

2009 DRAFTING REQUEST

Assembly Substitute Amendment (ASA-AB755)

Received: 03/10/2010

Received By: **mkunkel**

Wanted: **As time permits**

Companion to LRB:

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

By/Representing: **Vicky**

May Contact:

Drafter: **mkunkel**

Subject: **Public Util. - energy**

Addl. Drafters:

Extra Copies:

Submit via email: **YES**

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

Carbon copy (CC:) to: **David.Lovell@legis.wisconsin.gov**

Pre Topic:

No specific pre topic given

Topic:

Utility and political subdivision programs for investing in energy efficiency improvements and renewable resource applications

Instructions:

See attached

Drafting History:

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Typed</u>	<u>Proofed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
/?	mkunkel 03/15/2010			_____			
/1			rschluet 03/15/2010	_____	cduerst 03/15/2010	cduerst 03/15/2010	
/2	mkunkel 03/16/2010	kfollett 03/16/2010	rschluet 03/16/2010	_____	cduerst 03/16/2010	cduerst 03/16/2010	

FE Sent For:

<END>

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FE Sent For:

<END>

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Received By: **mkunkel**

Wanted: **As time permits**

Identical to LRB:

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

By/Representing: **Vicky**

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

Drafter: **mkunkel**

May Contact:

Adl. Drafters:

Subject: **Public Util. - energy**

Extra Copies:

Submit via email: **YES**

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

Carbon copy (CC:) to: **David.Lovell@legis.wisconsin.gov**

Pre Topic:

No specific pre topic given

Topic:


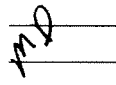
Utility and political subdivision programs for investing in energy efficiency improvements and renewable resource applications

Instructions:

See attached

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/?	mkunkel						
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FE Sent For:

<END>

Kunkel, Mark

From: Lovell, David
Sent: Tuesday, March 09, 2010 10:16 AM
To: Kunkel, Mark
Cc: Selkowe, Vicky
Subject: RE: SRC and Lee Cullen comments

Mark,

Vicky is coming to our offices at 2:30 to discuss drafting instructions for a revised sub to AB 755. We'll meet in our small conference room. If this does not work for you, please let me know.

David

David L. Lovell, Senior Analyst
Wisconsin Legislative Council Staff
608/266-1537

From: Selkowe, Vicky
Sent: Monday, March 08, 2010 12:19 PM
To: Lovell, David
Cc: 'Satya Rhodes-Conway'; Matthias, Mary
Subject: RE: SRC and Lee Cullen comments

Hi David & Mary –

Answers and additional information below, in blue. Rep.Mason & I have talked through all of this, and Satya & I then discussed it as well, so hopefully the below makes sense and answers your questions. If not, please give me a call. We do have a couple of other things we'll want done in the sub besides this package of clarifications/changes – should I send those to you, David, or to Mark Kunkel, or both?

**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
Toll-free: (888) 534-0062**

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03/09/2010

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From: Lovell, David
Sent: Thursday, March 04, 2010 12:42 PM
To: Selkove, Vicky
Cc: 'Satya Rhodes-Conway'; Matthias, Mary
Subject: RE: SRC and Lee Cullen comments

Vicky,

I am sending a write-up of my notes from our conversation with Representative Mason yesterday afternoon, which includes a number of questions. In addition, I have added one comment in red to the notes in the message you forwarded to me, below. Several of those comments relate to things in my notes, and should be discussed all together, I think.

Once folks have looked at this, do you want to arrange a conference call with Satya and/or Lee?

Here are my notes:

Notes on March 3, 2010, conversation with Representative Cory Mason, regarding redrafting Assembly Substitute Amendment 1 to 2009 Assembly Bill 755.

Provisions Relating to Utilities

Tariffs – s. 196.3745 (3)

Representative Mason agreed that the following changes are advisable:

- Clarify that the terms and conditions include payments on the utility bills for the benefitted property for recovery by the utility of the cost of the improvements or applications. This is implied but not stated in the current text. how clarify?
- Specify that the terms and conditions shall not include interest payments on any amount on which the utility earns return under s. 196.3745 (6) (am). clarify this?

Costs and Savings – s. 196.3745 (4)

To be eligible for benefit under either a municipal or utility program, one of three conditions must apply. The third, relating to performance contracting, is distinct from the others, but the distinction between first and second, in particular when one or the other of them applies is not clear. In essence, the first requires that the project be cost-effective and have a pay-back of not more than 10 years, while the second requires that the payback be not longer than the expected life of the improvement or application. They also differ in that the first is determined by an audit, while the second simply requires that a determination be made; both require the development of criteria for making the respective determinations, but neither is specific as to who makes the determinations.

Both Lee Cullen & Satya have pointed out that limiting payback to 10 years is problematic. We'd like to strike that language. We would, though, per our concern re. 'mortgages under water,' like to see some suggested language about how accepted underwriting practices have to be utilized, as an additional safeguard, to help avoid that problem.

Representative Mason appeared to indicate that the first condition is intended to apply to residential properties and the second to commercial, institutional, and other non-residential properties. He also appeared to indicate that the performance contract option was intended for non-residential properties, as well. If that is correct, the bill should be revised to specify that, for a residential property to be eligible, there must be a determination (by audit, as drafted?) that the project will be cost-effective and the pay-

back will be not more than 10 years; and that for other properties, either (a) there must be a determination that the pay-back will be not longer than the expected life of the improvement or application or (b) the project must be conducted under a performance contract. Is this interpretation correct? Also, should the bill be clarified as to who makes the determinations?

All of this confusing language was the result of our attempt to define cost-effective, while giving both the municipal and utility programs flexibility all while still having protections for consumers. (No wonder it was muddled...) What we want is for one of the following to have to be done/demonstrated, for any premises to be eligible:

- 1) pre & post-audit (current language in the bill)
- 2) performance contracting
- 3) deemed savings demonstrate that the payback will not be longer than the expected life of the improvement or application. (So there has to be some demonstration that the EE & RE measures being installed have deemed savings that equal or exceed the cost over the expected life of the installation.

We don't want to prioritize performance contracting for non-residential, and we don't want to limit performance contracting's useage to non-residential either (though it will likely only be done for non-residential). We just want any program to have to demonstrate that one of the above has been done.

We don't really want to specify who does the determinations if we don't have to.

Representative Mason asked me to offer suggestions of language to clarify these provisions and, with regard to utility programs, to clarify the link to the tariffs under sub. (3). Once the preceding questions are answered, I will work on that.

Performance Contracts – s. 196.3745 (4) (e)

While the provisions in s. 196.3745 (4) (e) appear to be sufficient, the definition of "performance contract" in s. 196.3745 (4) (a) 1. doesn't accurately describe the concept. If this were clarified, it would be advisable to make parallel clarifications in s. 66.0133. Representative Mason was disinclined to complicate the bill with remedial treatment of another section. If it is limited to the definition, though, it would be less disruptive; if he is interested in doing that, here is a definition I would suggest, as a starting point for discussion:

"Performance contract" means a contract under which one party makes an improvement or application on the property of another and guarantees a minimum level of cost savings that will result from reduced energy use due to the improvements with a commitment to pay to the other party the difference between the guaranteed and actual savings in the event that the guaranteed cost savings are not realized.

(Recall that "improvement or application" is a defined term in the bill.)

Your proposed definition is a good starting place and we're fine with that or something similar to it.

Return on Equity (ROE) – s. 196.3745 (6) (am)

Under the sub., a utility earns return on equity based on the amount it does *not* recover from assessments on customers' bills, this being overhead costs such as program administration. (ROE is earned on capital investments -- equity -- not administrative or other expenses.) Representative Mason agreed that the bill should, instead, specify that the commission shall ensure that a utility is allowed to earn a return on the amount it invests in capital improvements on customers' properties, excluding any amounts from other sources, such as state or federal grants, or matching contributions by customers.

Question: s. 196.3745 (6) (c) requires a utility to reinvest amounts recovered in assessments on the benefitted properties in improvements in other properties. This will be a blended pot of money, including repayment of money the utility invested and money that originated in state or federal grants. Should the utility earn a return on the reinvested funds? If so, should there be an effort to limit the basis

matching contrib - s?

of such earnings to funds that originally were the utility's or, stated another way, disallow earnings on funds that originally were from grants? This could be tricky – but see the question under the following heading.

We don't want the utilities to earn returns on anything other than funds that were originally the utilities'. So if it's a blended pot, they only get a return on what they put in.

Priorities – s. 196.3745 (6) (d)

Question: Will utilities be receiving state or federal grants for these programs? Representative Mason appeared to indicate that they would *not*. The bill does not say anything about this except to specify how the utility must set priorities for the use of funds if their origin is a grant. If utilities will not be receiving grants for this purpose, s. 196.3745 (6) (d) 1. a., at p. 18, l. 3-8, should be deleted. Also, if this is the case, the question under the preceding heading is moot.

I think the confusion here is that there may be some smaller, local utilities that want to do these programs using state or federal grants. If they're using a grant, then they don't get the return on investment. We had not envisioned the big utilities, like WE Energies, getting grants to do these programs, but instead using their own funds – they want to just be the banker. As noted above, with the ROE question, we only want to allow utilities to earn on funds that they put in, not on state or federal grant funds.

David L. Lovell, Senior Analyst
Wisconsin Legislative Council Staff
608/266-1537

From: Selkowe, Vicky
Sent: Wednesday, March 03, 2010 5:15 PM
To: Lovell, David
Cc: 'Satya Rhodes-Conway'
Subject: FW: SRC and Lee Cullen comments

David –

Below are the combined comments of Satya Rhodes-Conway at COWS and Lee Cullen at Cullen, Weston, Pines & Bach (representing JCI), that look like they require further work in the bill. I've put in blue my thoughts below each of them.

Satya has been a great resource and help to us and she's reachable at satya@cows.org work # 262-5387 or cell #320-0254. If it's helpful for the three of us to talk tomorrow, we can set that up, but also please feel free to contact Satya directly on these points and on the items we discussed this afternoon on the phone with Rep. Mason.

Thanks much,
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

03/09/2010

Toll-free: (888) 534-0062

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From: Satya Rhodes-Conway [mailto:satya@cow.s.org]

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

p 9 line 20, def. of performance contract doesn't include installation of measures - should read "...recommendation and installation of an improvement..." or just cross reference 66.0133 for the entire definition.

Agreed.

what is large?

suggested or required?

p.19 line 8-10 municipalities must prioritize PC - Lee says their intent here was to prioritize performance contracting only for large, non-residential customers. As you know, we would prefer to not impose any priorities on municipalities. We would certainly be happier if it was clear that this prioritization only applied to large non-residential properties.

It was not our intention to have municipalities prioritize PC - we agree with Lee that PC should be prioritized for large, non-residential customers and that we just want the municipal programs to have to demonstrate that they've done one of the three suggested ways of 'auditing' these programs.

P10 line 9 and 17, and page 11 line 2 should all read "savings to equal or exceed the cost". Does that make sense? Lee agrees.

Yes Agreed, if that fits with the other changes we discussed with you in that section.

I agree regarding the language on p. 10, but think this change is not correct regarding the language on p. 11. DLL

p 3 line 3 - remove "not more than 10 annual" so solar can be done over a longer period. Utility programs would still be limited to 10 years, but municipal PACE programs could do renewables over a longer time. Milwaukee is just about to roll out a program that would be illegal under this language. Lee would be in favor of removing the 10 year restriction across the board. We would not object to that.

This fits into the discussion we had with you. We obviously don't want to make Milwaukee's new program - that we're holding up as a shining example - illegal under our bill. We'll need to clarify with Satya how this 10 year limit really would impact Milwaukee's program (or other programs), but you've heard our concern about making sure programs don't cause customers to get in way over their head, while also still recognizing that renewables might need a longer time period. We're open to suggestions on this one from you.

where is that expressed?

12 line 15

The PSC shall ensure that a utility is allowed to earn 20% of or more the utility's net operating income, but does not include expenditures of other money (non utility)

grants ~~from~~ payments from premises owner etc

new paragraph in (4)

§ 191.23(4)(b) 1. or 2

implic sub as ut

shall provide

ability to make payments

Joseph Mird David's @ are blended pot

See David's language

+ waive

~~(3) (b) 3m.~~

~~New 46.3745 (4) (f) (6) (a) 5~~

depr of performance

waives from contractor requirements - effective 1/5/11

(F) 1. If a pol. subd. establishes the eligibility of a project for a pol. subd. loan under par (b) 1. or 2., the pol. subd. shall consider the ability of the owner or occupant of the premises to make required payments ~~under~~ A pol. subd. shall establish criteria for determination of ability to pay, which shall include a comparison of the cost of the project to the value of the property, as affected by existing liens, etc. . . .

2. If a utility establishes the eligibility of a project for an investment under par (b) 1. or 2., the utility shall The PSC shall promulgate criteria by rule for

Kunkel, Mark

From: Selkowe, Vicky
Sent: Wednesday, March 10, 2010 9:53 AM
To: Kunkel, Mark; Lovell, David
Subject: FW: Performance Contracting question for AB 755

Hi Mark & David –

Below, highlighted, is a slightly modified definition of performance contracting from JCI, via Lee Cullen. It's fine by us so if it makes sense to you, please use this.

I leave lang in - deals with reports, etc.

Lee also says JCI is fine with leaving in (e) on page 11. Is there a cleaner, simpler way to just refer back to the performance contracting statutes, perhaps as part of the definition you'll be inserting, instead of having all of that language that's in (e)?

I also don't have a problem with Lee's suggestion, bolded below, re. p. 18, lines 6-8, so please go ahead & make that change unless you believe it is problematic or creates inconsistencies.

Thanks,

Vicky

Vicky Selkowe
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From: Lee Cullen [mailto:cullen@cwpb.com]
Sent: Wednesday, March 10, 2010 8:59 AM
To: Selkowe, Vicky
Cc: Charles.K.McGinnis@jci.com
Subject: Re: Performance Contracting question for AB 755

✓

Vicky - JCI does not have a problem with (e) on p. 11 as drafted. The language is taken directly from the existing performance contracting statute that already applies to and is widely used by local units of government.

If a definition is deemed necessary, JCI proposes the following language:

"Performance contract" means a contract under which a qualified provider makes an improvement or application on the property of another, guarantees a minimum level of cost savings that will result from reduced energy or water use due to the improvement or application,

with a commitment to pay to the other party the difference between the guaranteed and actual savings in the event that the guaranteed cost savings are not realized, and also agrees that the savings guarantee will be validated by periodic measurement and verification.

As long as we're at it, **can we replace the language on p. 18, l. 6-8 with a more simple "unless the terms of the federal or state grant provide otherwise"?**

Thanks for the opportunity to provide input.

Lee Cullen
Cullen Weston Pines & Bach LLP
122 West Washington Ave., Suite 900
Madison, WI 53703
E-Mail- cullen@cwpb.com
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www.cwpb.com

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>>> "Selkove, Vicky" <Vicky.Selkove@legis.wisconsin.gov> 3/9/2010 5:16 PM >>>

Hi Lee –

As I believe I mentioned to you, we're hard at work on drafting a second substitute to AB755 that clarifies some of the issues you, Satya Rhodes-Conway and others have raised.

David Lovell at Leg Council has suggested that we might simplify some of the performance contracting language by inserting a definition of a performance contract, something like the following (this is David's language suggestion):

"Performance contract" means a contract under which a qualified provider makes an improvement or application on the property of another and guarantees a minimum level of cost savings that will result from reduced energy or water use due to the improvements, with a commitment to pay to the other party the difference between the guaranteed and actual savings in the event that the guaranteed cost savings are not realized.'

We would then also strike the entirety of (e) on page 11 in the sub (attached)

I want to give the drafters' final instructions on this and we all wanted to know whether this kind of PC definition made sense to you and still accomplished what JCI was trying to accomplish. Please let me know ASAP. Thanks!

Vicky <<AB 755 Sub March 1 2010.pdf>>

Vicky Selkove

03/10/2010

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Kunkel, Mark

From: Kunkel, Mark
Sent: Wednesday, March 10, 2010 8:30 AM
To: Lovell, David
Subject: Follow up question

David: I don't quite understand the revision regarding interest payments. Take a look at what I came up with below. Note that sub. (6) (as) will be the new paragraph based on the 2nd sentence of what is now sub. (6) (am).

When you have time, maybe you could walk me through the intent.

Revision to page 9 lines 4 to 8 of ASA1 to AB-755:

Terms and conditions for billing customers at premises for costs incurred at the premises in making or installing improvements or applications for which investments are made. The utility may not bill a customer for any interest on any amount on which the utility is allowed to earn a ~~rate~~ return under sub. (6) (as). The tariff shall allow the utility to collect, and enforce payment of, the amounts billed in the same manner as amounts billed for utility service.

✓
per David Lovell's suggestion

Kunkel, Mark

From: Selkowe, Vicky
Sent: Monday, March 15, 2010 1:06 PM
To: Lovell, David; Kunkel, Mark
Subject: RE: question re. initial applicability of contractor provisions in AB 755

David, thanks for this feedback. As Mark points out, qualified contractors will likely want to get their names on a list right away, so that they're eligible to do the work, so the PSC is going to have to get the list infrastructure created quickly. Though the two month figure is, I'll admit, a little arbitrary, we're not comfortable delaying the bill's effective date too much more than that – particularly since there are likely to be federal funds that the state or munis will be eligible for that we'll want covered by this bill's provisions.

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From: Lovell, David
Sent: Monday, March 15, 2010 9:03 AM
To: Selkowe, Vicky; Kunkel, Mark
Subject: RE: question re. initial applicability of contractor provisions in AB 755

Vicky, Mark,

Sorry to be so late checking in -- I still have raw milk on the brain!

What you are suggesting here works in terms of drafting, but I would caution you that 2 months is an awfully short time to ask PSC to accomplish that particular task. I would anticipate an objection from them, and a request for more time. What would you think about 6 months? Alternatively, would you be inclined to consult with them before finalizing the draft?

David

David L. Lovell, Senior Analyst
Wisconsin Legislative Council Staff
608/266-1537

From: Selkowe, Vicky

03/15/2010

Sent: Monday, March 15, 2010 6:46 AM
To: Kunkel, Mark
Cc: Selkowe, Vicky; Lovell, David
Subject: Re: question re. initial applicability of contractor provisions in AB 755

Thanks, Mark. Let's check in later this morning before you send it to editing -I was waiting on Friday afternoon for an answer from some of the utilities folks about language we may need to strike. Let me see if I have that answer when I get into the office before you send it over for editing.

David, I'm assuming you've recovered from the raw milk hearing (wow!) and have taken a look at the new language Mark's drafted?

Vicky

Sent from my iPhone.

Vicky Selkowe

On Mar 12, 2010, at 4:29 PM, "Kunkel, Mark" <Mark.Kunkel@legis.wisconsin.gov> wrote:

I will get the new sub into editing Monday am and have it to you by Monday afternoon. I have to leave now but will work on it later this weekend.

From: Selkowe, Vicky
Sent: Friday, March 12, 2010 11:14 AM
To: Kunkel, Mark
Cc: Lovell, David
Subject: RE: question re. initial applicability of contractor provisions in AB 755

It looks like the exec will be Wed afternoon – waiting for confirmation from the clerk.

Vicky Selkowe
Office of State Representative Cory Mason
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Room 321 East, State Capitol
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From: Kunkel, Mark
Sent: Friday, March 12, 2010 11:06 AM
To: Selkowe, Vicky
Cc: Lovell, David
Subject: RE: question re. initial applicability of contractor provisions in AB 755

I think they are the same option. Tell the PSC to start right away on the list process, but otherwise

03/15/2010

delay the bill's general effective date by a short period so that the PSC will have gotten the initial list work done by the time the bill goes into effect.

What date is the exec next week?

From: Selkowe, Vicky
Sent: Friday, March 12, 2010 10:40 AM
To: Kunkel, Mark
Cc: Lovell, David
Subject: RE: question re. initial applicability of contractor provisions in AB 755

If I'm reading your first paragraph correctly, you're suggesting two different options: 1) add a nonstat provision directing PSC to prepare the list by a certain date; or 2) delay the bill by a limited period of time and direct the PSC to figure out the list during that time. Or maybe you meant those as one and the same option? Cory & I talked briefly about this yesterday and prefer the idea of adding a provision that just directs the PSC to prepare the initial list within 2 months of the bill's effective date. If you think that makes sense, please go ahead & add that to the new sub.

Can you give me a sense of timing on completion of the new sub? The committee is scheduling an executive session next week and they'd like to know whether or not they can include this on their agenda?

Thanks!

Vicky

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From: Kunkel, Mark
Sent: Friday, March 12, 2010 8:30 AM
To: Selkowe, Vicky
Cc: Lovell, David
Subject: RE: question re. initial applicability of contractor provisions in AB 755

You might add a nonstat provision directing the PSC to prepare the initial version of the list by a date certain. You will have to give the PSC time to accept applications and then determine who should be included on the initial list. You could delay the bill by a limited period of time (perhaps the same date that the PSC is required to prepare the initial list) and direct the PSC to work on the list during that delay. Of course, the PSC may have concerns about how quickly it has to implement its new duties under the bill.

Note that the PSC can only include those contractors and subcontractors on the list that apply to the PSC for inclusion on the list. Over time, the PSC will revise the list as more and more contractors

and subcontractors apply after the initial period. Of course, it may be that contractors and subcontractors have an incentive to apply as soon as possible, as they may want to be certain that they are eligible to do the work.

From: Selkove, Vicky
Sent: Thursday, March 11, 2010 5:23 PM
To: Kunkel, Mark
Cc: Lovell, David
Subject: RE: question re. initial applicability of contractor provisions in AB 755

Hmmm...how can we craft a delayed effective date as narrowly as possible? Can we have a shorter turnaround stipulated for the PSC to develop the list, from the bill's effective date? (i.e. the commission has to develop that list within 2 months of the bill's effective date?)

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

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From: Kunkel, Mark
Sent: Thursday, March 11, 2010 2:20 PM
To: Selkove, Vicky
Cc: Lovell, David
Subject: RE: question re. initial applicability of contractor provisions in AB 755

That's a good point regarding the political subdivision loans.

For utilities, I don't think it's an issue, as a utility can't do a program unless approved by the PSC. That will take time and the PSC will, presumably, work on the list of contractors while it is in the process of approving utility programs.

However, political subdivision loans are done without PSC approval. Although the bill has an initial applicability provision that says that it first applies to political subdivision loans made on or after the bill's effective date, there is no delayed effective date, so once the bill goes into effect, all work done pursuant to a loan must satisfy the bill's requirements, including the contractor list. As a result, you may want to delay the effective date of the bill to give the PSC time to develop a list.

My apologies for not noticing this issue earlier.

-- Mark

From: Selkove, Vicky
Sent: Thursday, March 11, 2010 1:32 PM
To: Kunkel, Mark
Subject: question re. initial applicability of contractor provisions in AB 755

Hi Mark –

Eric Sundquist at COWS has raised a question about the initial applicability of the contractor provisions. His question, which seems like a fair one, is what will happen to local governments that are starting programs just like those described in AB 755 – he's concerned that the bill, as currently drafted, could be interpreted to require those local programs that being started now, to utilize contractors from a PSC list that doesn't yet exist.

Is there anything re. effective dates or delayed applicability to existing programs that could be added to the bill to address this concern?

Thanks,

Vicky

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Kunkel, Mark

From: Selkowe, Vicky
Sent: Monday, March 15, 2010 12:12 PM
To: Kunkel, Mark; Lovell, David; Matthias, Mary
Subject: RE: AB 755 comments

Thanks, Mark.

Once you've taken a look at these comments and the other drafted language, David, we need to get this finalized. I don't have anything else from the utilities to send your way so let's get this into editing. The PSC is also working on its fiscal note right now so I need to get Nate Zolik the second substitute ASAP.

Mary, will you be able to work with Mark & David to update your memo outlining the changes between this second sub and the main bill so we have that for committee members? Ideally, I'd like to be able to send that out with the second substitute tomorrow to the committee.

Thanks, all,
Vicky

Vicky Selkowe
Office of State Representative Cory Mason
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From: Kunkel, Mark
Sent: Monday, March 15, 2010 11:48 AM
To: Selkowe, Vicky; Lovell, David
Subject: RE: AB 755 comments

My responses are in italics and bold below.

From: Selkowe, Vicky
Sent: Monday, March 15, 2010 10:46 AM
To: Lovell, David; Kunkel, Mark
Subject: FW: AB 755 comments

David & Mark –
I've been trying to get the utilities to put in writing some of the concerns they've expressed about AB 755. Finally, below, is some of that. Can you take a quick look at the below in light of the changes we've been making to the bill and just let me know if my comments below are correct?

Thanks,

03/15/2010

Vicky

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From: Bill Skewes [mailto:bskewes@wisconsinutilities.com]
Sent: Monday, March 15, 2010 10:38 AM
To: Selkove, Vicky
Subject: FW: AB 755 comments

Vicky: I asked my members for their concerns in writing after we met the week before last. Here is what I received from one utility. We remain concerned about this bill in general. Thanks for reaching out last Friday afternoon to ask about our opinions of the language changes. I hope you got some decent input.

- Xcel Energy strongly supports the provisions of the legislation that allow for this to be a voluntary option for a utility, not to be mandated by the Public Service Commission either directly by a docket or indirectly in a rate case.

These provisions will remain as is in the second substitute.

The sub (and bill) specify that participation is at the discretion of a utility and the PSC may not require that a utility participate.

- Contractors to perform this type of work are not as abundant in the north and western parts of the state as they are in other parts of the state.

We don't address this issue in the bill. **You are correct.**

- The language allowing for an energy provider to earn a rate of return is also not well defined in the bill. At the very least it should state that an energy provider is authorized to earn a rate of return equal to its rate of return on net investment rate base. Simply referencing a utility's overall rate of return raises questions as to the specific mechanism that would be used for this calculation.

This language has been clarified for the second substitute but I'm not clear that it's been clarified in the way described above.

Here's a draft of what the sub will say. I do not know whether it addresses the above concerns.

196.3745 (6) (am) 1. The commission shall ensure in rate-making orders that a utility recovers from its ratepayers the amounts the utility spends for a utility program that exceed the amounts recovered from billing customers for improvements and applications under a tariff approved under sub. (3).

(as) 1. Subject to subd. 2., the commission shall ensure that a utility is allowed to earn a rate of return on the amounts that the utility expends under a program authorized under sub. (2) that is equal to the utility's overall rate of return authorized by the commission.

03/15/2010

2. A utility may not earn a rate of return under subd. 1. on an expenditure that is funded by a source other than the utility, including an expenditure funded by a federal or state grant or customer contribution.

3. With respect to a customer payment that is invested under par. (c), the commission shall establish requirements for determining the portion of the payment on which the utility is eligible to earn a rate of return under this paragraph. The portion shall be based on the amount of the payment that is attributable to an expenditure for which the utility is eligible to earn a rate of return under this paragraph.

- On a related note to the item above, the language states “a utility shall use payments received for improvements for and applications from customers to reinvest dollars.” The language should be revised to clarify that just the principal would need to be reinvested and a utility’s rate of return would not be reinvested in the revolving loan program.

I think we’ve addressed this sufficiently in the second substitute – yes?

The sub says: "196.3745 (6) (c) A utility shall use any payments received for improvements and applications from customers pursuant to a utility program to invest in other improvements and applications under the program." I need to create an exception to address the above concern. I don't believe we addressed this at our meeting, and if we did, I apologize for not making a note on what we decided. David, can we discuss how to draft the exception?

- We oppose the diversion from FOE to DWD.

That’s being removed in the second substitute. **You are correct.**

Related sections:

PSC 113.0301 Disconnections, residential. (8) Residential utility service may not be disconnected or refused for any of the following reasons:

(b) Failure to pay for merchandise or charges for non-utility service billed by the utility, except where authorized by law.

PSC 113.0302 Disconnections, commercial and farm accounts. (8) Commercial or farm utility service may not be disconnected or refused for any of the following reasons:

(b) Failure to pay for merchandise or charges for non-utility service billed by the utility.

PSC 113.0406 Billing. (1) (e) The utility may include on the utility service bill charges to the customer resulting from other services, materials, or work provided by the utility as a result of commission-approved conservation and alternative energy programs and, with the consent of both the customer and the utility, merchandise and service repair work charges. The charges shall be listed individually on the bill and the customer shall be permitted to include such payment in his or her payment for electric utility service. Any partial payments shall be applied first to the amount due for utility service and the remainder to the other charges.

The above are rules that will be superceded by the sub's statutory changes. Note that s. 196.3745 (3) (a) of the sub says: "The tariff shall allow the utility to collect, and enforce payment of, the amounts billed in the same manner as amounts billed for utility service."

This is in statutes

196.59 Merchandising by utilities. Each public utility engaged in the production, transmission, delivery or furnishing of

heat, light or power either directly or indirectly to or for the use of the public shall keep separate accounts to show any profit or loss resulting from the sale of appliances or other merchandise. The commission may not take the profit or loss into consideration in arriving at any rate to be charged for service by the public utility.
History: 1983 a. 53.

I don't think there is an inconsistency between the above statute and the sub. David, your thoughts?

Bill Skewes
WUA

Kunkel, Mark

From: Selkowe, Vicky
Sent: Monday, March 15, 2010 1:36 PM
To: Lovell, David; Kunkel, Mark
Subject: RE: AB 755 comments

Thanks, David. See below...in large purple.

Vicky Selkowe
Office of State Representative Cory Mason
62nd Assembly District
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From: Lovell, David
Sent: Monday, March 15, 2010 1:19 PM
To: Kunkel, Mark
Cc: Selkowe, Vicky
Subject: RE: AB 755 comments

MY RESPONSES ARE IN ALL CAPS, RED, FOLLOWED BY MY INITIALS. DLL

Again, I appologise for not being more available during this drafting process. I hope these comments are still timely.

David L. Lovell, Senior Analyst
Wisconsin Legislative Council Staff
608/266-1537

From: Kunkel, Mark
Sent: Monday, March 15, 2010 11:48 AM
To: Selkowe, Vicky; Lovell, David
Subject: RE: AB 755 comments

My responses are in italics and bold below.

03/15/2010

From: Selkove, Vicky
Sent: Monday, March 15, 2010 10:46 AM
To: Lovell, David; Kunkel, Mark
Subject: FW: AB 755 comments

David & Mark –

I've been trying to get the utilities to put in writing some of the concerns they've expressed about AB 755. Finally, below, is some of that. Can you take a quick look at the below in light of the changes we've been making to the bill and just let me know if my comments below are correct?

Thanks,
Vicky

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From: Bill Skewes [mailto:bskewes@wisconsinutilities.com]
Sent: Monday, March 15, 2010 10:38 AM
To: Selkove, Vicky
Subject: FW: AB 755 comments

Vicky: I asked my members for their concerns in writing after we met the week before last. Here is what I received from one utility. We remain concerned about this bill in general. Thanks for reaching out last Friday afternoon to ask about our opinions of the language changes. I hope you got some decent input.

- Xcel Energy strongly supports the provisions of the legislation that allow for this to be a voluntary option for a utility, not to be mandated by the Public Service Commission either directly by a docket or indirectly in a rate case.

These provisions will remain as is in the second substitute.

The sub (and bill) specify that participation is at the discretion of a utility and the PSC may not require that a utility participate. ✓

- Contractors to perform this type of work are not as abundant in the north and western parts of the state as they are in other parts of the state.

We don't address this issue in the bill. ***You are correct.*** ✓

- The language allowing for an energy provider to earn a rate of return is also not well defined in the bill. At the very least it should state that an energy provider is authorized to earn a rate of return equal to its rate of return on net investment rate base. Simply referencing a utility's overall rate of return raises questions as to the specific mechanism that would be used for this calculation.

This language has been clarified for the second substitute but I'm not clear that it's been clarified in the way described above.

Here's a draft of what the sub will say. I do not know whether it addresses the above concerns.

196.3745 (6) (am) 1. *The commission shall ensure in rate-making orders that a utility recovers from its ratepayers the amounts the utility spends for a utility program that exceed the amounts recovered from billing customers for improvements and applications under a tariff approved under sub. (3).*

(as) 1. *Subject to subd. 2., the commission shall ensure that a utility is allowed to earn a rate of return on the amounts that the utility expends under a program authorized under sub. (2) that is equal to the utility's overall rate of return authorized by the commission.*

2. *A utility may not earn a rate of return under subd. 1. on an expenditure that is funded by a source other than the utility, including an expenditure funded by a federal or state grant or customer contribution.*

3. *With respect to a customer payment that is invested under par. (c), the commission shall establish requirements for determining the portion of the payment on which the utility is eligible to earn a rate of return under this paragraph. The portion shall be based on the amount of the payment that is attributable to an expenditure for which the utility is eligible to earn a rate of return under this paragraph.*

YOU CERTAINLY COULD ADD "ON NET INVESTMENT RATE BASE" FOLLOWING "RATE OF RETURN" IN 196.3745 (6) (as) 1., IF THE UTILITIES FEEL THIS BETTER CAPTURES THE INTENT. DLL

If that's easy to add, Mark, and David agrees it makes sense to do so, then yes, please do that.

- On a related note to the item above, the language states "a utility shall use payments received for improvements for and applications from customers to reinvest dollars." The language should be revised to clarify that just the principal would need to be reinvested and a utility's rate of return would not be reinvested in the revolving loan program.

I think we've addressed this sufficiently in the second substitute – yes?

The sub says: "196.3745 (6) (c) A utility shall use any payments received for improvements and applications from customers pursuant to a utility program to invest in other improvements and applications under the program." I need to create an exception to address the above concern. I don't believe we addressed this at our meeting, and if we did, I apologize for not making a note on what we decided. David, can we discuss how to draft the exception?

I'M NOT SURE AN EXCEPTION IS NEEDED. I BELIEVE THAT RETURN ON EQUITY IS RECEIVED IN THE GENERAL RATE STRUCTURE, NOT IN THE PAYMENTS A UTILITY RECEIVES UNDER THE TARIFF, IN WHICH CASE WHAT THIS LANGUAGE DESCRIBES DOES NOT INCLUDE THE RETURN THE UTILITY HAS EARNED. YOU MIGHT WANT TO CONFIRM THIS WITH ONE OF THE UTILITY FOLKS YOU ARE TALKING TO. DLL

I don't think an exception is needed, either – the language seems clear that the payments are all that has to be reinvested.

- We oppose the diversion from FOE to DWD.

That's being removed in the second substitute. **You are correct.**

Related sections:

PSC 113.0301 Disconnections, residential. (8) Residential utility service may not be disconnected or refused for any of the following reasons:

(b) Failure to pay for merchandise or charges for non-utility service billed by the utility, except where authorized by law.

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This is in statutes

196.59 Merchandising by utilities. Each public utility engaged in the production, transmission, delivery or furnishing of heat, light or power either directly or indirectly to or for the use of the public shall keep separate accounts to show any profit or loss resulting from the sale of appliances or other merchandise. The commission may not take the profit or loss into consideration in arriving at any rate to be charged for service by the public utility.
History: 1983 a. 53.

I don't think there is an inconsistency between the above statute and the sub. David, your thoughts?

I THINK YOU'RE RIGHT. DLL ✓

Bill Skewes
WUA

Kunkel, Mark

From: Kunkel, Mark
Sent: Monday, March 15, 2010 2:23 PM
To: Selkove, Vicky
Cc: Lovell, David
Subject: RE: list of changes in the second substitute to AB755

I think I got all that, plus, delay effective date by 1st day of 3rd month beginning after publication (which ensures a delay of at least 2 months) and require PSC to prepare initial version of prequalification list by same delayed date. (Also note separate delay for real estate form as described below.)

From: Selkove, Vicky
Sent: Monday, March 15, 2010 1:50 PM
To: Kunkel, Mark
Cc: Lovell, David
Subject: list of changes in the second substitute to AB755

Hi Mark -

In addition to the more minor items we emailed about today, I wanted to try to make a list of the changes we're making in this second substitute, just to make sure what's being sent over to editing includes everything:

1. Clarifications to tariffs language, s. 196.3745 (3), as suggested by DLL and as discussed at the 3/9/10 VSS, MDK, DLL meeting.
2. Changes to the costs & savings language, s. 196.3745(4), as suggested by DLL and as discussed at the 3/9/10 VSS, MDK, DLL meeting.
3. Changes to the performance contract language, including the definition drafted by DLL and sent back as edited by Lee Cullen
4. Clarification re. return on equity, as suggested by DLL and as discussed at the 3/9/10 VSS, MDK, DLL meeting.
5. Clarification that municipalities don't have to prioritize performance contracting
6. Clarification that on page 10, lines should be changed to "savings to equal or exceed the cost"
7. Removal of the "10 annual" payback language
8. Removal of the chapter 20 "raid on Focus funds" transfer to DWD for apprenticeship grants language added to the first sub.
9. Changing the effective date on the form disclosure per the WI Realtors' suggestion. (Section 18)

I may be missing one or two things, but this is my running list.

Thanks, Mark, for your patience and flexibility during this process. David, thanks for your help in improving the bill. Am I allowed to buy you both a beer as a thank you? Or maybe David, you'd like some raw milk?

Vicky

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