency improvement or renewable resource application, and repay the political subdivision or utility that made the loan under the terms agreed to by the parties to the loan. The bill requires a utility that participates in the program to file a tariff subject to PSC approval that meets certain requirements, including specifying the terms and conditions for billing residential customers for utility and nonutility service related to energy efficiency improvements and renewable resource applications for which loans are made. With respect to political subdivisions, the bill allows them to collect a loan repayment as a special charge, to divide the special charge into installments, and to include the special charge in the tax roll even if the special charge is not delinquent.

an investor

In addition, the bill specifies that a residential property owner or utility customer is not eligible for a loan unless an audit is performed that demonstrates that the energy savings resulting from an energy efficiency improvement or renewable resource application are expected to be equal to or greater than the cost of the improvement or application. The PSC's proposal must specify the certification requirements that a person must satisfy to perform such an audit. Also, the bill requires that all work involved in making or installing the improvement or application must be performed by a contractor that the PSC has included on a list of approved contractors.

Premises are

and subcontractors

or subcontractor

The PSC may include a contractor on the list only if the PSC determines that the contractor satisfies certain requirements, including the following: 1) possesses the technical qualifications and resources to perform the work or obtains those 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.

or subcontractor or subcontractor prequalification

The bill also does all of the following:

or subcontractor and subcontractors

bill requires the PSC to promulgate rules specifying

an investment

and subcontractors

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.

for which a

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.

2. B) 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.

is authorized

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

compares

with an authorized

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

5. C) 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.

an authorized

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.

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

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

1 SECTION 1. 16.26 of the statutes is renumbered 16.26 (1).

X

2 SECTION 2. 16.26 (2) of the statutes is created to read:

X

SECTION 2

1 ~~16.26 (2) If the joint committee on finance approves a program under s.~~
 2 ~~196.3745 (3), the department shall prohibit by rule the performance of any work~~
 3 ~~under a contract entered into under sub. (1) by a contractor~~ ^{or subcontractor} ~~who is not included in~~
 4 ~~the list specified in s. 196.3745 (2) (e) 1., except that the department's rule shall allow~~
 5 ~~the performance of work by a contractor~~ ^{or subcontractor} ~~who does not satisfy the requirement under~~
 6 ~~s. 196.3745 (2) (e) 1. g. if no contractor~~ ^{or subcontractor} ~~who satisfies the requirement is available to~~
 7 ~~perform the work. This subsection applies to contracts that are entered into,~~
 8 ~~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.?

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

10 103.49 (3) (ar) In determining prevailing wage rates under par. (a) or (am), the
 11 department may not use data from projects that are subject to this section, s. 66.0903,
 12 103.50, 196.3745 ~~(2) (e) 1.~~ ^{(5) (a) 5.} or 229.8275 or 40 USC 276a unless the department
 13 determines that there is insufficient wage data in the area to determine those
 14 prevailing wage rates, in which case the department may use data from projects that
 15 are subject to this section, s. 66.0903, 103.50, 196.3745 ~~(2) (e) 1.~~ ^{(5) (a) 5.} or 229.8275 or 40
 16 USC 276a.

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

18 109.09 (1) The department shall investigate and attempt equitably to adjust
 19 controversies between employers and employees as to alleged wage claims. The
 20 department may receive and investigate any wage claim which is filed with the

INSERT 4-16 ✓

1 department, or received by the department under s. 109.10 (4), no later than 2 years
 2 after the date the wages are due. The department may, after receiving a wage claim,
 3 investigate any wages due from the employer against whom the claim is filed to any
 4 employee during the period commencing 2 years before the date the claim is filed.
 5 The department shall enforce this chapter and ss. 66.0903, 103.02, 103.49, 103.82,
 6 104.12, 196.3745 ~~(2)(e)~~ ^{(5)(a) 5-} and 229.8275. In pursuance of this duty, the department
 7 may sue the employer on behalf of the employee to collect any wage claim or wage
 8 deficiency and ss. 109.03 (6) and 109.11 (2), and (3) shall apply to such actions.
 9 Except for actions under s. 109.10, the department may refer such an action to the
 10 district attorney of the county in which the violation occurs for prosecution and
 11 collection and the district attorney shall commence an action in the circuit court
 12 having appropriate jurisdiction. Any number of wage claims or wage deficiencies
 13 against the same employer may be joined in a single proceeding, but the court may
 14 order separate trials or hearings. In actions that are referred to a district attorney
 15 under this subsection, any taxable costs recovered by the district attorney shall be
 16 paid into the general fund of the county in which the violation occurs and used by that
 17 county to meet its financial responsibility under s. 978.13 (2) (b) for the operation of
 18 the office of the district attorney who prosecuted the action.

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

20 111.322 (2m) (c) The individual files a complaint or attempts to enforce a right
 21 under s. 66.0903, 103.49, 196.3745 ~~(2)(e)~~ ^{(5)(a) 5-} or 229.8275 or testifies or assists in
 22 any action or proceeding under s. 66.0903, 103.49, 196.3745 ~~(2)(e)~~ ^{(5)(a) 5-} or 229.8275.

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

24 196.374 (2) (d) *Contractors.* If the joint committee on finance approves a
 25 program under s. 196.3745 (3), the commission shall prohibit, by order or rule, the

INSERT 5-22 ✓

X

1 performance of any work under a contract under a program under par. (a) 1., (b) 1.
 2 or 2., or (c) by a contractor who is not included in the list specified in s. 196.3745 (2)
 3 (e) 1., except that the commission's order or rule shall allow the performance of work
 4 by a contractor who does not satisfy the requirement under s. 196.3745 (2) (e) 1. g.
 5 if no contractor who satisfies the requirement is available to perform the work. This
 6 paragraph applies to contracts that are entered into, extended, modified, or renewed
 7 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.?

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

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

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

18 **196.3745 Residential energy efficiency and renewable energy ^Bloan**
 19 **program.** (1) DEFINITIONS. In this section:

20 (a) "Energy efficiency improvement" means an improvement to a residential
 21 premises that reduces the usage of energy, or increases the efficiency of energy usage,
 22 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?

INSERT 7-8

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 a residential premises.

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

8 ~~(2) PROPOSED. (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, political~~
13 ~~subdivision, residential customer, or residential property owner and the commission~~
14 ~~may not require that a utility, political subdivision, residential customer, or~~
15 ~~residential property owner participate in the program. If a residential customer or~~
16 ~~residential property owner participates in the program, it is the responsibility of the~~
17 ~~customer or property owner to hire the contractor to perform the work for making or~~
18 ~~installing the improvement or application, consistent with the requirements of the~~
19 ~~program, and to repay the loan to the utility or political subdivision under the terms~~
20 ~~agreed to by the parties to the loan.~~

21 (b) Utilities. 1. A utility may participate in the program described under par.
22 (a) only if the utility files a tariff that is approved by the commission. The commission
23 may not approve a tariff filed by a utility unless the commission determines that the
24 tariff does all of the following:

SECTION 8

at residential premises

1 a. ~~Specifies~~ ^(a) terms and conditions for billing ~~residential~~ ^{at residential premises} customers for utility
2 and nonutility service related to improvements or applications for which ~~loans~~ ^{investments} are
3 made.

4 b. ~~Requires~~ ^(b) a contract between the utility and an owner of property benefited
5 by an improvement or application that requires the owner to inform any property
6 lessees who are liable for utility service that the cost of the improvement or
7 application will appear on the lessees' utility bills.

8 ~~Requires~~ ^(c) a contract between the utility and an owner of property benefited
9 by an improvement or application that requires the owner to inform any purchaser
10 of the property that the purchaser, or any other person who is liable for utility service
11 at the property, is liable for the unpaid cost of the improvement or application and
12 that such unpaid cost will appear on utility bills for the property.

13 ~~Includes~~ ^(d) any other term or condition required by the commission.

14 2. A utility may make the loans from grants issued by the commission or, with
15 the approval of the commission, from any other appropriate funding source. If the
16 source of the loan funds is not from a grant issued by the commission, all of the other
17 relevant provisions of this section apply as if the source of the loan funds is a grant
18 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.

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

1 2. A political subdivision may make the loans from grants issued by the
 2 commission or from any other appropriate funding source. If the source of the loan
 3 funds is not from a grant issued by the commission, all of the other relevant
 4 provisions of this section apply as if the source of the loan funds is a grant issued by
 5 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?

6 3. A political subdivision that makes a loan under this paragraph may collect
 7 the loan repayment as a special charge under s. 66.0627 and, notwithstanding the
 8 limitations under s. 66.0627 (2), a county may use the procedure under s. 66.0627 to
 9 collect such a repayment for a loan that is made under this paragraph.
 10 Notwithstanding the provisions of s. 66.0627 (4), a special charge imposed under this
 11 subdivision may be collected in installments and may be included in the current or
 12 next tax roll for collection and settlement under ch. 74 even if the special charge is
 13 not delinquent.

14 ~~(A) Audits.~~ A residential ~~customer or residential property owner~~ ^{not ital} is not eligible
 15 for ~~a loan~~ ^{an investment} for an improvement or application under ~~the~~ ^{premises} program ~~described in par. (a)~~ ^{authorized under} sub.
 16 unless an audit is performed that demonstrates that the energy savings resulting ⁽²⁾
 17 from the improvement or application are expected to be equal to or greater than the
 18 cost of the improvement or application. The ~~proposal submitted by the~~ ^{promulgate rules} commission
 19 ~~under par. (a)~~ ^{ing} shall specify the certification requirements that a person must satisfy
 20 in order to perform an audit required under this ~~paragraph.~~ ^{subsection}

****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?

(14)
 (BF)

As noted in LRB-2740/P2
****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?

As noted in LRB-2740/P2
****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?

As noted in LRB-2740/P2
****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?

(B)

(5) (CS) NOTIAL (a) and subcontractors (Authorized under sub. (2))

1 Contractors. All work involved in making or installing an improvement
2 or application under the program described in par. (a) shall be performed by a
3 contractor that the commission has included on a list of approved prequalified contractors that

4 ~~the commission shall make available to residential customers and residential~~
5 ~~property owners upon request. The proposal shall include a procedure for the~~
6 commission shall approve a contractor for inclusion on the list and a contractor may be
7 included only if the commission determines that the contractor satisfies all of the

8 following:
9 1. a. Possesses the technical qualifications and resources, including equipment,

10 personnel, and financial resources, necessary to perform the required work or
11 obtains those qualifications and resources through the use of responsible
12 subcontractors who are approved by the commission for inclusion on the list. *prequalification*

13 2. b. Possesses all valid and effective licenses, registrations, and certificates that
14 are required under federal, state, and local law for the type of work that the
15 contractor *or subcontractor* performs.

16 3. 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?

1 ^(4.) Meets all insurance requirements as required by law or contract
 2 specifications, including general liability insurance, workers compensation
 3 insurance, and unemployment insurance requirements.

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

4 ^(5.) Agrees to pay all employees working on an improvement or application for
 5 which ~~work~~^{an investment} is made under the program who would be entitled to receive the
 6 prevailing wage rate under s. 66.0903 and who would not be required or permitted
 7 to work more than the prevailing hours of labor, as defined in s. 103.49 (1) (c), if the
 8 improvement or application were a project of public works under s. 66.0903, not less
 9 than the prevailing wage rate determined under s. 66.0903 (3) or (6) and not to
 10 require or permit those employees to work more than the prevailing hours of labor,
 11 except as permitted under s. 66.0903 (4) (a); to keep and permit inspection of records
 12 in the same manner as a contractor performing work on a project of public works that
 13 is subject to s. 66.0903 is required to keep and permit inspection of records under s.
 14 66.0903 (10); and otherwise to comply with s. 66.0903 in the same manner as a
 15 contractor performing work on a project of public works that is subject to s. 66.0903
 16 is required to comply with s. 66.0903.

17 ^(6.) Agrees not to permit an employee working on an improvement or application
 18 for which ~~work~~^{an investment} is made under the program to use, possess, attempt to possess,
 19 distribute, deliver, or be under the influence of a drug, as defined in s. 103.503 (1) (d),
 20 or use or be under the influence of alcohol, while performing that work, to have in
 21 place a written program for the prevention of substance abuse among those
 22 employees in the same manner as a contractor performing work on a project of public
 23 works that is subject to s. 66.0903 is required to have in place such a written program
 24 under s. 103.503 (3), and otherwise to comply with s. 103.503 in the same manner

SECTION 8

1 as a contractor performing work on a project of public works that is subject to s.
2 66.0903 is required to comply with s. 103.503.

3 ~~7. (b)~~ Except as provided in ~~subd. (b)~~ ^{(par. (b))}, agrees, if the contractor ^{or subcontractor} employs employees
4 in trades that are apprenticeable under subch. I of ch. 106, to sponsor an
5 apprenticeship training program that is approved by the department of workforce
6 development for each of those trades and to employ in each of those trades the
7 maximum ratio of apprentices to journeymen that are permitted under standards
8 adopted, recognized, or approved by that department.

9 ~~8. (b)~~ Fully complies with all equal employment opportunity, affirmative action,
10 and other workforce participation requirements.

11 ~~9. (a)~~ Provides the commission a detailed statement regarding related business
12 entities if, at any time in the 3 years prior to inclusion on the list, the contractor has
13 controlled or has been controlled by another corporation, partnership, or other
14 business entity operating in the construction industry.

15 ~~10. (a)~~ Certifies to the commission that the contractor ^{or subcontractor} understands that, in
16 performing work under the program, the contractor ^{or subcontractor} will be required to use as
17 subcontractors only those entities that are also included on the ^{prequalification} list.

18 ~~11. (a)~~ Certifies to the commission that employees are not improperly classified as
19 independent contractors in violation of federal or state law.

****NOTE: Is the above okay? *The above is included in LRB-2740/P2, but not in the list provided to our client meeting.*

20 ~~12. (a)~~ Discloses to the commission whether in the 3 years prior to inclusion on the
21 list the contractor ^{or subcontractor} has had any type of business, contracting, or trade license,
22 certification, or registration revoked or suspended; been debarred by any federal
23 state, or local government agency; defaulted on any project; committed a willful
24 violation of federal or state safety law as determined by a final decision of a court or

prequalification

1 government agency authority; or been found by a final decision of a court or
2 government agency to be in violation of any other law relating to its contracting
3 business, including wage and hour laws, prevailing wage laws, environmental laws,
4 antitrust laws, or tax laws, where the penalty for such violation resulted in the
5 imposition of a fine, back pay damages, or any other type of penalty, in an amount
6 of more than \$10,000.

7 ⁽⁹⁷⁾ ~~the contractor's~~ ^{prequalification} Certifies to the commission that the contractor's application for inclusion
8 on the list has been executed by a principal or person employed by the applicant who
9 has sufficient knowledge to address all matters in the application, including an
10 attestation stating, under the penalty of perjury, that all information submitted is
11 true, complete, and accurate.

12 (b) ~~2. The proposal under par. (a) shall allow the commission to include on the list~~ ^{may} ^{prequalification}
13 ~~recommended under sub. (1) a contractor who does not satisfy the requirement under~~ ^{par. (a)} ^{or subcontractor}
14 ~~sub. (1), but the proposal shall ensure that~~ ^{The commission shall promulgate rules allowing}
15 ~~requirement is not allowed to perform work on an improvement or application for~~ ^{or subcontractor}
16 ~~which is made under the program unless~~ ^{an investment} ^{authorized under sub. (2) only if} no contractor who satisfies the
17 requirement is available to perform the work.

18 (c) ~~3. An improvement or application is not eligible for the program~~ ^{an investment} ^a
19 ~~described in par. (a) unless at least 25 percent of the contractors who perform work~~ ^{authorized under sub. (2)} ^{and subcontractors}
20 on the improvement or application have a place of business in the political
21 subdivision in which the work is performed.

~~***NOTE: Is the above okay? The above is included in LRB 2740/P2~~

22 (f) ~~Funding.~~ The proposal under par. (a) shall recommend options for funding
23 the grants to utilities and political subdivisions for making loans under the program,
24 including any moneys available under P.L. 111-5 or bonding authority under state

INSERT 13-17

1 law. In recommending funding options, the commission shall consider those options
2 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 (3) PROGRAM APPROVAL. If the joint committee on finance approves, or approves
4 with modifications, a program described in a proposal under sub. (2) (a) the
5 commission shall implement the program as approved or as modified and approved.

6 (4) UTILITIES. (a) A utility for which the commission ~~approves a tariff under~~ ^{authorizes}
7 a program ~~approved by the joint committee on finance~~ ^{(6) (B)} under sub. (3) ⁽²⁾ may include a
8 separate line item on bills of a ~~residential customer at~~ ^{a residential premises} benefited by an
9 improvement or application made or installed under the program that ~~offsets~~ ^{compares} the
10 costs of the program borne by the customer with the energy savings resulting from
11 the improvement or application. Notwithstanding s. 218.04, a utility need not obtain
12 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?

13 (b) Any costs that a utility incurs to administer, fund, or provide administrative
14 services for ~~(them)~~ ^{an investment} made in accordance with a tariff ~~(described in par. (a))~~ ^{approved under sub. (3)} ^{shall be} in
15 addition to the amounts the commission requires the energy utility to spend under
16 s. 196.374 (3) (b) 2.

17 (c) A utility may not recover from ratepayers any bad debt related to nonutility
18 services provided under a tariff ~~(described in par. (a))~~ ^{approved under sub. (3)}

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

INSERT
14-18

and approves a tariff
under sub. (3)

INSERT 15-5

(15)(a) 5-

1 227.01 (13) (t) Ascertains and determines prevailing wage rates under ss.
 2 66.0903, 103.49, 103.50, 196.3745 ~~(13)(a)~~ and 229.8275, except that any action
 3 or inaction which ascertains and determines prevailing wage rates under ss.
 4 66.0903, 103.49, 103.50, 196.3745 ~~(13)(a)~~ and 229.8275 is subject to judicial
 5 review under s. 227.40.

(15)(a) 5-

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

7 709.03 (form)

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

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

16 946.15 (1) Any employer, or any agent or employee of an employer, who induces
 17 any person who seeks to be or is employed pursuant to a public contract, as defined
 18 in s. 66.0901 (1) (c), or who seeks to be or is employed on a project on which a
 19 prevailing wage rate determination has been issued by the department of workforce
 20 development under s. 66.0903 (3), 103.49 (3), 103.50 (3), 196.3745 ~~(13)(a)~~, or
 21 229.8275 (3) or by a local governmental unit, as defined in s. 66.0903 (1) (d), under
 22 s. 66.0903 (6) ~~of 196.3745 (13)(a)~~ to give up, waive, or return any part of the
 23 compensation to which that person is entitled under his or her contract of
 24 employment or under the prevailing wage rate determination issued by the
 25 department or local governmental unit, or who reduces the hourly basic rate of pay

(15)(a) 5-

SECTION 11

(5) (a) 5-

1 normally paid to an employee for work on a project on which a prevailing wage rate
2 determination has not been issued under s. 66.0903 (3) or (6), 103.49 (3), 103.50 (3),
3 196.3745 (2)(e) 1.e. or 229.8275 (3) during a week in which the employee works both
4 on a project on which a prevailing wage rate determination has been issued and on
5 on a project on which a prevailing wage rate determination has not been issued, is guilty
6 of a Class I felony.

NSC 2-1
6
16-6

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

(5) (a) 5-

8 946.15 (2) Any person employed pursuant to a public contract, as defined in s.
9 66.0901 (1) (c), or employed on a project on which a prevailing wage rate
10 determination has been issued by the department of workforce development under
11 s. 66.0903 (3), 103.49 (3), 103.50 (3), 196.3745 (2)(e) 1.e. or 229.8275 (3) or by a local
12 governmental unit, as defined in s. 66.0903 (1) (d), under s. 66.0903 (6) ~~196.3745~~
13 (2)(e) 1.e. who gives up, waives, or returns to the employer or agent of the employer
14 any part of the compensation to which the employee is entitled under his or her
15 contract of employment or under the prevailing wage determination issued by the
16 department or local governmental unit, or who gives up any part of the compensation
17 to which he or she is normally entitled for work on a project on which a prevailing
18 wage rate determination has not been issued under s. 66.0903 (3) or (6), 103.49 (3),
19 103.50 (3), 196.3745 (2)(e) 1.e. or 229.8275 (3) during a week in which the person
20 works part-time on a project on which a prevailing wage rate determination has been
21 issued and part-time on a project on which a prevailing wage rate determination has
22 not been issued, is guilty of a Class C misdemeanor.

SECTION 13. 946.15 (3) of the statutes is amended to read:

24 946.15 (3) Any employer or labor organization, or any agent or employee of an
25 employer or labor organization, who induces any person who seeks to be or is

INSERT 16-22

15) (a) 5.

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

INSERT
17-19
a

SECTION 14. 946.15 (4) of the statutes is amended to read:

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

15) (a) 5.

✓
INSERT
17-19

SECTION 946.1. Nonstatutory provisions, Administration.

21 (1) Using the procedure under section 227.24 of the statutes, the department
22 of administration may promulgate rules required under section 16.26 (2) of the
23 statutes, as created by this act, for the period before the effective date of the
24 permanent rules promulgated under that subsection, but not to exceed the period
25 authorized under section 227.24 (1) (c) and (2) of the statutes. Notwithstanding

SECTION 9101

1 section 227.24 (1) (a), (2) (b), and (3) of the statutes, the department is not required
2 to provide evidence that promulgating a rule under this subsection as an emergency
3 rule is necessary for the preservation of the public peace, health, safety, or welfare
4 and is not required to provide a finding of emergency for a rule promulgated under
5 this subsection.

6 **SECTION ~~9357~~ [#] Initial applicability, ~~Other~~**

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

10 (END)

INSERT
18-9

Change to autonumber
instead of budget style number

1
2
3
4
5
6
7

INSERT 1A:

authorize an electric, natural gas, or water public utility (utility) to administer, fund, or provide administrative services for a program

INSERT 1B:

allows the PSC to authorize a program only upon application by a utility and

at premises **INSERT 1C:** *where*

The bill requires a utility for which the PSC authorizes a program to file a tariff with the PSC that specifies the terms and conditions of utility and nonutility service provided to customers, ~~for whom~~ energy efficiency improvements or renewable resource applications are made under the program. A tariff has no effect until approved by the PSC.

INSERT 3A: *two*

6. Requires contractors and subcontractors to apply to renew their inclusion on the prequalification list every 2 years, allows the PSC to conditionally approve a contractor or subcontractor for inclusion on the list, specifies the circumstances under which the PSC may revoke inclusion, and requires the PSC to update the list on a monthly basis and make the list available to the public.

Finally, current law requires certain electric utilities and cooperatives to ensure that, in a given year, a specified percentage of the electricity it sells at retail is derived from renewable resources. These requirements are commonly referred to as renewable portfolio standards (RPSs). Current law also allows electric utilities and cooperatives to create credits based on the amount of electricity derived from renewable resources that is sold at retail in a year and that exceeds the RPS for the year. Subject to certain restrictions, an electric utility or cooperative may use the credit in a subsequent year to help comply with an RPS, or sell the credit to another electric utility or cooperative to help the buyer comply with an RPS. This bill requires the PSC to promulgate rules that allow an electric utility to create an additional credit that can be used or sold like the credits under current law. The PSC's rules must allow for the creation of credits that are based on the reductions in energy usage, increases in efficiency of electricity usage, and generation of renewable energy that results from a program authorized by the PSC under the bill. The PSC's rules must include requirements for measuring the amount of such reductions, increases, and generation, and calculating the amount of a credit. In addition, the bill eliminates the requirement under current law that a credit must be used in a year subsequent to the the year in which it is created or purchased.

INSERT 4-16:

create
author(A)
SECTION 103.49 (3) (ar) of the statutes, as affected by 2009 Wisconsin Act 28,
is amended to read:

1 103.49 (3) (ar) In determining prevailing wage rates under par. (a) or (am), the
 2 department may not use data from projects that are subject to this section, s. 66.0903,
 3 66.0904, 103.50, 196.3745 (5) (a) 5., or 229.8275 or 40 USC 3142 unless the
 4 department determines that there is insufficient wage data in the area to determine
 5 those prevailing wage rates, in which case the department may use data from
 6 projects that are subject to this section, s. 66.0903, 66.0904, 103.50, 196.3745 (5) (a)
 7 5., or 229.8275 or 40 USC 3142.

NOTE: NOTE: Par. (ar) is shown as amended eff. 1-1-10 by 2009 Wis. Act 28. Prior to 1-1-10 it reads:NOTE:

(ar) In determining prevailing wage rates under par. (a) or (am), the department may not use data from projects that are subject to this section, s. 66.0903, 103.50 or 229.8275 or 40 USC 276a unless the department determines that there is insufficient wage data in the area to determine those prevailing wage rates, in which case the department may use data from projects that are subject to this section, s. 66.0903, 103.50 or 229.8275 or 40 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; 2009 a. 28.

INSERT 5-19:

12 SECTION ^{create autoref (B)} 109.09 (1) of the statutes, as affected by 2009 Wisconsin Act 28, is
 13 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.
 21 The department shall enforce this chapter and ss. 66.0903, 66.0904, 103.02, 103.49,
 22 103.82, 104.12, 196.3745 (5) (a) 5., and 229.8275. In pursuance of this duty, the
 23 department may sue the employer on behalf of the employee to collect any wage claim
 24 or wage deficiency and ss. 109.03 (6) and 109.11 (2) and (3) shall apply to such actions.
 25 Except for actions under s. 109.10, the department may refer such an action to the
 26 district attorney of the county in which the violation occurs for prosecution and

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

NOTE: NOTE: Sub. (1) is shown as amended eff. 1-1-10 by 2009 Wis. Act 28. Prior to 1-1-10 it reads:NOTE:

10 (1) The department shall investigate and attempt equitably to adjust controversies between employers and employees as to alleged wage claims. The department
 11 may receive and investigate any wage claim which is filed with the department, or received by the department under s. 109.10 (4), no later than 2 years after the date
 12 the wages are due. The department may, after receiving a wage claim, investigate any wages due from the employer against whom the claim is filed to any employee
 13 during the period commencing 2 years before the date the claim is filed. The department shall enforce this chapter and ss. 66.0903, 103.02, 103.49, 103.82, 104.12 and
 14 229.8275. In pursuance of this duty, the department may sue the employer on behalf of the employee to collect any wage claim or wage deficiency and ss. 109.03 (6)
 15 and 109.11 (2) and (3) shall apply to such actions. Except for actions under s. 109.10, the department may refer such an action to the district attorney of the county
 16 in which the violation occurs for prosecution and collection and the district attorney shall commence an action in the circuit court having appropriate jurisdiction.
 17 Any number of wage claims or wage deficiencies against the same employer may be joined in a single proceeding, but the court may order separate trials or hearings.
 18 In actions that are referred to a district attorney under this subsection, any taxable costs recovered by the district attorney shall be paid into the general fund of the
 19 county in which the violation occurs and used by that county to meet its financial responsibility under s. 978.13 (2) (b) for the operation of 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; 2009 a. 28.

20 **INSERT 5-22:**

21 **SECTION 111.322 (2m) (c)** of the statutes, as affected by 2009 Wisconsin Act
 22 28, is amended to read:

23 111.322 (2m) (c) The individual files a complaint or attempts to enforce a right
 24 under s. 66.0903, 66.0904, 103.49, 196.3745 (5) (a) 5., or 229.8275 or testifies or
 25 assists in any action or proceeding under s. 66.0903, 66.0904, 103.49, 196.3745 (5)
 26 (a) 5., or 229.8275.

NOTE: NOTE: Par. (c) is shown as amended eff. 1-1-10 by 2009 Wis. Act 28. Prior to 1-1-10 it reads:NOTE:

27 (c) The individual files a complaint or attempts to enforce a right under s. 66.0903, 103.49 or 229.8275 or testifies or assists in any action or proceeding under s.
 28 66.0903, 103.49 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, 28.

29 **INSERT 7-8:**

30 **AUTHORIZATION.** The commission may, upon application by a utility, authorize
 31 the utility to administer, fund, or provide administrative services for a program for
 32 ~~making loans to residential customers for making or installing~~ improvements or

investing in

and a premises owner

for residential premises served by the utility

1 applications. Participation in such a program shall be at the discretion of a utility
2 and the commission may not require that a utility or premises owner participate in such a program.

3 (3) TARIFFS. A utility for which a program is authorized under sub. (2) shall file
4 a tariff specifying the terms and conditions of utility and nonutility service provided
5 to residential customers for whom improvements or applications are made under the
6 program. A tariff filed under this subsection shall have no effect until approved by
7 the commission. A tariff filed by a utility under this subsection shall include all of
8 the following:

9 **INSERT 13-17:**

10 (c) A contractor or subcontractor shall report to the commission any material
11 change to its business or operations that are relevant to the commission's approval
12 to include the contractor or subcontractor in the prequalification list under par. (a).
13 A contractor or subcontractor shall make a report required under this paragraph no
14 later than 15 days after obtaining knowledge of the material change. If a contractor
15 or subcontractor violates this paragraph, the commission may revoke the
16 contractor's or subcontractor's inclusion in the prequalification list for a period of no
17 more than 3 years.

18 (d) Except for conditional approvals under par. (e), a contractor's or
19 subcontractor's inclusion in the prequalification list under par. (a) is valid for 2 years,
20 unless the commission revokes the inclusion under par. (c). The commission shall
21 promulgate rules for a contractor or subcontractor to apply every 2 years for the
22 commission to renew an approval for inclusion in the prequalification list.

23 (e) The commission may conditionally approve a contractor or subcontractor for
24 inclusion in the prequalification list under par. (a) for a period not exceeding 2 years.

1 The commission shall set forth in writing any conditions of an approval made under
2 this paragraph.

3 (f) Prior to disapproving a contractor or subcontractor for inclusion in the
4 prequalification list under par. (a), the commission shall provide the contractor or
5 subcontractor with notice and opportunity to be heard.

6 (g) The commission shall make the prequalification list under par. (a) available
7 to the public. The prequalification list shall show the name, address, identification
8 number assigned by the commission, and approval renewal date for each contractor
9 or subcontractor. The commission shall update the prequalification list on a monthly
10 basis and make the updated lists available to the public.

11 (h) The commission shall periodically review the qualifications and
12 performance of contractors and subcontractors included in the prequalification list
13 under par. (a). For good cause shown, the commission may, after notice and
14 opportunity to be heard, revoke a contractor's or subcontractor's inclusion on the
15 prequalification list.

16 **INSERT 14-18:**

17 **SECTION 4.** 196.378 (1) (i) of the statutes is amended to read:

18 196.378 (1) (i) "Renewable resource credit" means a credit calculated in
19 accordance with rules promulgated under sub. (3) (a) 1. ~~and, 1m., or 2.~~

20 History: 1999 a. 9; 2001 a. 30; 2005 a. 141.

21 **SECTION 5.** 196.378 (3) (a) 1. of the statutes is amended to read:

22 196.378 (3) (a) 1. Subject to subd. 2., an electric provider that provides total
23 renewable energy to its retail electric customers or members in excess of the
24 percentages specified in sub. (2) (a) 2., or that satisfies the requirements specified in
rules promulgated under subd. 1m., may, in the applicable year, create a renewable

1 resource credit and sell to any other electric provider the renewable resource credit
 2 or a portion of the renewable resource credit at any negotiated price. An electric
 3 provider that creates or purchases a renewable resource credit or portion may use
 4 the credit or portion in a subsequent year, as provided under par. (c), to establish
 5 compliance with sub. (2) (a) 2. The commission shall promulgate rules that establish
 6 requirements for the creation and use of a renewable resource credit created on or
 7 after January 1, 2004, including calculating the amount of a renewable resource
 8 credit, and for the tracking of renewable resource credits by a regional renewable
 9 resource credit tracking system. The rules shall specify the manner for aggregating
 10 or allocating credits under this subdivision or sub. (2) (b) 4. or 5.

History: 1999 a. 9; 2001 a. 30; 2005 a. 141.

11 **SECTION 6.** 196.378 (3) (a) 1m. of the statutes is created to read:

12 196.378 (3) (a) 1m. The commission shall promulgate rules that allow an
 13 electric utility to create renewable resource credits based on the reduction in
 14 electricity usage, increase in the efficiency of electricity usage, and generation of
 15 renewable energy that results in a year from improvements or applications, as
 16 defined in s. 196.3745 (1) (b), under a program of the electric utility that is authorized
 17 under s. 196.3745 (2) (a). The rules shall include requirements for measuring the
 18 amount of such a reduction, increase, or generation, and calculating the amount of
 19 a renewable resource credit.

20 **SECTION 7.** 196.378 (3) (c) of the statutes is amended to read:

21 196.378 (3) (c) A renewable resource credit created under s. 196.378 (3) (a),
 22 2003 stats., may not be used after December 31, 2011. A renewable resource credit
 23 created under par. (a) 1., 1m., or 2., ~~as affected by 2005 Wisconsin Act 141,~~ may not
 24 be used after the 4th year after the year in which the credit is created, except the

6

1 commission may promulgate rules specifying a different period of time if the
2 commission determines that such period is necessary for consistency with any
3 regional renewable resource credit trading program that applies in this state.

4 History: 1999 a. 9; 2001 a. 30; 2005 a. 141.

create authored (D)

INSERT 15-5:

5 **SECTION 8.** 227.01 (13) (t) of the statutes, as affected by 2009 Wisconsin Act 28,
6 is amended to read:

7 227.01 (13) (t) Ascertain and determines prevailing wage rates under ss.
8 66.0903, 66.0904, 103.49, 103.50, 196.3745 (5) (a) 5., and 229.8275, except that any
9 action or inaction which ascertain and determines prevailing wage rates under ss.
10 66.0903, 66.0904, 103.49, 103.50, 196.3745 (5) (a) 5., and 229.8275 is subject to
11 judicial review under s. 227.40.

~~NOTE: NOTE: Par. (t) is shown as amended eff. 1-1-10 by 2009 Wis. Act 28. Prior to 1-1-10 it reads:NOTE:~~

12 (t) Ascertain and determines ~~prevailing~~ wage rates under ss. 66.0903, 103.49, 103.50 and 229.8275, except that any action or inaction which ascertain and
13 determines ~~prevailing~~ wage rates under ss. 66.0903, 103.49, 103.50 and 229.8275 is subject to judicial 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, 28.~~

create authored (E)

INSERT 16-6:

14 **SECTION 9.** 946.15 (1) of the statutes, as affected by 2009 Wisconsin Act 28, is
15 amended to read:
16

17 946.15 (1) Any employer, or any agent or employee of an employer, who induces
18 any person who seeks to be or is employed pursuant to a public contract as defined
19 in s. 66.0901 (1) (c) or who seeks to be or is employed on a project on which a prevailing
20 wage rate determination has been issued by the department of workforce
21 development under s. 66.0903 (3), 66.0904 (4), 103.49 (3), 103.50 (3), 196.3745 (5) (a)
22 5., or 229.8275 (3) or by a local governmental unit, as defined in s. 66.0903 (1) (d),
23 under s. 66.0903 (6) or 66.0904 (6) to give up, waive, or return any part of the
24 compensation to which that person is entitled under his or her contract of

1 employment or under the prevailing wage rate determination issued by the
 2 department or local governmental unit, or who reduces the hourly basic rate of pay
 3 normally paid to an employee for work on a project on which a prevailing wage rate
 4 determination has not been issued under s. 66.0903 (3) or (6), 66.0904 (4) or (6),
 5 103.49 (3), 103.50 (3), 196.3745 (5) (a) 5., or 229.8275 (3) during a week in which the
 6 employee works both on a project on which a prevailing wage rate determination has
 7 been issued and on a project on which a prevailing wage rate determination has not
 8 been issued, is guilty of a Class I felony.

9 History: 1979 c. 269; 1995 a. 27 s. 9130 (4); 1995 a. 215; 1997 a. 3; 1999 a. 150, 167; 2001 a. 30, 109; 2009 a. 28.

*create
 authorref* (E) **INSERT 16-22:**

10 **SECTION 10.** 946.15 (2) of the statutes, as affected by 2009 Wisconsin Act 28,

11 is amended to read:

12 946.15 (2) Any person employed pursuant to a public contract as defined in s.
 13 66.0901 (1) (c) or employed on a project on which a prevailing wage rate
 14 determination has been issued by the department of workforce development under
 15 s. 66.0903 (3), 66.0904 (4), 103.49 (3), 103.50 (3), 196.3745 (5) (a) 5., or 229.8275 (3)
 16 or by a local governmental unit, as defined in s. 66.0903 (1) (d), under s. 66.0903 (6)
 17 or 66.0904 (6) who gives up, waives, or returns to the employer or agent of the
 18 employer any part of the compensation to which the employee is entitled under his
 19 or her contract of employment or under the prevailing wage determination issued by
 20 the department or local governmental unit, or who gives up any part of the
 21 compensation to which he or she is normally entitled for work on a project on which
 22 a prevailing wage rate determination has not been issued under s. 66.0903 (3) or (6),
 23 66.0904 (4) or (6), 103.49 (3), 103.50 (3), 196.3745 (5) (a) 5., or 229.8275 (3) during
 24 a week in which the person works part-time on a project on which a prevailing wage

create auto ref (G)

1 rate determination has been issued and part-time on a project on which a prevailing
2 wage rate determination has not been issued, is guilty of a Class C misdemeanor.

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; 2009 a. 28.

INSERT 17-9:

4 **SECTION 10.** 946.15 (3) of the statutes, as affected by 2009 Wisconsin Act 28,
5 is amended to read:

6 946.15 (3) Any employer or labor organization, or any agent or employee of an
7 employer or labor organization, who induces any person who seeks to be or is
8 employed on a project on which a prevailing wage rate determination has been issued
9 by the department of workforce development under s. 66.0903 (3), 66.0904 (4), 103.49
10 (3), 103.50 (3), 196.3745 (5) (a) 5., or 229.8275 (3) or by a local governmental unit, as
11 defined in s. 66.0903 (1) (d), under s. 66.0903 (6) or 66.0904 (6) to permit any part of
12 the wages to which that person is entitled under the prevailing wage rate
13 determination issued by the department or local governmental unit to be deducted
14 from the person's pay is guilty of a Class I felony, unless the deduction would be
15 permitted under 29 CFR 3.5 or 3.6 from a person who is working on a project that is
16 subject to 40 USC 3142.

create auto ref (H)

17 History: 1979 c. 269; 1995 a. 27 s. 9130 (4); 1995 a. 215; 1997 a. 3; 1999 a. 150, 167; 2001 a. 30, 109; 2009 a. 28.

INSERT 17-19:

18 **SECTION 12.** 946.15 (4) of the statutes, as affected by 2009 Wisconsin Act 28,
19 is amended to read:

20 946.15 (4) Any person employed on a project on which a prevailing wage rate
21 determination has been issued by the department of workforce development under
22 s. 66.0903 (3), 66.0904 (4), 103.49 (3), 103.50 (3), 196.3745 (5) (a) 5., or 229.8275 (3)
23 or by a local governmental unit, as defined in s. 66.0903 (1) (d), under s. 66.0903 (6)
24 or 66.0904 (6) who permits any part of the wages to which that person is entitled

1 under the prevailing wage rate determination issued by the department or local
 2 governmental unit to be deducted from his or her pay is guilty of a Class C
 3 misdemeanor, unless the deduction would be permitted under 29 CFR 3.5 or 3.6 from
 4 a person who is working on a project that is subject to 40 3142.

NOTE: NOTE: This section is shown as amended eff. 1-1-10 by 2009 Wis. Act 28. Prior to 1-1-10 it reads:NOTE:

5 946.15 Public construction contracts at less than full rate. (1) Any employer, or any agent or employee of an employer, who induces any person who seeks to
 6 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
 7 has been issued by the department of workforce development under s. 66.0903 (3), 103.49 (3), 103.50 (3) or 229.8275 (3) or by a local governmental unit, as defined in
 8 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
 9 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
 10 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) or 229.8275 (3)
 11 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
 12 wage rate determination has not been issued, is guilty of a Class I felony.

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

20 (3) Any employer or labor organization, or any agent or employee of an employer or labor organization, who induces any person who seeks to be or is employed
 21 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)
 22 or 229.8275 (3) or by a local governmental unit, as defined in s. 66.0903 (1) (d), under s. 66.0903 (6) to permit any part of the wages to which that person is entitled under
 23 the prevailing wage rate determination issued by the department or local governmental unit to be deducted from the person's pay is guilty of a Class I felony, unless
 24 the deduction would be permitted under 29 CFR 3.5 or 3.6 from a person who is working on a project that is subject to 40 USC 276c.

25 (4) Any person employed on a project on which a prevailing wage rate determination has been issued by the department of workforce development under s. 66.0903
 26 (3), 103.49 (3), 103.50 (3) or 229.8275 (3) or by a local governmental unit, as defined in s. 66.0903 (1) (d), under s. 66.0903 (6) who permits any part of the wages to which
 27 that person is entitled under the prevailing wage rate determination issued by the department or local governmental unit to be deducted from his or her pay is guilty
 28 of a Class C misdemeanor, unless the deduction would be permitted under 29 CFR 3.5 or 3.6 from a person who is working on a project that 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; 2009 a. 28.

INSERT 18-9:

SECTION 13. Effective dates. This act takes effect on the day after publication,

except as follows:

(1) The amendment of sections 103.49 (3) (ar) (by SECTION #), 109.09 (1) (by SECTION #), 111.322 (2m) (c) (by SECTION #), 227.01 (13) (t) (by SECTION #) and 946.15 (1) (by SECTION #), (2) (by SECTION #), (3) (by SECTION #) and (4) (by SECTION #) of the statutes takes effect on January 1, 2010.

or on the day after publication, whichever is later

use autoref (B) from p. 2 of INSERT

use autoref (E) from p. 7 of INSERT

use autoref (F) from p. 8 of INSERT

use autoref (G) from p. 9 of INSERT

use autoref (D) from p. 7 of INSERT

use autoref (H) from p. 9 of INSERT

use autoref (C) from p. 3 of INSERT

use autoref (A) from p. 1 of INSERT

DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-2740/P3dn

MDK:|:....

cjs

Date

I refer to the program as an investment program rather than a loan program because I think investment program more accurately reflects the nature of the program.

3

Rep. Mason:

Please note the following about this version of the draft, which is based on the material you provided at our recent meeting:

1. As you requested, I eliminated the requirements that the PSC submit a proposal to Joint Finance. Instead, this version allows the PSC to authorize a program by an electric, natural gas, or water utility.

2. Because 2009 Wisconsin Act 11 allows cities, villages, towns, and counties to make loans for energy efficiency improvements, and collect loan repayments as special charges, I eliminated the requirements in the previous version relating to cities, villages, towns, and counties. Also, you asked whether 2009 Wisconsin Act 11 applies to water utilities. Note that 2009 Wisconsin Act 11 refers to loans by cities, villages, towns, and counties, rather than to loans by utilities. See s. 66.0627 (1) (a), (b) and (8), created by 2009 Wisconsin Act 11.

4

3. I eliminated the requirements in the previous version that only contractors and subcontractors on the prequalification list must be used for programs under current law in ss. 16.26 and 196.374. Is that okay, or did you want to maintain those requirements? ✓

5

4. Regarding contractors and subcontractors:

A. Are proposed s. 196.3745 (5) (a) 11. (independent contractor certification), (b) (exception to apprenticeship requirements), and (i) (25 percent rule) okay? These provisions were included in the previous version, but not in the material you provided at our meeting. ✓

B. Regarding proposed s. 196.3745 (5) (a) 12., the material you provided also states: "The applicant shall provide an explanation to Focus on Energy of any [of the disciplinary or legal violation] disclosures ..., and Focus on Energy shall determine if such incidents are of such a nature as to disqualify the applicant." I did not include such language because I don't think it gives sufficient direction to the PSC on when it should disqualify an applicant. You could require the PSC to promulgate rules for such disqualifications. Please let me know what you think.

C. Regarding proposed s. 196.3745 (5) (a) 3. and 4., as noted in the previous version, I think the reference to contract specification is potentially

confusing. Does this refer to future contracts? If so, how can the PSC determine that an applicant will comply with a future contract?

D. Regarding proposed s. 196.3745 (5) (h), unless you clarify your intent, the PSC will have to determine what constitutes "good cause" to revoke inclusion in the prequalification list. With respect to qualifications, I think the issue is relatively straightforward. If the PSC determines that a contractor or subcontractor no longer satisfies the criteria in proposed s. 196.3745 (5) (a), the PSC would have good cause to revoke inclusion. However, with respect to performance, the bill doesn't impose any requirements on performance. Therefore, it isn't clear what constitutes "good cause" to revoke inclusion on the basis of performance.



5. Regarding audits under proposed s. 196.3745 (4), is the requirement regarding savings and costs okay? If not, what must an audit show in order for an improvement or application to be eligible? Also, as noted in the previous version of the draft, you mentioned that you want audits before and after an improvement or application is made or installed. However, I did not include a requirement for an audit after an improvement is made or installed because I don't know what consequences should follow from the results of such an audit. Please let me know your intent on this issue.



6. In the material you provided, the loan program for utilities is incorporated into s. 196.374. However, in this version of the draft, I continued to create a new section for the program in proposed s. 196.3745. I did so because I'm not sure about your intent on the following issues:



A. The material includes language, which I have not incorporated into this draft, that requires the PSC to ensure in rate-making orders that a utility recovers the amounts spent on the loan program under the bill. However, proposed s. 196.3745 (6) (a) allows a utility to collect loan program costs as a separate line item on bills, which does not seem compatible with collecting costs via rates. Is the line item approach okay, or do you want to do something different?

B. The material includes the following language: "The cost of [the loan program under the bill and the supplemental utility programs under s. 196.374 (2) (b) 2.] will be recovered from the amounts collected under [s. 196.374] (3) (b) 2., to the extent that those collections exceed 1.2% of revenues." I'm not sure what this language is intended to accomplish. Do you want a utility's spending on the loan program under the bill, as well as supplemental utility programs under current law, to count toward the 1.2% requirement? Also, I don't understand the phrase beginning "to the extent that...." Also note that the language is inconsistent with proposed s. 196.3745 (6) (b), which states that the costs of the loan program are in addition to amounts required to be spent under s. 196.374 (3) (b) 2.

percent

C. Proposed s. 196.3745 (6) (c) prohibits a utility from recovering bad debt related to nonutility service from ratepayers. Is that okay?



§7. In proposed s. 196.3745 (6) (a), I refer to a separate line item on a bill that compares, rather than offsets, the cost of a program borne by a customer with energy savings. I made this change because I think "offsets" is potentially confusing.

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/P3dn
MDK:cjs:md

October 29, 2009

Rep. Mason:

Please note the following about this version of the draft, which is based on the material you provided at our recent meeting:

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should disqualify an applicant. You could require the PSC to promulgate rules for such disqualifications. Please let me know what you think.

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

Kunkel, Mark

From: Selkowe, Vicky
Sent: Friday, October 30, 2009 5:02 PM
To: Kunkel, Mark
Subject: RE: Available on Monday?

Great. Thanks. See you then. In response to your questions in the note: #s 2 & 3 are both fine. We like your change in #3 a lot. The rest we'll have to talk about on Monday.

Vicky

Vicky Selkowe
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: Friday, October 30, 2009 12:59 PM
To: Selkowe, Vicky
Subject: RE: Available on Monday?

Yes, 2 pm Monday is okay.

From: Selkowe, Vicky
Sent: Friday, October 30, 2009 12:26 PM
To: Kunkel, Mark
Subject: Available on Monday?

Hi Mark –

Thanks for the most recent draft of the WISE legislation. Rep. Mason and I are reviewing it today. Are you available on Monday to meet with us and go through your questions and try to firm up remaining details? Rep. Mason will be here on Monday and is available to meet at 2:00 if that works for you.

Vicky

Vicky Selkowe
Office of State Representative Cory Mason
62nd Assembly District
Room 321 East, State Capitol
PO Box 8953, Madison, WI 53708
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Kunkel, Mark

From: Selkowe, Vicky
Sent: Thursday, November 05, 2009 3:45 PM
To: Kunkel, Mark
Subject: RE: Meeting with interested parties re. the WISE bill

Great. Thanks.

Vicky Selkowe
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: Thursday, November 05, 2009 3:42 PM
To: Selkowe, Vicky
Subject: RE: Meeting with interested parties re. the WISE bill

Yes, that time and date is okay.

From: Selkowe, Vicky
Sent: Thursday, November 05, 2009 3:41 PM
To: Kunkel, Mark
Subject: Meeting with interested parties re. the WISE bill

Hi Mark –
Rep. Mason would like to have you join us for a meeting with all of the parties we're working with on the WISE legislation, to answer/clarify the remaining questions and finalize the drafting plan for this bill.

Are you available next Thursday the 12th at 11:15?
Vicky

Vicky Selkowe
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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Kunkel, Mark

From: Selkove, Vicky
Sent: Wednesday, November 11, 2009 4:45 PM
To: Selkove, Vicky; 'Haubrich.Joel'; 'Joe Oswald'; 'erics@cows.org'; 'Phil Neuenfeldt'; 'Keith Reopelle'; satya@cows.org; Kunkel, Mark; 'dboetcher tds.net'
Subject: Reminder: WISE meeting Thursday @ 11:15a.m.

Hi all –

Just a quick reminder that we're scheduled to meet tomorrow, **Thursday, November 12th @ 11:15 a.m.** to resolve the remaining questions and issues surrounding the WISE bill draft.

Mark Kunkel, the Legislative Reference Bureau attorney who's been working on this bill, will be joining us.

We will be meeting in the conference room down the hall from our office (the conference room in-between Rep. Pocan and Sen. Miller's offices). Due to everyone's busy schedules, we're going to try to plow through numerous issues as quickly as possible so please be there ready to go at 11:15.

Thanks to all of you who have sent detailed comments about the draft as those will help greatly to focus our discussion tomorrow morning.

See you tomorrow,
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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Kunkel, Mark

From: Selkove, Vicky
Sent: Friday, November 20, 2009 11:16 AM
To: Kunkel, Mark
Subject: FW: [Fwd: Biden's Recovery Through Retrofit & EECBG Competitive FOA]
Attachments: Recovery_Through_Retrofit_Final_Report 10-19-09.pdf; EECBG Competitive FOA 10-19-09.pdf; EECBG Competitive Grants Summary 10-19-09.doc

Mark –

I think this is the information you need for the WISE bill re. the federal grant name, information, etc. to put in as the appropriation link.

Please let me know if this is not what you needed and if you had questions about the other issues we clarified at the meeting last week. We're still working on the local hire piece.

Thanks,

Vicky

Vicky Selkove

Office of State Representative Cory Mason

62nd Assembly District

Room 321 East, State Capitol

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----- Original Message -----

Subject: Biden's Recovery Through Retrofit & EECBG Competitive FOA

Date: Mon, 19 Oct 2009 12:31:03 -0700

From: Uyen Le <uyenle1@gmail.com>

To: ecn@efficiencycities.us, rachel_golden <rachel@ef.org>, Emmaia Gelman CWF <emmaia@cwfn.org>, "Stacey Paradis | MEEA" <sparadis@mwalliance.org>, Roger-Mark.DeSouza@sierraclub.org, Kelley McKanna <kelley@renewfund.com>, Eric Mackres <emackres@mit.edu>, John Bailey <bailey@ilsr.org>, Steve Morgan <smorgan@cleanenergysol.com>, VanGendt.Saskia@epamail.epa.gov, "Roche, Patrick" <Patrick.Roche@csgpr.com>, Sean Weitner <sweitner@ecw.org>, Ingrid Kelley <ikelley@ecw.org>, Erik Bonnett <ebonnett@rmi.org>, Cherlyn Seruto <cseruto@rmi.org>, Caroline Fluhrer <cfluhrer@rmi.org>, Merrian C Fuller <MCFuller@lbl.gov>, Courtney Lane <lane@pennfuture.org>, Jennifer.Perrone@sierraclub.org, Sidney Davidson <S.Davidson@uccorps.com>, Seth Kaplan <skaplan@clf.org>, Bill Coleman <bcoleman@clf.org>, Rhys Roth <rhys@climatesolutions.org>, tomosdoba@mac.com, "Eileen V. Quigley" <eileen@climatesolutions.org>, Abby Vogen Horn <avogenhorn@ecw.org>, Dan Cantor <dcantor@workingfamilies.org>, Gregg Small <gregg@climatesolutions.org>.

11/20/2009

ben@seealliance.org, alex@seealliance.org, forest@all4energy.org, Jim Marston
<jmarston@environmentaldefense.org>, bmatchett@elpc.org, mpetersen@globalgreen.org,
kim.lundgren@iclei.org, swilliams@livingcities.org, "Coakley, Sue" <scoakley@neep.org>,
nmoser@theoec.org, Jan Jarrett <jarrett@pennfuture.org>, sam@cleanenergy.org, Kevin
McCarty <kmccarty@usmayors.org>, laura.s.grossman@hud.gov, David Wooley
<dwooley@ef.org>, Priya Amar <priya@ef.org>, Meredith Wingate
<meredith_wingate@ef.org>

Hi All, this is Uyen Le from the California Construction Academy and the CoLab @ MIT.

Here's the link to the press release for VP Biden's Recovery Through Report (10-19-09) that the DOE rep from Friday's call was referring to. I've attached it as a pdf, as well. This is a report released by Biden's Middle Class Task Force. http://www.whitehouse.gov/the_press_office/Vice-President-Biden-Unveils-Report-Focused-on-Expanding-Green-Jobs-And-Energy-Savings-For-Middle-Class-Families/.

I've also attached the newly-released FOA for the new EECBG competitive round http://www.eecbg.energy.gov/about/competitive_grants.html, as well as a Word document summarizing the FOA. The applications for the EECBG are due December 14th.

Take Care, Uyen

--

Uyen Le
California Construction Academy - Research Director
Community Innovators Lab (CoLab) @ MIT - Program Manager
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uyenle1@gmail.com - Primary Account
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