



State of Wisconsin  
2009 - 2010 LEGISLATURE

LRB-2740/P6

MDK/GMM/MES:cjs&nwn:ph

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PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION

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1 AN ACT *to renumber* 16.26; *to amend* 103.49 (3) (ar), 103.49 (3) (ar), 109.09 (1),  
2 109.09 (1), 111.322 (2m) (c), 111.322 (2m) (c), 196.374 (4) (b), 196.378 (1) (i),  
3 196.378 (3) (a) 1., 196.378 (3) (c), 227.01 (13) (t), 227.01 (13) (t), 946.15 (1),  
4 946.15 (1), 946.15 (2), 946.15 (2), 946.15 (3), 946.15 (3), 946.15 (4) and 946.15  
5 (4); and *to create* 16.26 (2), 196.374 (2) (d), 196.3745, 196.378 (3) (a) 1m. and  
6 709.03 (form) C. 25m. of the statutes; **relating to:** allowing political  
7 subdivisions and certain utilities to administer investment programs for  
8 energy efficiency improvements and renewable energy applications, providing  
9 an exemption from emergency rule procedures, and granting rule-making  
10 authority.

**Analysis by the Legislative Reference Bureau**

This bill allows the Public Service Commission (PSC) to authorize a city, village, town, or county (political subdivision) or an electric, natural gas, or water public utility (utility) to administer, fund, or provide administrative services for a program for investing in energy efficiency improvements and renewable resource applications at any type of premises within the political subdivision or served by the utility. The bill defines "energy efficiency improvement" as an improvement that reduces the

verify that

usage of energy or increases the efficiency of energy usage at 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 premises. The bill allows the PSC to authorize a program only upon application by a political subdivision or utility and prohibits the PSC from requiring that political subdivisions and utilities participate in such a program. 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 at premises where energy efficiency improvements or renewable resource applications are made under the program. A tariff has no effect until approved by the PSC.

under an authorized program

In addition, the bill specifies that premises are not eligible for an investment unless an audit is performed that demonstrates that an energy efficiency improvement or renewable resource application is cost-effective, as specified in rules promulgated by the PSC. The rules may specify criteria that include comparing the cost of an improvement or application to the value of the premises. In addition, for an energy efficiency improvement, the rules may specify criteria that include the energy savings resulting from the improvement and the period of time required for the energy savings to equal the cost of the improvement. In addition, the PSC must promulgate rules requiring the performance of audit after an energy efficiency improvement or renewable resource application is made or installed. The purpose of such an audit is to ~~determine whether~~ the improvement or application ~~was made or installed in a competent manner, and 2) operates in a cost-effective manner.~~ The bill requires the PSC to promulgate rules specifying the certification requirements that a person must satisfy to perform either type of audit.

The bill also requires that all work involved in making or installing an energy efficiency improvement or renewable resource application under an authorized program must be performed by a contractor or subcontractor that the PSC has included on a prequalification list of approved contractors and subcontractors. The PSC may include a contractor or subcontractor on the list only if the PSC determines that the contractor or subcontractor 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; 7) satisfies cultural competency requirements in rules promulgated by the PSC; 8) certifies that not less than 30 percent of the total hours worked on an individual energy efficiency improvement or renewable resource application will be performed by individuals who reside in the city, village, or town where the work is performed and who belong to historically disadvantaged or underrepresented groups; and 9) discloses certain past disciplinary actions and violations of federal or state law. If the past disciplinary

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1st or 2nd class

actions and violations constitute "good cause," as defined by the PSC by rule, the PSC may exclude a contractor or subcontractor from the list. In addition, the PSC must determine that a contractor or subcontractor 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 or subcontractor who does not sponsor such a program, but only if contractors and subcontractors who sponsor such a program are not available to perform the work.

In addition, the bill requires the PSC to make grants to political subdivisions and utilities for which the PSC authorizes programs under the bill. A political subdivision or utility must use the grants only for costs associated with an authorized program. The bill directs the PSC to make the grants from certain federal block grants that the state receives under a program administered by the federal Department of Energy under the American Recovery and Reinvestment Act of 2009. The bill also requires the PSC to allocate the federal grants in the manner required under the federal program.

The bill also includes requirements for ~~utility~~ <sup>utility</sup> to prioritize spending on a program authorized under the bill. For spending whose source is a grant by the PSC, the utility must give the greatest priority to energy efficiency improvements and renewable resource applications at residential premises and the least priority to energy efficiency improvements and renewable resource applications at nonresidential premises of customers with the greatest demand for utility service. For spending from other sources, the priorities are reversed. ~~In addition, the bill prohibits a utility from counting any spending whose source is a PSC grant under the bill for purposes of requirements under current law for spending a specified percentage of the public utility's annual operating revenues on energy efficiency and renewable resource programs.~~

The bill also does all of the following:

1. Allows a political subdivision for which a program is authorized under the bill to make loans to residents for energy efficiency improvements and renewable resource applications, and to collect loan repayments as special charges, divide the special charges into installments, and include the special charges in tax rolls even if they are not delinquent. A political subdivision has similar collection authority under current law for loans for energy efficiency improvements and renewable resource applications.
2. Requires political subdivisions and utilities that receive payments from residents and customers for energy efficiency improvements and renewable resource applications under authorized programs to use the payments to invest in other improvements and applications under the programs.
3. Requires a tariff filed by a utility for which a program is authorized 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

utilities  
and political  
subdivisions

INSERT 3A

utility

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 compares 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 with an authorized 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 an authorized program on the real estate conditions report that is required for residential property transfers.

7. Requires contractors and subcontractors to apply to renew their inclusion on the prequalification list every two years, allows the PSC to conditionally approve a contractor or subcontractor for inclusion on the list, allows the PSC to revoke inclusion for "good cause," as defined in rules promulgated by the PSC, and requires the PSC to update the list on a monthly basis and make the list available to the public.

8. 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 and subcontractors who are not included on the list described above. However, the rule or order must allow performance of work by contractors and subcontractors who do not satisfy the apprenticeship requirements only if contractors and subcontractors who do satisfy the requirements are not available to perform the work.

9. 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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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 an energy efficiency improvement or renewable resource application under a program authorized by the PSC under the bill, but only if the spending source for the improvement or application is not a PSC grant 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.

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:**

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

\*\*\*NOTE: The above SECTION is new material.

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

3 16.26 (2) The department shall prohibit by rule the performance of any work  
4 under a contract entered into under sub. (1) by a contractor or subcontractor who is  
5 not included in the list specified in s. 196.3745 (5) (a), except that the department's  
6 rule shall allow the performance of work by a contractor or subcontractor who does  
7 not satisfy the requirement under s. 196.3745 (5) (a) <sup>3</sup>. If no contractor or ✓  
8 subcontractor who satisfies the requirement is available to perform the work. This  
9 subsection applies to contracts that are entered into, extended, modified, or renewed  
10 on the effective date of the department's rule.

\*\*\*\*NOTE: The above SECTION is new material.

11 SECTION 3. 103.49 (3) (ar) of the statutes is amended to read.

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

1

SECTION 4. 103.49 (3) (ar) of the statutes, as affected by 2009 Wisconsin Act 28,  
is amended to read:

103.49 (3) (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,  
66.0904, 103.50, 196.3745 (5) (a) ~~b.~~, or 229.8275 or 40 USC 3142 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, 66.0904, 103.50, 196.3745 (5) (a)  
or 229.8275 or 40 USC 3142.

2

SECTION 5. 109.09 (1) of the statutes is amended to read:

109.09 (1) The department shall investigate and attempt equitably to adjust  
controversies between employers and employees as to alleged wage claims. The  
department 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 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 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, 196.3745 (5) (a) ~~b.~~, and 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) 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 in which the violation occurs for prosecution and  
collection and the district attorney shall commence an action in the circuit court  
having appropriate jurisdiction. Any number of wage claims or wage deficiencies

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

7 **SECTION 6.** 109.09 (1) of the statutes, as affected by 2009 Wisconsin Act 28, is  
8 amended to read:

9 109.09 (1) The department shall investigate and attempt equitably to adjust  
10 controversies between employers and employees as to alleged wage claims. The  
11 department may receive and investigate any wage claim which is filed with the  
12 department, or received by the department under s. 109.10 (4), no later than 2 years  
13 after the date the wages are due. The department may, after receiving a wage claim,  
14 investigate any wages due from the employer against whom the claim is filed to any  
15 employee during the period commencing 2 years before the date the claim is filed.  
16 The department shall enforce this chapter and ss. 66.0903, 66.0904, 103.02, 103.49,  
17 103.82, 104.12, 196.3745 (5) (a) ~~2.~~ and 229.8275. In pursuance of this duty, the  
18 department may sue the employer on behalf of the employee to collect any wage claim  
19 or wage deficiency and ss. 109.03 (6) and 109.11 (2) and (3) shall apply to such actions.  
20 Except for actions under s. 109.10, the department may refer such an action to the  
21 district attorney of the county in which the violation occurs for prosecution and  
22 collection and the district attorney shall commence an action in the circuit court  
23 having appropriate jurisdiction. Any number of wage claims or wage deficiencies  
24 against the same employer may be joined in a single proceeding, but the court may  
25 order separate trials or hearings. In actions that are referred to a district attorney

1 under this subsection, any taxable costs recovered by the district attorney shall be  
2 paid into the general fund of the county in which the violation occurs and used by that  
3 county to meet its financial responsibility under s. 978.13 (2) (b) for the operation of  
4 the office of the district attorney who prosecuted the action.

5 **SECTION 7.** 111.322 (2m) (c) of the statutes is amended to read:

6 111.322 (2m) (c) The individual files a complaint or attempts to enforce a right  
7 under s. 66.0903, 103.49, 196.3745 (5) (a) <sup>1</sup> ~~or~~ b., or 229.8275 or testifies or assists in any  
8 action or proceeding under s. 66.0903, 103.49, 196.3745 (5) (a) <sup>1</sup> ~~or~~ 229.8275.

9 **SECTION 8.** 111.322 (2m) (c) of the statutes, as affected by 2009 Wisconsin Act  
10 28, is amended to read:

11 111.322 (2m) (c) The individual files a complaint or attempts to enforce a right  
12 under s. 66.0903, 66.0904, 103.49, 196.3745 (5) (a) <sup>1</sup> ~~or~~, or 229.8275 or testifies or ✓  
13 assists in any action or proceeding under s. 66.0903, 66.0904, 103.49, 196.3745 (5)  
14 (a) <sup>1</sup> ~~or~~, or 229.8275. ✓

15 **SECTION 9.** 196.374 (2) (d) of the statutes is created to read:

16 196.374 (2) (d) *Contractors.* The commission shall prohibit, by order or rule,  
17 the performance of any work under a contract under a program under par. (a) 1., (b)  
18 1. or 2., or (c) by a contractor or subcontractor who is not included in the list specified  
19 in s. 196.3745 (5) (a), except that the commission's order or rule shall allow the  
20 performance of work by a contractor or subcontractor who does not satisfy the  
21 requirement under s. 196.3745 (5) (a) <sup>3</sup> ~~7.~~ if no contractor or subcontractor who ✓  
22 satisfies the requirement is available to perform the work. This paragraph applies  
23 to contracts that are entered into, extended, modified, or renewed on the effective  
24 date of the commission's order or rule.

\*\*\*\*NOTE: The above SECTION is new material.



1           **SECTION 10.** 196.374 (4) (b) of the statutes is amended to read:

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

\*\*\*\*NOTE: The above SECTION is new material.

10           **SECTION 11.** 196.3745 of the statutes is created to read:

11           **196.3745 Energy efficiency and renewable energy investment**  
12 **program. (1) DEFINITIONS.** In this section:

13           (a) "Cultural competency" means the ability to understand and act respectfully  
14 toward, in a cultural context, the beliefs, interpersonal styles, attitudes, and  
15 behaviors of persons of various cultures.

\*\*\*\*NOTE: Paragraph (a) is new material and is based on the definition under  
current law in s. 48.983 (1) (cm).

16           (b) "Energy efficiency improvement" means an improvement to any type of  
17 premises that reduces the usage of energy, or increases the efficiency of energy usage,  
18 at the premises.

\*\*\*\*NOTE: The above is revised to refer to "any type of premises" rather than  
"residential premises."

19           (c) "Improvement or application" means an energy efficiency improvement or  
20 renewable resource application.

21           (d) "Political subdivision" means a city, village, town, or county.

\*\*\*\*NOTE: Paragraph (d) is new material.

1 (e) "Renewable resource application" means the application of a renewable  
2 resource, as defined in s. 196.374 (1) (j), at any type of premises.

~~\*\*\*\*NOTE: The above is revised to refer to "any type of premises" rather than  
"residential premises."~~

3 (f) "Utility" means a public utility that furnishes electricity, natural gas, or  
4 water service to retail customers.

~~\*\*\*\*NOTE: The above is revised to refer to "retail customers" rather than "residential  
customers."~~

5 (2) AUTHORIZATION. The commission may, upon application by a political  
6 subdivision or utility, authorize the political subdivision or utility to administer,  
7 fund, or provide administrative services for a program for investing in improvements  
8 or applications for any type of premises within the political subdivision or served by  
9 the utility. Participation in such a program shall be at the discretion of political  
10 subdivisions, utilities, and premises owners, and the commission may not require  
11 that a political subdivision, utility, or premises owner participate in such a program.

~~\*\*\*\*NOTE: The above is revised to refer to "any type of premises" rather than  
"residential premises," and to refer to political subdivisions, in addition to utilities.~~

12 (3) TARIFFS. A utility for which a program is authorized under sub. (2) shall file  
13 a tariff specifying the terms and conditions of utility and nonutility service provided  
14 to customers at premises where improvements or applications are made under the  
15 program. A tariff filed under this subsection shall have no effect until approved by  
16 the commission. A tariff filed by a utility under this subsection shall include all of  
17 the following:

~~\*\*\*\*NOTE: The above is revised to refer to "premises" rather than "residential  
premises."~~

18 (a) Terms and conditions for billing customers at premises for utility and  
19 nonutility service related to improvements or applications for which investments are  
20 made.

\*\*\*\*NOTE: The above is revised to refer to "premises" rather than "residential premises."

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

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

10 (d) Any other term or condition required by the commission.

11 (4) AUDITS. (a) *Pre-audits*. A premises is not eligible for an investment for an  
12 improvement or application under a program authorized under sub. (2) unless an  
13 audit is performed that demonstrates that the improvement or application is  
14 cost-effective. The commission shall promulgate rules for determining whether an  
15 improvement or application is cost-effective. For an improvement or application, the  
16 rules may specify criteria that include comparing the cost of the improvement or  
17 application to the value of the premises benefited by the improvement or application.  
18 For an improvement, the rules may specify criteria that include the energy savings  
19 resulting from the improvement and the period of time required for the energy  
20 savings to equal the cost of the improvement.

\*\*\*\*NOTE: The above is substantially revised. Note that the last sentence is limited to improvements. The reason is that, based on discussions at a meeting on this draft, I assume that a renewable resource application should not be evaluated on the basis of its energy savings or "payback period." Is the above okay?

1 (b) *Post-audits.* The commission shall promulgate rules requiring the  
 2 performance of an audit after an improvement or application is made or installed  
 3 under a program authorized under sub. (2). The purpose of the audit shall be to  
 4 ~~determine whether~~ <sup>verify that</sup> an improvement or application was made or installed ~~in a~~  
 5 ~~competent manner and whether the improvement or application operates in a~~  
 6 ~~cost-effective manner.~~

\*\*\*\*NOTE: Paragraph (b) is new material. Note that par. (d) applies only to utilities  
 and not political subdivisions. Is that okay?

7 (c) *Certifications.* The commission shall promulgate rules specifying the  
 8 certification requirements that a person must satisfy in order to perform an audit  
 9 required under this subsection.

\*\*\*NOTE: The above is revised to refer to "premises" rather than "residential  
 premises."

10 (5) CONTRACTORS AND SUBCONTRACTORS. (a) All work involved in making or  
 11 installing an improvement or application under a program authorized under sub. (2)  
 12 shall be performed by a contractor or subcontractor that the commission has included  
 13 on a list of prequalified contractors and subcontractors. The commission shall  
 14 approve a contractor or subcontractor for inclusion on the prequalification list only  
 15 if the commission determines that the contractor or subcontractor satisfies all of the  
 16 following:

- 17 1. Possesses the technical qualifications and resources, including equipment,  
 18 personnel, and financial resources, necessary to perform the required work or  
 19 obtains those qualifications and resources through the use of responsible  
 20 subcontractors who are approved by the commission for inclusion on the  
 21 prequalification list.

1 2. Possesses all valid and effective licenses, registrations, and certificates that  
 2 are required under federal, state, and local law for the type of work that the  
 3 contractor or subcontractor performs.  
 4 3. Meets all bonding requirements required by law or contract specifications.  
 5 4. Meets all insurance requirements as required by law or contract  
 6 specifications, including general liability insurance, workers compensation  
 7 insurance, and unemployment insurance requirements. The commission shall  
 8 promulgate rules specifying the requirements that must be met under this  
 9 subdivision.

\*\*\*\*NOTE: The sentence regarding rules is new material.

10 (1, 5) Agrees to pay all employees working on an improvement or application for  
 11 which an investment is made under the program who would be entitled to receive the  
 12 prevailing wage rate under s. 66.0903 and who would not be required or permitted  
 13 to work more than the prevailing hours of labor, as defined in s. 103.49 (1) (c), if the  
 14 improvement or application were a project of public works under s. 66.0903, not less  
 15 than the prevailing wage rate determined under s. 66.0903 (3) or (6) and not to  
 16 require or permit those employees to work more than the prevailing hours of labor,  
 17 except as permitted under s. 66.0903 (4) (a); to keep and permit inspection of records  
 18 in the same manner as a contractor performing work on a project of public works that  
 19 is subject to s. 66.0903 is required to keep and permit inspection of records under s.  
 20 66.0903 (10); and otherwise to comply with s. 66.0903 in the same manner as a  
 21 contractor performing work on a project of public works that is subject to s. 66.0903  
 22 is required to comply with s. 66.0903.

23 (2, 6) Agrees not to permit an employee working on an improvement or application  
 24 for which an investment is made under the program to use, possess, attempt to

## SECTION 11

1 possess, distribute, deliver, or be under the influence of a drug, as defined in s.  
2 103.503 (1) (d), or use or be under the influence of alcohol, while performing that  
3 work, to have in place a written program for the prevention of substance abuse  
4 among those employees in the same manner as a contractor performing work on a  
5 project of public works that is subject to s. 66.0903 is required to have in place such  
6 a written program under s. 103.503 (3), and otherwise to comply with s. 103.503 in  
7 the same manner as a contractor performing work on a project of public works that  
8 is subject to s. 66.0903 is required to comply with s. 103.503.

9 ~~3~~ Except as provided in par. (b), agrees, if the contractor or subcontractor  
10 employs employees in trades that are apprenticeable under subch. I of ch. 106, to  
11 sponsor an apprenticeship training program that is approved by the department of  
12 workforce development for each of those trades and to employ in each of those trades  
13 the maximum ratio of apprentices to journeymen that are permitted under  
14 standards adopted, recognized, or approved by that department.

15 ~~8. Fully complies with all equal employment opportunity, affirmative action,  
16 and other workforce participation requirements.~~

17 ~~4~~ Provides the commission a detailed statement regarding related business  
18 entities if, at any time in the 3 years prior to inclusion on the prequalification list,  
19 the contractor or subcontractor has controlled or has been controlled by another  
20 corporation, partnership, or other business entity operating in the construction  
21 industry.

22 ~~5~~ Certifies to the commission that the contractor or subcontractor  
23 understands that, in performing work under the program, the contractor or  
24 subcontractor will be required to use as subcontractors only those entities that are  
25 also included on the prequalification list.

1 ~~6~~ 11. Certifies to the commission that employees are not improperly classified as  
2 independent contractors in violation of federal or state law.

3 ~~7~~ 12. Discloses to the commission whether in the 3 years prior to inclusion on the  
4 prequalification list the contractor or subcontractor has had any type of business,  
5 contracting, or trade license, certification, or registration revoked or suspended;  
6 been debarred by any federal state, or local government agency; defaulted on any  
7 project; committed a willful violation of federal or state safety law as determined by  
8 a final decision of a court or government agency authority; or been found by a final  
9 decision of a court or government agency to be in violation of any other law relating  
10 to its contracting business, including wage and hour laws, prevailing wage laws,  
11 environmental laws, antitrust laws, or tax laws, where the penalty for such violation  
12 resulted in the imposition of a fine, back pay damages, or any other type of penalty,  
13 in an amount of more than \$10,000.

14 ~~8~~ 13. Satisfies cultural competency requirements established in rules  
15 promulgated by the commission.

\*\*\*NOTE: Subdivision 13. is new material.

16 ~~9~~ 14. Certifies to the commission that not less than 30 percent of the total hours  
17 of work performed by the contractor or subcontractor on an individual improvement  
18 or application will be performed by individuals who reside in the city, village, or town  
19 in which the work is performed and who are members of groups that are historically  
20 disadvantaged or underrepresented in the trades employed by the contractor or  
21 subcontractor, including women, individuals of color, and low-income individuals.  
22 The commission shall promulgate rules for making certifications under this  
23 subdivision.

\*\*\*NOTE: Subdivision 14. is new material. It replaces the material set forth in  
proposed s. 196.3745 (5) (j) in LRB-2740/P4. The reason that I moved the material from

INSERT 15-16

*196.3745 (5) (f) is that, by including it in subd. 14, it will also apply to work performed under ss. 16.26 and 196.374, which I assume is your intent. Is that okay?*

*10/13*

1 Certifies to the commission that an application for inclusion on the  
2 prequalification list has been executed by a principal or person employed by the  
3 applicant who has sufficient knowledge to address all matters in the application,  
4 including an attestation stating, under the penalty of perjury, that all information  
5 submitted is true, complete, and accurate.

*X*

6 (b) The commission may include on the prequalification list under par. (a) a  
7 contractor or subcontractor who does not satisfy the requirement under par. (a).

*3*

8 The commission shall promulgate rules allowing a contractor or subcontractor who  
9 does not satisfy the requirement to perform work on an improvement or application  
10 for which an investment is made under a program authorized under sub. (2), only if  
11 no contractor or subcontractor who satisfies the requirement is available to perform  
12 the work.

13 (c) Based on good cause shown by the disclosures required under par. (a),  
14 the commission may disapprove a contractor or subcontractor for inclusion in the  
15 prequalification list under par. (a). The commission shall promulgate rules defining  
16 "good cause" for purposes of this paragraph.

*7*

*\*\*\*NOTE: Paragraph (c) is new material.*

17 (d) A contractor or subcontractor shall report to the commission any material  
18 change to its business or operations that are relevant to the commission's approval  
19 to include the contractor or subcontractor in the prequalification list under par. (a).  
20 A contractor or subcontractor shall make a report required under this paragraph no  
21 later than 15 days after obtaining knowledge of the material change. If a contractor  
22 or subcontractor violates this paragraph, the commission may revoke the




1 contractor's or subcontractor's inclusion in the prequalification list for a period of no  
2 more than 3 years.

3 (e) Except for conditional approvals under par. (f), a contractor's or  
4 subcontractor's inclusion in the prequalification list under par. (a) is valid for 2 years,  
5 unless the commission revokes the inclusion under par. (d). The commission shall  
6 promulgate rules for a contractor or subcontractor to apply every 2 years for the  
7 commission to renew an approval for inclusion in the prequalification list.

8 (f) The commission may conditionally approve a contractor or subcontractor for  
9 inclusion in the prequalification list under par. (a) for a period not exceeding 2 years.  
10 The commission shall set forth in writing any conditions of an approval made under  
11 this paragraph.

12 (g) Prior to disapproving a contractor or subcontractor for inclusion in the  
13 prequalification list under par. (a), the commission shall provide the contractor or  
14 subcontractor with notice and opportunity to be heard.

15 (h) The commission shall make the prequalification list under par. (a) available  
16 to the public. The prequalification list shall show the name, address, identification  
17 number assigned by the commission, and approval renewal date for each contractor  
18 or subcontractor. The commission shall update the prequalification list on a monthly  
19 basis and make the updated lists available to the public.

20 (i) The commission shall periodically review the qualifications and  
21 performance of contractors and subcontractors included in the prequalification list  
22 under par. (a). For good cause shown, the commission may, after notice and  
23 opportunity to be heard, revoke a contractor's or subcontractor's inclusion on the  
24 prequalification list. The commission shall promulgate rules defining "good cause"  
25 for purposes of this paragraph. ~~The rules shall define "good cause" to include the~~ 

1 work experience of a contractor or subcontractor on improvements or applications  
 2 which audits under sub. (4) (b) determine were not made or installed in a competent  
 3 manner or do not operate in a cost-effective manner.

\*\*\*NOTE: The language regarding rules is new material.

4 (6) UTILITIES. (a) A utility for which the commission authorizes a program  
 5 under sub. (2) and approves a tariff under sub. (3) may include a separate line item  
 6 on bills of a customer at premises benefited by an improvement or application made  
 7 or installed under the program that compares the costs of the program borne by the  
 8 customer with the energy savings resulting from the improvement or application.  
 9 Notwithstanding s. 218.04, a utility need not obtain a license as a collection agency  
 10 for this billing practice.

\*\*\*NOTE: The above is revised to refer to "premises" rather than "a residential premises."

11 (b) Any costs that a utility incurs to administer, fund, or provide administrative  
 12 services for an investment made in accordance with a tariff approved under sub. (3),  
 13 and for which the utility receives a grant under sub. (8) (b), shall be in addition to  
 14 the amounts the commission requires the energy utility to spend under s. 196.374  
 15 (3) (b) 2.

\*\*\*NOTE: The phrase "and for which the utility receives a grant under sub. (8) (b)" is new material.

16 (c) A utility shall use any payments received for improvements and  
 17 applications from customers pursuant to a program authorized under sub. (2) to  
 18 invest in other improvements and applications under the program.

\*\*\*NOTE: Paragraph (c) is new material.

19 (d) 1. A utility for which a program is authorized under sub. (2) shall prioritize  
 20 the utility's spending on the program in the following manner:

1 a. If the source of the spending is a grant under sub. (8) (b), the utility shall give  
2 the greatest priority to improvements and applications at residential premises and  
3 the least priority to improvements and applications at nonresidential premises of  
4 customers with the greatest demand for service provided by the utility.

5 b. If the source of the spending is not a grant under sub. (8) (b), the utility shall  
6 give the greatest priority to improvements and applications at nonresidential  
7 premises of customers with the greatest demand for service provided by the utility  
8 and the least priority to improvements and applications at residential premises.

9 2. The commission shall promulgate rules implementing the requirements of  
10 subd. 1. INSERT 19-10

~~\*\*\* NOTE: Paragraph (d) is new material. Note that par. (d) applies only to utilities,  
and not political subdivisions. Is that okay?~~

11 (e) A utility may not recover from ratepayers any bad debt related to nonutility  
12 services provided under a tariff approved under sub. (3).

13 (7) POLITICAL SUBDIVISIONS. <sup>(a)</sup> A political subdivision for which a program is  
14 authorized under sub. (2) shall make loans to residents of the political subdivision  
15 for improvements or applications. A political subdivision that makes such a loan  
16 may collect the loan repayment in the same manner as loans under s. 66.0627 (8).  
17 A political subdivision shall use any loan repayments to make additional loans for  
18 other improvements or applications.

~~\*\*\* NOTE: Subsection (7) is new material.~~

19 (8) GRANTS. (a) In this subsection, "block grant program" means the the energy  
20 efficiency and conservation block grant program under P.L. 111-5.

21 (b) Notwithstanding s. 16.54 (2) (a), the commission shall administer all  
22 moneys received by the state under the block grant program for the purpose of  
23 making grants to political subdivisions and utilities for which programs are

INSERT 19-18

1 authorized under sub. (2). The commission shall allocate the moneys received under  
2 the block grant program in the manner required under the block grant program. A  
3 political subdivision or utility may use a grant only for costs associated with a  
4 program authorized under sub. (2).

*\*\*\*NOTE: Subsection (8) is new material*

5 **SECTION 12.** 196.378 (1) (i) of the statutes is amended to read:

6 196.378 (1) (i) "Renewable resource credit" means a credit calculated in  
7 accordance with rules promulgated under sub. (3) (a) 1. and, 1m., or 2.

8 **SECTION 13.** 196.378 (3) (a) 1. of the statutes is amended to read:

9 196.378 (3) (a) 1. Subject to subd. 2., an electric provider that provides total  
10 renewable energy to its retail electric customers or members in excess of the  
11 percentages specified in sub. (2) (a) 2., or that satisfies the requirements specified in  
12 rules promulgated under subd. 1m., may, in the applicable year, create a renewable  
13 resource credit and sell to any other electric provider the renewable resource credit  
14 or a portion of the renewable resource credit at any negotiated price. An electric  
15 provider that creates or purchases a renewable resource credit or portion may use  
16 the credit or portion ~~in a subsequent year~~, as provided under par. (c), to establish  
17 compliance with sub. (2) (a) 2. The commission shall promulgate rules that establish  
18 requirements for the creation and use of a renewable resource credit created on or  
19 after January 1, 2004, including calculating the amount of a renewable resource  
20 credit, and for the tracking of renewable resource credits by a regional renewable  
21 resource credit tracking system. The rules shall specify the manner for aggregating  
22 or allocating credits under this subdivision or sub. (2) (b) 4. or 5.

23 **SECTION 14.** 196.378 (3) (a) 1m. of the statutes is created to read:

1           196.378 (3) (a) 1m. The commission shall promulgate rules that allow an  
2 electric utility to create renewable resource credits based on the reduction in  
3 electricity usage, increase in the efficiency of electricity usage, and generation of  
4 renewable energy that results in a year from an improvement or application, as  
5 defined in s. 196.3745 (1) (c), under a program of the electric utility that is authorized  
6 under s. 196.3745 (2), but only if the utility's spending source for the improvement  
7 or application is not a grant under s. 196.3745 (8) (b). The rules shall include  
8 requirements for measuring the amount of such a reduction, increase, and  
9 generation and calculating the amount of a renewable resource credit.

\*\*\*\*NOTE: The phrase "but only if the utility's spending source for the improvement  
or application is not a grant under s. 196.3745 (8) (b)" is new material.

10           **SECTION 15.** 196.378 (3) (c) of the statutes is amended to read:

11           196.378 (3) (c) A renewable resource credit created under s. 196.378 (3) (a),  
12 2003 stats., may not be used after December 31, 2011. A renewable resource credit  
13 created under par. (a) 1., 1m., or 2., ~~as affected by 2005 Wisconsin Act 141~~, may not  
14 be used after the 4th year after the year in which the credit is created, except the  
15 commission may promulgate rules specifying a different period of time if the  
16 commission determines that such period is necessary for consistency with any  
17 regional renewable resource credit trading program that applies in this state.

18           **SECTION 16.** 227.01 (13) (t) of the statutes is amended to read:

19           227.01 (13) (t) Ascertain<sup>9</sup> and determine<sup>1</sup> prevailing wage rates under ss.  
20 66.0903, 103.49, 103.50, 196.3745 (5) (a) 5., and 229.8275, except that any action or  
21 inaction which ascertain<sup>9</sup> and determine<sup>1</sup> prevailing wage rates under ss. 66.0903,  
22 103.49, 103.50, 196.3745 (5) (a) 5., and 229.8275 is subject to judicial review under  
23 s. 227.40.

1           **SECTION 17.** 227.01 (13) (t) of the statutes, as affected by 2009 Wisconsin Act  
2 28, is amended to read:

3           227.01 (13) (t) Ascertains and determines prevailing wage rates under ss.  
4 66.0903, 66.0904, 103.49, 103.50, 196.3745 (5) (a) <sup>1</sup>, and 229.8275, except that any  
5 action or inaction which ascertains and determines prevailing wage rates under ss.  
6 66.0903, 66.0904, 103.49, 103.50, 196.3745 (5) (a) <sup>1</sup>, and 229.8275 is subject to  
7 judicial review under s. 227.40.

8           **SECTION 18.** 709.03 (form) C. 25m. of the statutes is created to read:

9           709.03 (form)

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

17          **SECTION 19.** 946.15 (1) of the statutes is amended to read:

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

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

8 **SECTION 20.** 946.15 (1) of the statutes, as affected by 2009 Wisconsin Act 28,  
9 is amended to read:

10 946.15 (1) Any employer, or any agent or employee of an employer, who induces  
11 any person who seeks to be or is employed pursuant to a public contract as defined  
12 in s. 66.0901 (1) (c) or who seeks to be or is employed on a project on which a prevailing  
13 wage rate determination has been issued by the department of workforce  
14 development under s. 66.0903 (3), 66.0904 (4), 103.49 (3), 103.50 (3), 196.3745 (5) (a)  
15 ~~2.~~ or 229.8275 (3) or by a local governmental unit, as defined in s. 66.0903 (1) (d),  
16 1 under s. 66.0903 (6) or 66.0904 (6) to give up, waive, or return any part of the  
17 compensation to which that person is entitled under his or her contract of  
18 employment or under the prevailing wage rate determination issued by the  
19 department or local governmental unit, or who reduces the hourly basic rate of pay  
20 normally paid to an employee for work on a project on which a prevailing wage rate  
21 determination has not been issued under s. 66.0903 (3) or (6), 66.0904 (4) or (6),  
22 103.49 (3), 103.50 (3), 196.3745 (5) (a) 1, <sup>← underscored</sup> or 229.8275 (3) during a week in which the  
23 employee works both on a project on which a prevailing wage rate determination has  
24 been issued and on a project on which a prevailing wage rate determination has not  
25 been issued, is guilty of a Class I felony.

1 ~~SECTION 21. 946.15 (2) of the statutes is amended to read:~~

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

17 SECTION 22. 946.15 (2) of the statutes, as affected by 2009 Wisconsin Act 28,  
18 is amended to read:

19 946.15 (2) Any person employed pursuant to a public contract as defined in s.  
20 66.0901 (1) (c) or 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) <sup>1</sup> b., 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 gives up, waives, or returns to the employer or agent of the  
25 employer any part of the compensation to which the employee is entitled under his



1 or her contract of employment or under the prevailing wage determination issued by  
2 the department or local governmental unit, or who gives up any part of the  
3 compensation to which he or she is normally entitled for work on a project on which  
4 a prevailing wage rate determination has not been issued under s. 66.0903 (3) or (6),  
5 66.0904 (4) or (6), 103.49 (3), 103.50 (3), 196.3745 (5) (a) <sup>g1</sup> or 229.8275 (3) during ✓  
6 a week in which the person works part-time on a project on which a prevailing wage  
7 rate determination has been issued and part-time on a project on which a prevailing  
8 wage rate determination has not been issued, is guilty of a Class C misdemeanor.

9 **SECTION 23.** 946.15 (3) of the statutes is amended to read:

10 ~~946.15 (3) Any employer or labor organization, or any agent or employee of an~~  
11 ~~employer or labor organization, who induces any person who seeks to be or is~~  
12 ~~employed on a project on which a prevailing wage rate determination has been issued~~  
13 ~~by the department of workforce development under s. 66.0903 (3), 103.49 (3), 103.50~~  
14 ~~(3), 196.3745 (5) (a) <sup>g1</sup>, or 229.8275 (3) or by a local governmental unit, as defined in~~  
15 ~~s. 66.0903 (1) (d), under s. 66.0903 (6) to permit any part of the wages to which that~~  
16 ~~person is entitled under the prevailing wage rate determination issued by the~~  
17 ~~department or local governmental unit to be deducted from the person's pay is guilty~~  
18 ~~of a Class I felony, unless the deduction would be permitted under 29 CFR 3.5 or 3.6~~  
19 ~~from a person who is working on a project that is subject to 40 USC 276c.~~

20 **SECTION 24.** 946.15 (3) of the statutes, as affected by 2009 Wisconsin Act 28,  
21 is amended to read:

22 946.15 (3) Any employer or labor organization, or any agent or employee of an  
23 employer or labor organization, who induces any person who seeks to be or is  
24 employed on a project on which a prevailing wage rate determination has been issued  
25 by the department of workforce development under s. 66.0903 (3), 66.0904 (4), 103.49

1

1 (3), 103.50 (3), 196.3745 (5) (a), or 229.8275 (3) or by a local governmental unit, as  
2 defined in s. 66.0903 (1) (d), under s. 66.0903 (6) or 66.0904 (6) to permit any part of  
3 the wages to which that person is entitled under the prevailing wage rate  
4 determination issued by the department or local governmental unit to be deducted  
5 from the person's pay is guilty of a Class I felony, unless the deduction would be  
6 permitted under 29 CFR 3.5 or 3.6 from a person who is working on a project that is  
7 subject to 40 USC 3142.

8 **SECTION 25.** 946.15 (4) of the statutes is amended to read:

9 946.15 (4) Any person 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 (5) (a), or 229.8275 (3) or by a local  
12 governmental unit, as defined in s. 66.0903 (1) (d), under s. 66.0903 (6) who permits  
13 any part of the wages to which that person is entitled under the prevailing wage rate  
14 determination issued by the department or local governmental unit to be deducted  
15 from his or her pay is guilty of a Class C misdemeanor, unless the deduction would  
16 be permitted under 29 CFR 3.5 or 3.6 from a person who is working on a project that  
17 is subject to 40 USC 276c.

18 **SECTION 26.** 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), 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  
25 under the prevailing wage rate determination issued by the department or local

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**INSERT 19-18:**

(b) A political subdivision for which a program is authorized under sub. (2) shall prioritize spending on the program in a manner that gives the greatest priority to improvements and applications at residential premises and the least priority to improvements and applications at nonresidential premises of utility customers with the greatest demand for services provided by utilities. The commission shall promulgate rules implementing the requirements of this paragraph and requiring political subdivisions to make annual reports to the commission regarding their implementation of the requirements.

**INSERT 27-7:**

(4) (a), (b), and (c),

**INSERT 27-7:**

, (6) (d) 2. and (7) (b)

**INSERT 27-9:**

(4) (a), (b), and (c),

**INSERT 27-10:**

, (6) (d) 2. and (7) (b)

**INSERT 27-16:**

(2) If the public service commission determines to promulgate rules instead of issuing an order under section 196.374 (2) (d) of the statutes, as created by this act, then, by the first day of the 4th month beginning after the effective date of this subsection, the public service commission shall, using the procedure under section 227.24 of the statutes, promulgate rules under section 196.374 (2) (d) of the statutes, as created by this act, for the period before the effective date of the permanent rules promulgated under section 196.374 (2) (d) of the statutes, as created by this act, but

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(b), (e)

INSERT 27-7

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

4 **SECTION 27. Nonstatutory provisions.**

5 (1) By the first day of the 4th month beginning after the effective date of this  
6 subsection, the public service commission shall, using the procedure under section  
7 227.24 of the statutes, promulgate the rules required under section 196.3745 (5) (a)

8 (b), (c), and (i)

INSERT 27-8

INSERT 27-a

8 and (b), (c), and (i) of the statutes, as created by this act, for the period before the  
9 effective date of the permanent rules promulgated under section 196.3745 (5) (a)

10 (b), (c), and (i)

INSERT 27-11

10 and (b), (c), and (i) of the statutes, as created by this act, but not to exceed the period  
11 authorized under section 227.24 (1) (c) and (2) of the statutes. Notwithstanding

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

\*\*\*\*NOTE: The above nonstatutory provision is new material. Do you also want to  
require emergency rules for the audit requirements under proposed s. 196.3745 (4) (a),  
(b), or (c)? Or for the hiring rules under proposed s. 196.3745 (5) (a) 14. Or the  
prioritization rules under proposed s. 196.3745 (6) (d)?

17 **SECTION 28. Initial applicability.**

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

21 **SECTION 29. Effective dates.** This act takes effect on the day after publication,  
22 except as follows:

INSERT 27-16

**SECTION 29**

1 (1) The amendment of sections 103.49 (3) (ar) (by SECTION 4), 109.09 (1) (by  
2 SECTION 6), 111.322 (2m) (c) (by SECTION 8), 227.01 (13) (t) (by SECTION 17) and 946.15  
3 (1) (by SECTION 20), (2) (by SECTION 22), (3) (by SECTION 24) and (4) (by SECTION 26)  
4 of the statutes takes effect on January 1, 2010, or on the day after publication,  
5 whichever is later.

6

(END)

*d-note*

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

7 ~~(3)~~ By the first day of the 4th month beginning after the effective date of this  
8 subsection, the department of administration shall, using the procedure under  
9 section 227.24 of the statutes, promulgate the rules required under section 16.26 (2)  
10 of the statutes, as created by this act, for the period before the effective date of the  
11 permanent rules promulgated under section 16.26 (2) of the statutes, as created by  
12 this act, but not to exceed the period authorized under section 227.24 (1) (c) and (2)  
13 of the statutes. Notwithstanding section 227.24 (1) (a), (2) (b), and (3) of the statutes,  
14 the department of administration is not required to provide evidence that  
15 promulgating a rule under this subsection as an emergency rule is necessary for the  
16 preservation of the public peace, health, safety, or welfare and is not required to  
17 provide a finding of emergency for a rule promulgated under this subsection.

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

LRB-2740/lins  
MDK:.....

1

**INSERT 2A:**

who had incomes in the prior year that do not exceed 200 percent of federal poverty guidelines and

2

**INSERT 2B:**

, or, if the work is not performed in a 1st or 2nd class city, in the county where the work is performed;

3

**INSERT 3A:**

For political subdivisions, the bill requires them to give the greatest priority to energy efficiency improvements and renewable resource applications at residential premises and the least priority to nonresidential premises of utility customers with the greatest demand for utility services. The PSC must promulgate rules implementing the priorities and requiring utilities and political subdivisions to make annual reports regarding implementation of the priorities. ✓

4

**INSERT 4A:**

10. Prohibits a utility from counting any spending under a program authorized under the bill whose source is a PSC grant under the bill toward compliance with requirements under current law for spending a specified percentage of the utility's annual operating revenues on energy efficiency and renewable resource programs.

5

✓ **INSERT 15-16:**

6

Certifies to the commission that not less than 30 percent of the total hours of work

7

performed by the contractor or subcontractor on an individual improvement or

8

application will be performed by individuals who, if the work is performed in a 1st

9

or 2nd class city, reside in the 1st or 2nd class city, or, if the work is not performed

10

in a 1st or 2nd class city, reside in the county in which the work is performed, and

11

whose annual income during the year prior to performance of the work did not exceed

12

200 percent of the poverty level under the federal poverty income guidelines of the

13

✓ federal Department of Health and Human Services under 42 USC 9902 (2).

14

**INSERT 19-10:** ✓

15

and requiring utilities to make annual reports to the commission regarding their

16 ✓

implementation of the requirements ⊙

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

LRB-2740/1dn

MDK:/:....

9/5

late

Rep. Mason:

This version is identical to the previous version, except as follows:

1. The contractor and subcontractor certification requirements relating to the following are deleted: 1) possession of technical qualifications and resources to perform work; 2) possession of valid and effective licenses, registrations, and certificates; 3) satisfaction of bonding and insurance requirements; and 4) compliance with equal employment opportunity, affirmative action, and other workforce participation requirements. ✓
2. The local hire requirement in proposed s. 196.3745 (5) (a) 9. is revised as you requested. ✓
3. The post-audit requirement in proposed s. 196.3745 (4) (b) is revised as you requested. Note that it applies to both utilities and political subdivisions. In a note in the previous version I mistakenly said that it applies only to utilities. ✓
4. The prioritization requirements for utilities are revised to require annual reports to the PSC. See proposed s. 196.3745 (6) (d) 2. ✓
5. As you requested, political subdivisions must prioritize spending in favor of residential premises. See proposed s. 196.3745 (7) (b). ✓
6. Emergency rules are required for all rules of the PSC and DOA under the bill. ✓

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

except for the PSC's renewable resource credit rules under proposed s. 196.378 (3) (a) 1m, which are not necessary for the programs under proposed

S. 196.374.



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

LRB-2740/1dn  
MDK:cjs:rs

January 22, 2010

Rep. Mason:

This version is identical to the previous version, except as follows:

1. The contractor and subcontractor certification requirements relating to the following are deleted: 1) possession of technical qualifications and resources to perform work; 2) possession of valid and effective licenses, registrations, and certificates; 3) satisfaction of bonding and insurance requirements; and 4) compliance with equal employment opportunity, affirmative action, and other workforce participation requirements.
2. The local hire requirement in proposed s. 196.3745 (5) (a) 9. is revised as you requested.
3. The post-audit requirement in proposed s. 196.3745 (4) (b) is revised as you requested. Note that it applies to both utilities and political subdivisions. In a note in the previous version I mistakenly said that it applies only to utilities.
4. The prioritization requirements for utilities are revised to require annual reports to the PSC. See proposed s. 196.3745 (6) (d) 2.
5. As you requested, political subdivisions must prioritize spending in favor of residential premises. See proposed s. 196.3745 (7) (b).
6. Emergency rules are required for all rules of the PSC and DOA under the bill, except for the PSC's renewable resource credit rules under proposed s. 196.378 (3) (a) 1m., which are not necessary for the programs under proposed s. 196.3745.

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

**Kunkel, Mark**

---

**From:** Selkove, Vicky  
**Sent:** Tuesday, January 26, 2010 4:19 PM  
**To:** Kunkel, Mark  
**Subject:** (Apologies) More WISE edits

Hi Mark –

Politics are requiring more edits to the bill draft. I'm going to send them to you as we get them finalized/confirmed so that they're in your hopper. There will be a couple of others coming your way, so please hold off on putting a new /# on this until you've got them all. As Rep. Mason mentioned last week

As always, let me know if you have questions.  
Thanks,  
Vicky

1. Per the language immediately below, which needs to be inserted, we need to clarify that for the utility-funded (non-grant) investments, there are provisions for the utility to earn on what they're doing.

**§ 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.

---

✓ 2. In section 196.378 (3)(a) – pages 17-18 of the draft – we want to modify the language related to the PSC's promulgation of rules re. the renewable credit to make clear that the rules they create for credits for energy reduction have to be 1 kw reduced = 1 kw of renewable credit. So any of the language that leaves that piece of the calculation up to debate/discussion in the rules process should be removed.

---

✓ 3. In the local hire section, page 12-13, #9, we need to add a provision that if an individual qualifies under these provisions (residency + 200% FPL) that they shall continue to qualify under these provisions for 3 years from the date he or she first participates in a contractor or subcontractor's contract for these projects. (Basically, we want language to protect contractors & subcontractors from having to continually reevaluate whether an individual meets these local hire provisions – if they meet 'em once, we want them continually eligible to satisfy those local hire requirements for 3 years out).

---

**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:** Haubrich.Joel [mailto:Joel.Haubrich@we-energies.com]  
**Sent:** Monday, January 25, 2010 9:17 AM  
**To:** Selkove, Vicky  
**Subject:** RE: (Close to) final WISE Draft

Vicky,

**§ 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.

**Joel M. Haubrich**

**We Energies**

MKE Phone (414) 221-4102

MDSN Phone (608) 283-3004

---

**From:** Selkowe, Vicky [mailto:Vicky.Selkowe@legis.wisconsin.gov]

**Sent:** Friday, January 22, 2010 2:34 PM

**To:** Pam Fendt; Joe Oswald; Haubrich.Joel; dboetcher tds.net

**Subject:** (Close to) final WISE Draft

Hi all –

Hot off the presses, the updated WISE bill draft. I'm going to be reading through this carefully this weekend, and looking for final changes, but I think we're 99% of the way there. Joe, Dave & Pam, you'll note we've changed the local hire section quite a bit – please let me know what you think.

Cory will be circulating this version of the bill internally next week to key potential legislative partners.

<<WISE Draft Jan 22 2010.pdf>>

Vicky

**Vicky Selkowe**

**Office of State Representative Cory Mason**

**62nd Assembly District**

Room 321 East, State Capitol

PO Box 8953, Madison, WI 53708

01/28/2010

Phone: (608) 266-0634

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## Kunkel, Mark

---

**From:** Selkowe, Vicky  
**Sent:** Thursday, January 28, 2010 10:56 AM  
**To:** Kunkel, Mark  
**Subject:** RE: WISE - Checking in & changes

Hi Mark –

Thanks for your response and questions. Some answers below, in bold and highlighted, others coming soon.  
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  
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---

**From:** Kunkel, Mark  
**Sent:** Thursday, January 28, 2010 9:26 AM  
**To:** Selkowe, Vicky  
**Subject:** RE: WISE - Checking in & changes

Regarding your email of January 26, I have the following questions.

The email includes the following new next for s. 196.374 (5) (b) 2.:

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.

Question 1.: The first sentence requires the PSC to find that a program is cost-effective. I would move that requirement to s. 196.374 (2) (b) 2., which, under current law, allows the PSC to approve the programs. I would revise s. 196.374 (2) (b) 2. to say that the PSC may approve a program only if it finds the program is cost-effective. Is that okay? Or do you instead want to allow the PSC to approve a program under s. 196.374 (2) (b) 2., but leave open the possibility that the PSC can deny rate recovery under s. 196.374 (5) (b) 2. because the program, although approved under s. 196.374 (2) (b) 2., is not cost effective? **What is the definition of "cost-effective"?**  
Under my approach, you avoid that possibility, because approval under s. 196.374 (2) (b) 2. is limited to programs that are cost effective. Therefore, under my approach, if the PSC approves a program under s. 196.374 (2) (b) 2., the PSC must allow cost recovery for the program under s. 196.374 (5) (b) 2. Let me know what you think.

Question 2: I don't understand the 2nd sentence, which refers to amounts collected under s. 196.374 (3) (b) 2. That provision requires the PSC to require utilities to spend on certain programs 1.2% of annual operating revenues. If certain requirements are satisfied, the PSC may require spending a percentage larger than 1.2%. This raises 2 issues. First, s. 196.374 (3) (b) 2. requires spending, not collecting, so I'm not sure what you mean by the amounts collected. Second, spending is required for certain programs, but those programs do not include the programs under s. 196.374 (5) (b) 2. As a result, I'm not sure how s. 196.374 (3) (b) 2. is relevant.

The email also includes the following:

In section 196.378 (3)(a) – pages 17-18 of the draft – we want to modify the language related to the PSC's

promulgation of rules re. the renewable credit to make clear that the rules they create for credits for energy reduction have to be 1 kw reduced = 1 kw of renewable credit. So any of the language that leaves that piece of the calculation up to debate/discussion in the rules process should be removed.

I can do the above, but note that the PSC must promulgate rules for creating credits based on 3 things: 1) reductions in energy usage, 2) increases in energy efficiency, and 3) generation of renewable energy. So the above language in the email will only apply to the 1st thing. Is that okay? **YES**

Also, I think I should refer to kilowatt hour, instead of kilowatt. **FINE**

Finally, regarding your email below, you are correct that under current law a local government (i.e., city, village, town, or county) can make loans to residents for energy efficiency improvements and renewable resource applications to residential property, and may collect the loans in installments as special charges. See s. 66.0627 (8), created by 2009 Wisconsin Act 11. So current law is limited to residential property, but your bill allows for loans to any type of property. Also, you bill requires local governments to give the highest priority to loans for residential property and the least priority to loans for nonresidential property of persons with the greatest demand for utility services. This raises 2 issues. First, do you want to continue to require PSC approval for local government loans for nonresidential property, since such loans aren't covered under current law? **NO, NO PSC APPROVAL/AUTHORIZATION FOR THESE, JUST ENSURING THAT THE LOCAL GOVERNMENT LOANS FOR NONRESIDENTIAL PROPERTY ARE COVERED BY ALL OF THE BILL'S OTHER PROVISIONS RE. AUDITS, CONTRACTORS, PRIORITY RULE, ETC.**

Second, how do you want your priority rule to apply, if at all, to loans made under current law? **PRIORITY RULE SHOULD APPLY TO ALL SUCH LOANS.**

Also, you mention that you don't want to create new requirements for utilities. However, utilities aren't covered under s. 66.0627 (8). Furthermore, I think a utility would have to get approval from the PSC under current law to do the type of program allowed under the bill. So I don't think you are adding another layer of approval for utilities. **MAKES SENSE. THANKS.**

I understand you want a new version of the bill by tomorrow morning. To do that, I will need to get the above issues resolved soon.

Thanks,

-- Mark

---

**From:** Selkove, Vicky  
**Sent:** Wednesday, January 27, 2010 5:54 PM  
**To:** Kunkel, Mark  
**Subject:** WISE - Checking in & changes

Hi Mark –

Just checking in:

1. Did the three changes I sent you yesterday make sense? Questions?
2. We need to alter the section related to "authorization" - page 8, 196.3745(2) – and any other references in the bill that require political subdivisions or utilities to have to make application to the PSC and get authorization from the PSC to do these programs/investments. It's our understanding (please verify) that local governments can already administer, fund or provide administrative services for these programs. We don't want this bill to add an additional layer of application or authorization by requiring programs to have to go to the PSC for application/approval. We don't want political subdivisions or utilities to have to get permission from the PSC to do this work. We want political subdivisions and utilities to be able to make these loans in exactly the way the bill lays out, to be covered by the bill's other provisions re. contractor standards, audits, etc. but we do not want the political subdivisions or utilities to have to apply to the PSC to be able to do this. Make sense?

We are rolling this bill out publicly on Monday morning. We will need all changes in hand by Friday morning. As always, please let me know if you have questions.

Thanks,  
Vicky

**Vicky Selkove**



**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, January 28, 2010 12:56 PM  
**To:** Kunkel, Mark  
**Subject:** RE: WISE - Checking in & changes

Make sense. Thanks.

**Vicky Selkowe**  
**Office of State Representative Cory Mason**  
**62nd Assembly District**  
Room 321 East, State Capitol  
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---

**From:** Kunkel, Mark  
**Sent:** Thursday, January 28, 2010 11:11 AM  
**To:** Selkowe, Vicky  
**Subject:** RE: WISE - Checking in & changes

You highlighted a question, "what is the definition of cost-effective." That term is used without a definition in the language you provided, which appears to have been drafted by We Energies. Since there's no definition, the PSC would have to interpret its meaning.

---

**From:** Selkowe, Vicky  
**Sent:** Thursday, January 28, 2010 10:56 AM  
**To:** Kunkel, Mark  
**Subject:** RE: WISE - Checking in & changes

Hi Mark –  
Thanks for your response and questions. Some answers below, in bold and highlighted, others coming soon.  
Vicky

**Vicky Selkowe**  
**Office of State Representative Cory Mason**  
**62nd Assembly District**  
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---

**From:** Kunkel, Mark  
**Sent:** Thursday, January 28, 2010 9:26 AM  
**To:** Selkowe, Vicky  
**Subject:** RE: WISE - Checking in & changes

Regarding your email of January 26, I have the following questions.

The email includes the following new next for s. 196.374 (5) (b) 2.:

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.

Question 1.: The first sentence requires the PSC to find that a program is cost-effective. I would move that requirement to s. 196.374 (2) (b) 2., which, under current law, allows the PSC to approve the programs. I would revise s. 196.374 (2) (b) 2. to say that the PSC may approve a program only if it finds the program is cost-effective. Is that okay? Or do you instead want to allow the PSC to approve a program under s. 196.374 (2) (b) 2., but leave open the possibility that the PSC can deny rate recovery under s. 196.374 (5) (b) 2. because the program, although approved under s. 196.374 (2) (b) 2., is not cost effective? **What is the definition of "cost-effective"?**

Under my approach, you avoid that possibility, because approval under s. 196.374 (2) (b) 2. is limited to programs that are cost effective. Therefore, under my approach, if the PSC approves a program under s. 196.374 (2) (b) 2., the PSC must allow cost recovery for the program under s. 196.374 (5) (b) 2. Let me know what you think.

Question 2: I don't understand the 2nd sentence, which refers to amounts collected under s. 196.374 (3) (b) 2. That provision requires the PSC to require utilities to spend on certain programs 1.2% of annual operating revenues. If certain requirements are satisfied, the PSC may require spending a percentage larger than 1.2%. This raises 2 issues. First, s. 196.374 (3) (b) 2. requires spending, not collecting, so I'm not sure what you mean by the amounts collected. Second, spending is required for certain programs, but those programs do not include the programs under s. 196.374 (5) (b) 2. As a result, I'm not sure how s. 196.374 (3) (b) 2. is relevant.

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I can do the above, but note that the PSC must promulgate rules for creating credits based on 3 things: 1) reductions in energy usage, 2) increases in energy efficiency, and 3) generation of renewable energy. So the above language in the email will only apply to the 1st thing. Is that okay? **YES**

Also, I think I should refer to kilowatt hour, instead of kilowatt. **FINE**

Finally, regarding your email below, you are correct that under current law a local government (i.e., city, village, town, or county) can make loans to residents for energy efficiency improvements and renewable resource applications to residential property, and may collect the loans in installments as special charges. See s. 66.0627 (8), created by 2009 Wisconsin Act 11. So current law is limited to residential property, but your bill allows for loans to any type of property. Also, you bill requires local governments to give the highest priority to loans for residential property and the least priority to loans for nonresidential property of persons with the greatest demand for utility services. This raises 2 issues. First, do you want to continue to require PSC approval for local government loans for nonresidential property, since such loans aren't covered under current law? **NO, NO PSC APPROVAL/AUTHORIZATION FOR THESE, JUST ENSURING THAT THE LOCAL GOVERNMENT LOANS FOR NONRESIDENTIAL PROPERTY ARE COVERED BY ALL OF THE BILL'S OTHER PROVISIONS RE. AUDITS, CONTRACTORS, PRIORITY RULE, ETC.**

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Thanks,

-- Mark

---

**From:** Selkove, Vicky  
**Sent:** Wednesday, January 27, 2010 5:54 PM  
**To:** Kunkel, Mark  
**Subject:** WISE - Checking in & changes

Hi Mark –

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2. We need to alter the section related to “authorization” - page 8, 196.3745(2) – and any other references in the bill that require political subdivisions or utilities to have to make application to the PSC and get authorization from the PSC to do these programs/investments. It’s our understanding (please verify) that local governments can already administer, fund or provide administrative services for these programs. We don’t want this bill to add an additional layer of application or authorization by requiring programs to have to go to the PSC for application/approval. We don’t want political subdivisions or utilities to have to get permission from the PSC to do this work. We want political subdivisions and utilities to be able to make these loans in exactly the way the bill lays out, to be covered by the bill’s other provisions re. contractor standards, audits, etc. but we do not want the political subdivisions or utilities to have to apply to the PSC to be able to do this. Make sense?

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Thanks,  
Vicky

**Vicky Selkove**  
**Office of State Representative Cory Mason**  
**62nd Assembly District**  
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## Kunkel, Mark

---

**From:** Selkowe, Vicky  
**Sent:** Thursday, January 28, 2010 12:08 PM  
**To:** Kunkel, Mark  
**Subject:** RE: WISE - Checking in & changes

Hi Mark –  
Answers to the rest of your questions below.  
Thanks!  
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  
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**From:** Kunkel, Mark  
**Sent:** Thursday, January 28, 2010 9:26 AM  
**To:** Selkowe, Vicky  
**Subject:** RE: WISE - Checking in & changes

Regarding your email of January 26, I have the following questions.

The email includes the following new next for s. 196.374 (5) (b) 2.:

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.

Question 1.: The first sentence requires the PSC to find that a program is cost-effective. I would move that requirement to s. 196.374 (2) (b) 2., which, under current law, allows the PSC to approve the programs. I would revise s. 196.374 (2) (b) 2. to say that the PSC may approve a program only if it finds the program is cost-effective. Is that okay? Or do you instead want to allow the PSC to approve a program under s. 196.374 (2) (b) 2., but leave open the possibility that the PSC can deny rate recovery under s. 196.374 (5) (b) 2. because the program, although approved under s. 196.374 (2) (b) 2., is not cost effective? Under my approach, you avoid that possibility, because approval under s. 196.374 (2) (b) 2. is limited to programs that are cost effective. Therefore, under my approach, if the PSC approves a program under s. 196.374 (2) (b) 2., the PSC must allow cost recovery for the program under s. 196.374 (5) (b) 2. Let me know what you think.  
**YOUR APPROACH IS GOOD. THANKS.**

Question 2: I don't understand the 2nd sentence, which refers to amounts collected under s. 196.374 (3) (b) 2. That provision requires the PSC to require utilities to spend on certain programs 1.2% of annual operating revenues. If certain requirements are satisfied, the PSC may require spending a percentage larger than 1.2%. This raises 2 issues. First, s. 196.374 (3) (b) 2. requires spending, not collecting, so I'm not sure what you mean by the amounts collected. Second, spending is required for certain programs, but those programs do not include the programs under s. 196.374 (5) (b) 2. As a result, I'm not sure how s. 196.374 (3) (b) 2. is relevant. **BASICALLY, ALL THAT NEW LANGUAGE IS TRYING TO DO IS ALLOW COST RECOVERY FOR ANYTHING APPROVED ABOVE THE 1.2%. SO IF PSC APPROVES A PROGRAM THAT TAKES THE UTILITY ABOVE THE 1.2%, THEN THE UTILITY GETS TO COLLECT THIS COST RECOVERY.**

**DOES THAT MAKE SENSE? IF NOT, I WILL CONNECT YOU DIRECTLY TO JOEL HAUBRICH @ WE TO DISCUSS THIS MORE SO YOU CAN GET CLARITY.**

The email also includes the following:

In section 196.378 (3)(a) – pages 17-18 of the draft – we want to modify the language related to the PSC’s promulgation of rules re. the renewable credit to make clear that the rules they create for credits for energy reduction have to be 1 kw reduced = 1 kw of renewable credit. So any of the language that leaves that piece of the calculation up to debate/discussion in the rules process should be removed.

I can do the above, but note that the PSC must promulgate rules for creating credits based on 3 things: 1) reductions in energy usage, 2) increases in energy efficiency, and 3) generation of renewable energy. So the above language in the email will only apply to the 1st thing. Is that okay? Also, I think I should refer to kilowatt hour, instead of kilowatt.

Finally, regarding your email below, you are correct that under current law a local government (i.e., city, village, town, or county) can make loans to residents for energy efficiency improvements and renewable resource applications to residential property, and may collect the loans in installments as special charges. See s. 66.0627 (8), created by 2009 Wisconsin Act 11. So current law is limited to residential property, but your bill allows for loans to any type of property. Also, your bill requires local governments to give the highest priority to loans for residential property and the least priority to loans for nonresidential property of persons with the greatest demand for utility services. This raises 2 issues. First, do you want to continue to require PSC approval for local government loans for nonresidential property, since such loans aren’t covered under current law? Second, how do you want your priority rule to apply, if at all, to loans made under current law?

Also, you mention that you don’t want to create new requirements for utilities. However, utilities aren’t covered under s. 66.0627 (8). Furthermore, I think a utility would have to get approval from the PSC under current law to do the type of program allowed under the bill. So I don’t think you are adding another layer of approval for utilities.

I understand you want a new version of the bill by tomorrow morning. To do that, I will need to get the above issues resolved soon.

Thanks,

-- Mark

---

**From:** Selkove, Vicky  
**Sent:** Wednesday, January 27, 2010 5:54 PM  
**To:** Kunkel, Mark  
**Subject:** WISE - Checking in & changes

Hi Mark –

Just checking in:

1. Did the three changes I sent you yesterday make sense? Questions?
2. We need to alter the section related to “authorization” - page 8, 196.3745(2) – and any other references in the bill that require political subdivisions or utilities to have to make application to the PSC and get authorization from the PSC to do these programs/investments. It’s our understanding (please verify) that local governments can already administer, fund or provide administrative services for these programs. We don’t want this bill to add an additional layer of application or authorization by requiring programs to have to go to the PSC for application/approval. We don’t want political subdivisions or utilities to have to get permission from the PSC to do this work. We want political subdivisions and utilities to be able to make these loans in exactly the way the bill lays out, to be covered by the bill’s other provisions re. contractor standards, audits, etc. but we do not want the political subdivisions or utilities to have to apply to the PSC to be able to do this. Make sense?

We are rolling this bill out publicly on Monday morning. We will need all changes in hand by Friday morning. As always, please let me know if you have questions.

Thanks,  
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

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**From:** Selkowe, Vicky  
**Sent:** Thursday, January 28, 2010 2:01 PM  
**To:** Kunkel, Mark  
**Subject:** RE: WISE - Checking in & changes

Great. Thank you!

**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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**From:** Kunkel, Mark  
**Sent:** Thursday, January 28, 2010 1:50 PM  
**To:** Selkowe, Vicky  
**Subject:** RE: WISE - Checking in & changes

I just talked to Joel and I now understand what he wants. Thanks for having him call me.

---

**From:** Kunkel, Mark  
**Sent:** Thursday, January 28, 2010 1:38 PM  
**To:** Selkowe, Vicky  
**Subject:** RE: WISE - Checking in & changes

I'm sorry, but I still don't understand the 1.2% language. Can I give Joel a call or can he call me at 266-0131? I don't think I have his contact info.

---

**From:** Selkowe, Vicky  
**Sent:** Thursday, January 28, 2010 12:08 PM  
**To:** Kunkel, Mark  
**Subject:** RE: WISE - Checking in & changes

Hi Mark –  
Answers to the rest of your questions below.  
Thanks!  
Vicky

**Vicky Selkowe**  
**Office of State Representative Cory Mason**  
**62nd Assembly District**  
Room 321 East, State Capitol  
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**From:** Kunkel, Mark  
**Sent:** Thursday, January 28, 2010 9:26 AM  
**To:** Selkove, Vicky  
**Subject:** RE: WISE - Checking in & changes

Regarding your email of January 26, I have the following questions.

The email includes the following new next for s. 196.374 (5) (b) 2.:

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.

Question 1.: The first sentence requires the PSC to find that a program is cost-effective. I would move that requirement to s. 196.374 (2) (b) 2., which, under current law, allows the PSC to approve the programs. I would revise s. 196.374 (2) (b) 2. to say that the PSC may approve a program only if it finds the program is cost-effective. Is that okay? Or do you instead want to allow the PSC to approve a program under s. 196.374 (2) (b) 2., but leave open the possibility that the PSC can deny rate recovery under s. 196.374 (5) (b) 2. because the program, although approved under s. 196.374 (2) (b) 2., is not cost effective? Under my approach, you avoid that possibility, because approval under s. 196.374 (2) (b) 2. is limited to programs that are cost effective. Therefore, under my approach, if the PSC approves a program under s. 196.374 (2) (b) 2., the PSC must allow cost recovery for the program under s. 196.374 (5) (b) 2. Let me know what you think.  
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Question 2: I don't understand the 2nd sentence, which refers to amounts collected under s. 196.374 (3) (b) 2. That provision requires the PSC to require utilities to spend on certain programs 1.2% of annual operating revenues. If certain requirements are satisfied, the PSC may require spending a percentage larger than 1.2%. This raises 2 issues. First, s. 196.374 (3) (b) 2. requires spending, not collecting, so I'm not sure what you mean by the amounts collected. Second, spending is required for certain programs, but those programs do not include the programs under s. 196.374 (5) (b) 2. As a result, I'm not sure how s. 196.374 (3) (b) 2. is relevant. **BASICALLY, ALL THAT NEW LANGUAGE IS TRYING TO DO IS ALLOW COST RECOVERY FOR ANYTHING APPROVED ABOVE THE 1.2%. SO IF PSC APPROVES A PROGRAM THAT TAKES THE UTILITY ABOVE THE 1.2%, THEN THE UTILITY GETS TO COLLECT THIS COST RECOVERY. DOES THAT MAKE SENSE? IF NOT, I WILL CONNECT YOU DIRECTLY TO JOEL HAUBRICH @ WE TO DISCUSS THIS MORE SO YOU CAN GET CLARITY.**

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**To:** Kunkel, Mark  
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