

2011 DRAFTING REQUEST

Bill

Received: **01/20/2011**

Received By: **jkuesel**

Wanted: **As time permits**

Companion to LRB:

For: **Administration-Budget 6-5878**

By/Representing: **Kraus**

May Contact:

Drafter: **jkuesel**

Subject: **State Govt - state bldg proj**

Addl. Drafters:

Extra Copies:

Submit via email: **YES**

Requester's email:

Carbon copy (CC:) to: **Gregory.Murray@wisconsin.gov**

Pre Topic:

DOA:.....Kraus, BAB0030 -

Topic:

Sale of state-owned power plants

Instructions:

Per 05 b0333/3.

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>
/?	jkuesel 01/26/2011 mkunkel 01/26/2011	csicilia 01/28/2011		_____			State
/1			phenry 01/28/2011	_____	sbasford 01/28/2011		State
/2	jkuesel 01/30/2011 mkunkel	csicilia 02/04/2011	mduchek 02/04/2011	_____	mbarman 02/04/2011		State

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	01/31/2011			_____			
/3	jkuesel 02/08/2011	csicilia 02/08/2011	mduchek 02/08/2011	_____	lparisi 02/08/2011		State
/4	jkuesel 02/09/2011	kfollett 02/09/2011	jfrantze 02/09/2011	_____	cduerst 02/09/2011		

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Sale of state-owned power plants and wastewater treatment facilities

Instructions:

Per 05 b0333/3.

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1/3 jkuesel
FE Sent For: 2/8/11

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2/8/11

~~_____~~
2/8

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NOTES

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1/?	jkuesel	1 cjs	1/28 11	ph	1/28 MD/A		

FE Sent For:

<END>

Kuesel, Jeffery

From: Kuesel, Jeffery
Sent: Thursday, January 20, 2011 1:29 PM
To: Kunkel, Mark
Cc: Hanaman, Cathlene
Subject: RE: Statutory Language Drafting Request - Budget Adjustment Bill

Mark,

I will handle it and let you know if I need you. I am severely pressed, but I'll try to get a start on it this weekend.

Jeff

From: Kunkel, Mark
Sent: Thursday, January 20, 2011 11:06 AM
To: Kuesel, Jeffery
Cc: Hanaman, Cathlene
Subject: RE: Statutory Language Drafting Request - Budget Adjustment Bill

Jeff, can you take the lead on this? My involvement in 05b0333/3 consisted of adding the following sentence to the end of proposed s. 16.896 (1):

"Notwithstanding ss. 196.49 and 196.80, no approval or certification of the public service commission is necessary for a public utility to purchase, or contract for the operation of, such a plant or facility."

From: Hanaman, Cathlene
Sent: Thursday, January 20, 2011 10:32 AM
To: Kuesel, Jeffery; Kunkel, Mark
Subject: FW: Statutory Language Drafting Request - Budget Adjustment Bill

Jeff entered 05b0333 but Mark had an insert, so I am sending this to both of you.

From: DOADLBASADMININTERNETSHAREPOINT@WI.GOV
[mailto:DOADLBASADMININTERNETSHAREPOINT@WI.GOV]
Sent: Thursday, January 20, 2011 10:29 AM
To: Hanaman, Cathlene
Cc: Hetzel, Shayna - DOA; Thornton, Scott - DOA; Kraus, Jennifer - DOA; Kraus, Jennifer - DOA
Subject: Statutory Language Drafting Request - Budget Adjustment Bill

Topic: Sale of state-owned power plants and wastewater treatment facilities

Tracking Code: BAB0030

SBO Team: General Government and Economic Development

SBO Analyst: Kraus, Jennifer - DOA
Phone: (608) 266-5878
E-mail: Jennifer.Kraus@Wisconsin.gov

Agency Acronym: DOA

Agency Number: 505

Priority: High

Intent:

Modify 2005 LRBb0333/3 to direct the DOA secretary to sell or contract for these facilities (including those owned by the UW) by the end of the 11-13 biennium. Authorize the Secretary to eliminate positions and adjust budgets as facilities are sold or if they contract instead. Ensure that agency energy appropriations can continue to pay for these services.

Attachments: False

Kuesel, Jeffery

From: Kuesel, Jeffery
Sent: Tuesday, January 25, 2011 5:06 PM
To: Kraus, Jennifer - DOA
Cc: Kunkel, Mark
Subject: FW: LRB-1130 (Sale of state-owned power, heating, and cooling plants and wastewater treatment facilities)

Jenny,

1. I am forwarding an E mail from Mark Kunkel, our attorney who does the PSC drafting. One result of selling the state-owned plants is that because these plants provide heat and air conditioning by means of steam and chilled water lines that interconnect the plants with state-owned facilities, the facilities will be captive customers of the plant owners. It appears that, under current law, the rates set by the owners cannot be regulated by the PSC, so the state will be forced to pay whatever the owners require. You may wish to consider requiring the PSC to regulate the rates charged to the state so the state will be able to obtain review of any disputes regarding the appropriateness of the rates.

2. The draft will permit any savings realized from separating state employees to be lapsed to the general fund. However, over the longer term, it's possible that energy costs could in some cases increase over what the state pays now. If so, you will need to ask the legislature for supplemental appropriations or, if you wish, include a program supplement appropriation in the draft to handle any unbudgeted energy cost increases.

3. I assume that you will sell the plants and facilities contingent upon a guarantee that they will continue to be operated and kept in good repair, and the operator will continue to provide adequate and sufficient power, heat, light and wastewater treatment to meet the state's current and future needs. If you want any provision concerning this subject in the draft, please let me know.

Jeffery T. Kuesel

Wisconsin Legislative Reference Bureau

P.O. Box 2037

Madison, WI 53701-2037

(608) 266-6778

Jeffery.Kuesel@legis.wisconsin.gov

From: Kunkel, Mark
Sent: Tuesday, January 25, 2011 4:37 PM
To: Kuesel, Jeffery
Cc: Kuczenski, Tracy
Subject: UW steam plants

Jeff,

Regarding the proposal for privatizing UW plants that produce steam for the purpose of heating and cooling buildings, and that also treat wastewater, you asked whether a private entity that purchases the plants would be subject to regulation by the PSC.

The PSC has the authority to regulate a "public utility," which is defined, with certain exceptions that do not apply, as "every corporation, company, individual, association, their lessees, trustees or receivers appointed by any court, and every sanitary district, town, village or city that may own, operate, manage or control ... any part of a plant or equipment, within the state, for the production, transmission, delivery or furnishing of heat, light, water or power either directly or indirectly to or for the public." Section 196.01 (5) (a) (intro.). In addition, "public utility" includes a person, other than a governmental unit, "who furnishes services by means of a sewerage system either directly or indirectly to or for the public."

Because the UW plants furnish heat, they could qualify under the definition of public utility. In addition, if the plants provide sewerage service in treating wastewater, they could also qualify under the definition.

However, if the only customer for the heat or wastewater treatment is the UW, a court might conclude that such services are not furnished to or for the public. In *City of Sun Prairie v. PSC*, 37 Wis. 2d 96 (1967), the Wis. Supreme Court held that a landlord who furnishes heat, power, light and water to its tenants in its multiple apartment complex is not a public

utility. The court quoted with approval a 1911 decision that stated: "The word 'public' must be construed to mean more than a limited class defined by the relation of landlord and tenant, or by nearness of location, as neighbors, or more than a few who by reason of any peculiar relation to the owner of the plant can be served by him." 37 Wis. 2d at 99-100, quoting *Cawker v. Meyer*, 147 Wis. 320, 324-26 (1911). If the new owner of the UW plants furnishes heat to only the UW, a court might conclude that the UW has a peculiar relation to the new owner that disqualifies the new owner from being considered a public utility.

If a court follows the reasoning in *City of Sun Prairie*, it would hold that the new owner is not a public utility.

-- Mark

Date (time) needed

STONK TODAY

LRB-1130/1

date

DOA BUDGET DRAFT

STK+MD/K:gs

Use the appropriate components and routines developed for bills.

→ P.W.F. ←

>>FOR BUDGET — NOT READY FOR INTRODUCTION<<

AN ACT . . . [DO NOT generate catalog]; relating to: ^{sale or} ~~the budget.~~
contractual operation of state-owned heating, cooling,
and power plants and wastewater treatment facilities

SA 11 ✓
SA 09 ✓
SA 07 ✓
SA 05 ✓

Analysis by the Legislative Reference Bureau

If titles are needed in the analysis, in the component bar:

For the main heading, execute: create → anal: → title: → head

For the subheading, execute: create → anal: → title: → sub

For the sub-subheading, execute: create → anal: → title: → sub-sub

For the analysis text, in the component bar:

For the text paragraph, execute: create → anal: → text

FMS A →

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

SECTION #.

→

LFB:.....Renner - Sale of state-owned power plants and wastewater treatment facilities

FOR 2005-07 BUDGET -- NOT READY FOR INTRODUCTION

ASSEMBLY AMENDMENT ,
TO 2005 ASSEMBLY BILL 100

1 At the locations indicated, amend the bill as follows:

2 ~~1. Page 58, line 16; after that line insert:~~

3 ~~SECTION 16m.~~ 13.48 (2) (k) 1. of the statutes is renumbered 13.48 (2) (k). ✕

4 SECTION 16n. 13.48 (2) (k) 2. of the statutes is repealed. ✕

5 ~~2. Page 77, line 4; after that line insert:~~

6 ~~SECTION 8m.~~ 16.84 (1) of the statutes is amended to read:

7 16.84 (1) Have charge of, operate, maintain and keep in repair the state capitol
8 building, the executive residence, the light, heat and power plant, the state office
9 buildings and their power plants, the grounds connected therewith, and such other
10 state properties as are designated by law. All costs of such operation and
11 maintenance shall be paid from the appropriations under s. 20.505 (5) (ka) and (kb),

LPS: Thaw Bill Section Numbers

LPS: Traw Bill Section Numbers

2005 - 2006 Legislature

- 2 -

LRBb0333/3
JTK&MDK:lmk:pg

1 except for debt service costs paid under s. 20.866 (1) (u). The department shall
2 transfer moneys from the appropriation under s. 20.505 (5) (ka) to the appropriation
3 account under s. 20.505 (5) (kc) sufficient to make principal and interest payments
4 on state facilities and payments to the United States under s. 13.488 (1) (m).

5 ~~3. Page 79, line 2: after that line insert:~~

6 ~~SECTION 85g.~~ [#] 16.85 (4) of the statutes is repealed. x

7 SECTION ~~85r.~~ [#] 16.895 of the statutes is repealed. x

8 ~~4. Page 80, line 15: after that line insert:~~

9 ~~SECTION 87d.~~ [#] 16.896 of the statutes is created to read:

10 **16.896 Sale or contractual operation of state-owned heating, cooling,**
11 **and power plants and wastewater treatment facilities. (1) Except as provided**

12 ~~in (2005) Wisconsin Act ... (this act), section 9101 (4), and~~ notwithstanding ss. 13.48

13 (14) (am) and 16.705 (1), no later than ~~April 1, 2007~~ ^{June 30, 2013}, the department shall sell each

14 state-owned heating, cooling, and power plant and wastewater treatment facility or

15 shall contract with a private entity for the operation of each such plant or facility for

16 the period beginning no later than ~~April 1, 2007~~ ^{June 30, 2013}. Notwithstanding ss. 196.49 and

17 196.80, no approval or certification of the public service commission is necessary for

18 a public utility to purchase, or contract for the operation of, such a plant or facility.

19 (2) If there is any outstanding public debt used to finance the acquisition,

20 construction, or improvement of any plant or facility that is sold under sub. (1), the

21 department shall deposit a sufficient amount of the net proceeds from the sale of the

22 property in the bond security and redemption fund under s. 18.09 to repay the

23 principal and pay the interest on the debt, and any premium due upon refunding of

24 the debt. If the property was acquired, constructed, or improved with federal

Subject to approval under sub (4) whenever required

Remove the extra space here

1 financial assistance, the department shall repay to the federal government any
2 of the net proceeds required by federal law.

3 (3) Except as provided in s. 51.06 (6), if there is no such debt outstanding or
4 there are no moneys payable to the federal government, or if the net proceeds exceed
5 the amount required to be deposited or paid under sub. (2), the department shall
6 deposit the net proceeds or remaining net proceeds in the budget stabilization fund.

7 (4) If the department proposes to sell any property under sub. (1) having a fair
8 market value of at least \$20,000, the department shall notify the joint committee on
9 finance in writing of its proposed action. If the cochairpersons of the committee do
10 not notify the department that the committee has scheduled a meeting for the
11 purpose of reviewing the proposed sale within 14 working days after the date of the
12 department's notification, the property may be sold by the department. If, within 14
13 working days after the date of the department's notification, the cochairpersons of
14 the committee notify the department that the committee has scheduled a meeting for
15 the purpose of reviewing the proposed sale, the property may be sold under sub. (1)
16 only upon approval of the committee.

17 (5) Any contract entered into under sub. (1) (a) for the initial operation of a
18 state-owned heating, cooling, or power plant or wastewater treatment facility that
19 was operated by the state prior to the effective date of the contract shall require the
20 purchaser or contractor to offer employment to those state employees who performed services at
21 the plant or facility and whose positions were terminated as ~~the~~ result of the contract.

22 SECTION 87h. 16.90 of the statutes is repealed. +

23 SECTION 87p. 16.91 of the statutes is repealed. +

24 SECTION 87L. 16.93 (2) and (3) of the statutes are amended to read:

Handwritten marks

1 16.93 (2) Except as provided in sub. (3), any agency, with the approval of the
 2 department, may sell fuel, ~~or water, sewage treatment service, electricity, heat or~~
 3 ~~chilled water~~ to another agency, a federal agency, a local government or a private
 4 entity.

5 (3) Prior to contracting for the sale of any fuel or extending any water, ~~sewage~~
 6 ~~treatment, electrical, heating or chilled water~~ service to a new private entity after
 7 August 9, 1989, an agency shall contact each public utility that serves the area in
 8 which the private entity is located and that is engaged in the sale of the same fuel
 9 or ~~utility~~ water service. If a public utility so contacted objects to the proposed sale
 10 and commits to provide the fuel or water service, the agency shall not contract for the
 11 sale. *De*

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07-20
09-28

12 **5.** Page 302, line 8: after that line insert:

13 “**SECTION 163m.** 20.225 (1) (b) of the statutes is amended to read:

14 20.225 (1) (b) *Energy costs.* The amounts in the schedule to pay for utilities and
 15 for fuel, heat, and air conditioning, and to pay costs incurred under ~~ss. s. 16.858 and~~
 16 ~~16.895, by or on behalf of the board.”~~

17 **6.** Page 303, line 9: after that line insert:

18 “**SECTION 167m.** 20.245 (1) (c) of the statutes is amended to read:

19 20.245 (1) (c) *Energy costs.* The amounts in the schedule to pay for utilities and
 20 for fuel, heat, and air conditioning, and to pay costs incurred by or on behalf of the
 21 historical society under ~~ss. s. 16.858 and 16.895.”~~

22 **7.** Page 305, line 2: after that line insert:

23 “**SECTION 172m.** 20.255 (1) (c) of the statutes is amended to read:

1 20:255 (1) (c) *Energy costs; Wisconsin Educational Services Program for the*
2 *Deaf and Hard of Hearing and Wisconsin Center for the Blind and Visually Impaired.*
3 The amounts in the schedule to be used at the facilities of the Wisconsin Educational
4 Services Program for the Deaf and Hard of Hearing and the Wisconsin Center for the
5 Blind and Visually Impaired to pay for utilities and for fuel, heat and air conditioning
6 and to pay costs incurred by or on behalf of the department under ss. s. 16.858 and
7 ~~16.895.~~”.

8 **8.** Page 309, line 2: after that line insert:

9 “**SECTION 193m.** 20.285 (1) (c) of the statutes is amended to read:

10 20.285 (1) (c) *Energy costs.* The amounts in the schedule to pay for utilities and
11 for fuel, heat, and air conditioning, and to pay costs incurred under ss. s. 16.858 and
12 ~~16.895, including all operating costs recommended by the department of~~
13 ~~administration that result from the installation of pollution abatement equipment~~
14 ~~in state-owned or operated heating, cooling, or power plants, by or on behalf of the~~
15 board of regents, and including the cost of purchasing electricity, steam, and chilled
16 water generated by the cogeneration facility constructed pursuant to an agreement
17 under 2001 Wisconsin Act 109, section 9156 (2z) (g).”.

18 **9.** Page 333, line 2: after that line insert:

19 “**SECTION 286m.** 20.410 (1) (f) of the statutes is amended to read:

20 20.410 (1) (f) *Energy costs.* The amounts in the schedule to be used at state
21 correctional institutions to pay for utilities and for fuel, heat and air conditioning and
22 to pay costs incurred by or on behalf of the department under ss. s. 16.858 and
23 ~~16.895.~~”.

24 **10.** Page 333, line 13: after that line insert:

~~SECTION 288m.~~

1 SECTION 288m. 20.410 (1) (gm) of the statutes is amended to read:

2 20.410 (1) (gm) *Sale of fuel and utility water service.* The amounts in the
3 schedule for fuel, or water, ~~sewage treatment service, electricity, heat or chilled water~~
4 provided to entities outside the department at correctional facilities. All moneys
5 received from the sale of those materials or services at correctional facilities to
6 entities outside the department under s. 16.93 (2) shall be credited to this
7 appropriation.

FWS
6-7
6-7

8 **11.** Page 353, line 9: after that line insert:

9 "SECTION 364m. 20.465 (1) (f) of the statutes is amended to read:

10 20.465 (1) (f) *Energy costs.* The amounts in the schedule to be used at military
11 buildings under control of the department to pay for utilities and for fuel, heat and
12 air conditioning and to pay costs incurred by or on behalf of the department under
13 ss. s. 16.858 and 16.895."

14 **12.** Page 357, line 14: after that line insert:

15 "SECTION 384m. 20.485 (4) (r) of the statutes is amended to read:

16 20.485 (4) (r) *Cemetery energy costs.* From the veterans trust fund, the amounts
17 in the schedule to be used at the veterans memorial cemeteries operated under s.
18 ~~45.358~~ ^{45.161} for utilities and for fuel, heat and air conditioning and for costs incurred by
19 or on behalf of the department of veterans affairs under ss. s. 16.858 and 16.895."

20 **13.** Page 365, line 7: after that line insert:

21 "SECTION 413m. 20.505 (5) (ka) of the statutes is amended to read:

22 20.505 (5) (ka) *Facility operations and maintenance; police and protection*
23 *functions.* The amounts in the schedule for the purpose of financing the costs of
24 operation of state-owned or operated facilities that are not funded from other

15-16

21-22

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1 appropriations, including custodial and maintenance services; minor projects;
 2 utilities, fuel, heat and air conditioning; costs incurred under ~~ss. s.~~ 16.858 and 16.895
 3 by or on behalf of the department; and supplementing the costs of operation of child
 4 care facilities for children of state employees under s. 16.841; and for police and
 5 protection functions under s. 16.84 (2) and (3). All moneys received from state
 6 agencies for the operation of such facilities, parking rental fees established under s.
 7 16.843 (2) (bm) and miscellaneous other sources, ~~all moneys received from~~
 8 ~~assessments under s. 16.895~~, all moneys received for the performance of gaming
 9 protection functions under s. 16.84 (3), and all moneys transferred from the
 10 appropriation account under s. 20.865 (2) (e) for this purpose shall be credited to this
 11 appropriation account.

12 **14.** Page 443, line 19: after that line insert:

13 ~~SECTION~~ **SECTION 775m.** 45.365 (2m) (a) of the statutes is amended to read:

14 45.365 (2m) (a) The department may enter into agreements for furnishing and
 15 charging for water and sewer service from facilities constructed at and for the home
 16 to public and private properties lying in the immediate vicinity of the home.

17 **15.** Page 1065, line 24: after that line insert:

18 ~~(1v)~~ SALE OR CONTRACTUAL OPERATION OF STATE-OWNED HEATING, COOLING, AND
 19 POWER PLANTS AND WASTEWATER TREATMENT FACILITIES. Notwithstanding section 16.50

20 (1) of the statutes, the secretary of administration shall require submission of
 21 expenditure estimates under section 16.50 (2) of the statutes for each state agency

22 ~~as defined in section 20.001 (1) of the statutes, that proposes to expend moneys in the~~
 23 ~~2005-07 fiscal biennium~~ *(Prior to July 1, 2013)* that are not encumbered on the effective date of this

24 ~~subsection~~ from any appropriation for the operation of a state-owned heating,
 Paragraph

LWS
7-19

9101. Nonstatutory provisions. Administration.

1 cooling, or power plant or wastewater treatment facility. Notwithstanding section
2 16.50 (2) of the statutes, the secretary shall disapprove any such estimate for any
3 period during which that plant or facility is owned or operated by a private entity.

4 The secretary may then require the use of the amounts of any disapproved,
5 expenditure estimates for the purpose of ~~payment of the costs of purchasing heating,~~ ^{purchase of contractual services}
6 cooling, power, or wastewater treatment for the state agencies or facilities for which ^{relating}
7 the amounts were appropriated. ~~The secretary shall notify the joint committee on~~ ^{to heating,}
8 ~~finance in writing of any action taken under this subsection.~~ ^{cooling,}
^{power,}
^{or}
^{wastewater}
^{treatment}
^{for}
^{state}
^{facilities}
^{or}

~~The secretary shall notify the joint committee on finance in writing of any action taken under this subsection.~~

JWS
8-8

16. Page 1132, line 17: after that line insert:

10 ~~(3w)~~ SALE OR CONTRACTUAL OPERATION OF STATE-OWNED HEATING, COOLING, AND
11 POWER PLANTS AND WASTEWATER TREATMENT FACILITIES. The treatment of sections 13.48
12 (2) (k) 1. and 2., 16.84 (1), 16.85 (4), 16.895, 16.90, 16.91, 16.93 (2) and (3), 20.255 (1)
13 (b), 20.245 (1) (c), 20.255 (1) (c), 20.285 (1) (c), 20.410 (1) (f) and (gm), 20.465 (1) (f),
14 20.485 (4) (r), 20.505 (5) (ka), and 45.365 (2m) (a) of the statutes takes effect on April
15 ~~1, 2007.~~ ^{20.435 (2) (f)}
^{July 1, 2013}

~~1, 2007.~~

(END)

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9 9401. Effective dates; Administration

1 INS A:

The bill exempts such sales and contracts from the requirement for PSE approval that may otherwise apply under current law.

STATE GOVERNMENT ✓

OTHER STATE GOVERNMENT ✓

Currently, this state owns and operates numerous heating, cooling, and power plants and wastewater treatment facilities that were constructed by the state to provide heating, cooling, power, and wastewater treatment to state facilities. Generally, the heating and cooling is provided by producing steam and chilled water, which is then piped directly from the plants to the facilities. In some cases, nonstate governmental and private facilities are also served by the state-owned plants and facilities. Under current law, DOA determines the method of operation of state-owned or operated heating, cooling and power plants and may delegate this authority to any other state agency that has managing authority for a plant. DOA also approves the rates that each agency charges for heating, cooling, and power that it provides at such plants, and may assess state agencies for their proportionate share of DOA's administrative costs with respect to state heating, cooling, and power provided by state-owned or operated plants.

This bill directs DOA to sell or contract for the operation of all state-owned heating, cooling, and power plants and wastewater treatment facilities by June 30, 2013. Under the bill, effective on July 1, 2013, DOA no longer has any managerial authority for the operation of any state-owned heating, cooling and power plant. The bill provides that the net proceeds of any sale, after retirement of any outstanding state debt that was used to finance the acquisition, construction, or improvement of a plant or facility and any necessary repayment to the federal government of federal financial assistance that was used by this state to acquire, construct, or improve a plant or facility, is deposited in the budget stabilization fund. Under the bill, if the fair market value of any plant or facility to be sold by DOA exceeds \$20,000, the sale is subject to approval of the JCF unless the JCF waives its right to approve the sale.

The bill provides that any contract for the sale or operation of a state-operated plant or facility must provide that the purchaser or contractor shall offer employment to those employees at the plant or facility whose positions were terminated as a result of the contract. The bill permits the secretary of administration to decrease the authorized full-time positions for any state agency to reflect any positions the responsibilities of which were primarily related to management or operation of a plant or facility before the effective date of a sale or contract for services. The bill also permits the secretary, with certain exceptions, to transfer or lapse unencumbered balances of appropriations to state agencies that were allocated for the purpose of management or operation of a plant or facility, effective on the date that an agency ceases to have managerial or operational authority, and to reallocate moneys that were appropriated for management or operation of a plant or facility to be used instead for the purpose of purchase of heating, cooling, power, or wastewater treatment or for the purchase of contractual

operational

services relating to heating, cooling, power, or wastewater treatment services for state facilities. Under the bill, this authority expires on September 1, 2013.

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

1 INS 7-19: ✓

2 (A) # (a) *Definition*. In this subsection, "state agency" has the meaning given under
3 section 20.001 (1) of the statutes.

4 (A) # (b) *Reallocation of operating moneys for purchase of services*.

5 INS 8-8: ✓

6 (c) *Decreases in authorized full-time equivalent positions*. If the department
7 of administration sells or contracts for the operation of any state-owned heating,
8 cooling and power plant, or any wastewater treatment facility under section 16.896
9 (1) of the statutes, as created by this act, the secretary of administration may identify
10 any full-time equivalent positions authorized for the state agency that has
11 operating authority for the plant or facility, the duties of which primarily relate to
12 the management or operation of the plant or facility, and may decrease the
13 authorized full-time equivalent positions for that agency by the number of positions
14 so identified effective on the date that the state agency no longer has operating
15 authority for the plant or facility.

16 (d) *Transfer or lapse of moneys appropriated to operate plants or facilities*.

17 Notwithstanding sections 20.001 (3) (a) to (c) and 25.40 (3) of the statutes, the
18 secretary of administration may lapse or transfer to the general fund from the
19 unencumbered balances of appropriations to any state agency, other than sum
20 sufficient appropriations and appropriations of federal revenues, any amount

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1 appropriated to an a state agency that is determined by the secretary to be allocated
 2 for the purpose of management or operation of a plant or facility that is sold or the
 3 operation of which is contracted under section 16.896 (1) of the statutes, as created
 4 by this act, effective on the date that the state agency to which the moneys are
 5 appropriated no longer has operating authority for the plant or facility.

6 ~~(e)~~ *Notification.* The secretary of administration shall notify the
 7 cochairpersons of the joint committee on finance of any action taken by the secretary
 8 under this subsection.

9 ~~(f)~~ *Expiration.* This subsection does not apply after August 31, 2013. ✓

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WS4-11:1

Section #. 20.225 (1) (b) of the statutes is amended to read:

20.225 (1) (b) *Energy costs; energy-related assessments.* The amounts in the schedule to pay for utilities and for fuel, heat, and air conditioning, to pay assessments levied by the department of administration under s. 16.847 (3) for costs incurred and savings generated at facilities of the board, and to pay costs incurred under ~~ss. 16.858 and 16.895~~ by or on behalf of the board.

↓ S. ↓ ↓
~~History: 1971 c. 125; 1973 c. 90, 333; 1975 c. 39; 1977 c. 29; 1981 c. 20; 1985 a. 29 ss. 210m, 212, 3202 (15) (a); 1987 a. 399; 1989 a. 31; 1993 a. 16; 1995 a. 27; 1997 a. 27; 1999 a. 9; 2001 a. 16; 2003 a. 33; 2007 a. 20; 2009 a. 28.~~
← plain commg

AWS 4-11:2

Section #. 20.245 (1) (c) of the statutes is amended to read:

20.245 (1) (c) *Energy costs; energy-related assessments.* The amounts in the schedule to pay for utilities and for fuel, heat, and air conditioning, to pay assessments levied by the department of administration under s. 16.847 (3) for costs incurred and savings generated at facilities of the society, and to pay costs incurred by or on behalf of the historical society under ~~ss.~~ ^{s.} 16.858 and ~~16.895~~.

History: 1971 c. 100 s. 23; ~~1971 c. 125~~; 1973 c. 30, 90; 1975 c. 39, 224; 1977 c. 29; 1979 c. 34, 221; 1981 c. 20; 1983 a. 27; 1985 a. 29, 316; 1987 a. 27, 395, 399; 1989 a. 31; 1991 a. 39, 226, 269, 315; 1993 a. 16, 257, 399, 471, 490; 1995 a. 3, 27, 216; 1997 a. 27, 237; 1999 a. 9; 2001 a. 16, 109; 2003 a. ~~33, 91, 326~~; 2007 a. 20; 2009 a. 28.

RWS 4-11:3

Section #. 20.255 (1) (c) of the statutes is amended to read:

20.255 (1) (c) *Energy costs; Wisconsin Educational Services Program for the Deaf and Hard of Hearing and Wisconsin Center for the Blind and Visually Impaired; energy-related assessments.*

The amounts in the schedule to be used at the facilities of the Wisconsin Educational Services Program for the Deaf and Hard of Hearing and the Wisconsin Center for the Blind and Visually Impaired to pay for utilities and for fuel, heat and air conditioning, to pay assessments levied by the department of administration under s. 16.847 (3) for costs incurred and savings generated at departmental facilities, and to pay costs incurred by or on behalf of the department under ~~ss. 16.858 and 16.895~~ ^{ss. 16.858 and 16.895}.

History: 1971 c. 42, 56, 125; 1971 c. 152 s. 38; 1971 c. 154 s. 80; 1971 c. 211 ss. 24, 126; 1971 c. 215; 1973 c. 89 s. 20 (2); 1973 c. 90, 190, 243, 300, 307, 333, 336; 1975 c. 39 ss. 97 to 109, 732 (1); 1975 c. 105, 220, 224, 395; 1977 c. 26 s. 75; 1977 c. 29; 1977 c. 83 s. 26; 1977 c. 418 ss. 88m to 90, 929 (55); 1979 c. 34 ss. 164 to 191, 2102 (43) (a); 1979 c. 221 ss. 96e to 97w, 2200 (43); 1979 c. 331; 1979 c. 346 ss. 9, 15; 1981 c. 20, 86, 169; 1981 c. 314 s. 146; 1983 a. 22 s. 6; 1983 a. 27 ss. 158 to 212, 2200 (42), 2202 (42); 1983 a. 192; 1983 a. 333 s. 6; 1983 a. 370; 1985 a. 29, 56, 75, 120; 1987 a. 27, 339, 399; 1989 a. 31, 56, 114, 122, 269, 299, 309, 336, 359; 1991 a. 32, 39, 196, 269; 1993 a. 16, 168, 367, 377, 437, 454, 458, 490, 491; 1995 a. 27 ss. 563, 567 to 599, 622, 623, 9145 (1); 1995 a. 49, 227; 1997 a. 27, 113, 164, 237, 252; 1999 a. 9, 185; 2001 a. 16, 57, 105, 109; 2003 a. 33; 2005 a. 25, 43; 2007 a. 20; 2009 a. 11, 28, 58, 329.

JWS4-11:4

Section #. 20.285 (1) (c) of the statutes is amended to read:

20.285 (1) (c) *Energy costs; energy-related assessments.* The amounts in the schedule to pay for utilities and for fuel, heat, and air conditioning, to pay assessments levied by the department of administration under s. 16.847 (3) for costs incurred and savings generated at university facilities, and to pay costs incurred under ss. 16.858 and 16.895, including all operating costs recommended by the department of administration that result from the installation of pollution abatement equipment in state-owned or operated heating, cooling, or power plants, by or on behalf of the board of regents, and including the cost of purchasing electricity, steam, and chilled water generated by the cogeneration facility constructed pursuant to an agreement under 2001 Wisconsin Act 109, section 9156 (2z) (g).

History: 1971 c. 40 s. 93; 1971 c. 100 s. 23; 1971 c. 125, 215, 236; 1971 c. 323 s. 27; 1973 c. 90, 301, 333, 340; 1975 c. 39; 1975 c. 41 s. 52; 1975 c. 198 s. 63; 1975 c. 224; 1977 c. 29; 1977 c. 418 ss. 91 to 92, 924 (50), 929 (55); 1977 c. 422; 1977 c. 447 s. 206; 1979 c. 34, 221; 1981 c. 20; 1983 a. 27 ss. 213 to 215m, 2202 (20); 1983 a. 237; 1983 a. 333 s. 6; 1985 a. 29, 120, 339; 1987 a. 27, 399; 1989 a. 31; 1989 a. 56 s. 259; 1989 a. 269, 335, 353; 1991 a. 39, 167, 269; 1993 a. 16, 455; 1995 a. 27 ss. 600m to 615m, 1080b, 1085b, 1086b; 1995 a. 227, 228; 1997 a. 27 s. 257m, 263m, 271 to 281; 1997 a. 237, 252; 1999 a. 9, 32, 107; 1999 a. 150 s. 672; 2001 a. 16, 103, 109; 2003 a. 33, 176, 321; 2005 a. 25, 460; 2007 a. 20 ss. 248m to 262, 9121 (6) (a); 2009 a. 28 ss. 211, 215, 253m to 262m; 2009 a. 190, 265.

JW 54-11:5

Section #. 20.410 (1) (f) of the statutes is amended to read:

20.410 (1) (f) *Energy costs; energy-related assessments.* The amounts in the schedule to be used at state correctional institutions to pay for utilities and for fuel, heat and air conditioning, to pay assessments levied by the department of administration under s. 16.847 (3) for costs incurred and savings generated at departmental facilities, and to pay costs incurred by or on behalf of the department under ss. ~~16.858 and 16.897~~.

History: 1989 a. 31 ss. 340, 361 to 380, 382 to 392; 1989 a. 107, 122, 359; 1991 a. 39; 1993 a. 16, 98, 377, 437, 490; 1995 a. 27, 77, 416, 440; 1997 a. 4, 27, 35, 237, 252, 275, 283, 284; 1999 a. 9, 89; 2001 a. 16; 2003 a. 33; 2005 a. 25 ss. 287 to 295m, 414t, 415wr; 2005 a. 234 s. 4; 2005 a. 344, 433; 2007 a. 20, 97; 2009 a. 28, 71, 100, 182, 233.

aws 6-7:1

07-20
09-28

Section #. 20.435 (2) (f) of the statutes is amended to read:

20.435 (2) (f) *Energy costs; energy-related assessments.* The amounts in the schedule to be used at mental health institutes and centers for the developmentally disabled to pay for utilities and for fuel, heat and air conditioning, to pay assessments levied by the department of administration under s. 16.847 (3) for costs incurred and savings generated at departmental facilities, and to pay costs incurred by or on behalf of the department under ~~ss. 16.858 and 16.895~~ ^{s.} ~~16.858~~ and ~~16.895~~.

~~History: 1971 c. 125 ss. 138 to 155, 522 (1); 1971 c. 211, 215, 302, 307, 322; 1973 c. 90, 198, 243; 1973 c. 284 s. 32; 1973 c. 308, 321, 322, 333, 336; 1975 c. 39 ss. 153 to 173, 732 (1), (2); 1975 c. 41 s. 52; 1975 c. 82, 224, 292; 1975 c. 413 s. 18; 1975 c. 422, 423; 1975 c. 430 ss. 1, 2, 80; 1977 c. 29 ss. 236 to 273, 1657 (18); 1977 c. 112; 1977 c. 203 s. 106; 1977 c. 213, 233, 327; 1977 c. 354 s. 101; 1977 c. 359; 1977 c. 418 ss. 129 to 137, 924 (18) (d), 929 (55); 1977 c. 428 s. 115; 1977 c. 447; 1979 c. 32 s. 92 (11); 1979 c. 34, 48; 1979 c. 102 s. 237; 1979 c. 111, 175, 177; 1979 c. 221 ss. 118g to 133, 2202 (20); 1979 c. 238, 300, 331, 361; 1981 c. 20 ss. 301 to 356b, 2202 (20) (b), (d), (g); 1981 c. 93 ss. 3 to 8, 186; 1981 c. 298, 314, 317, 359, 390; 1983 a. 27 ss. 318 to 410, 2202 (20); 1983 a. 192, 199, 245; 1983 a. 333 s. 6; 1983 a. 363, 398, 410, 427; 1983 a. 435 ss. 2, 3, 7; 1983 a. 538; 1985 a. 24, 29, 56, 73, 120, 154, 176, 255, 281, 285, 332; 1987 a. 27, 339, 368, 398, 399, 402; 1987 a. 403 ss. 25, 256; 1987 a. 413; 1989 a. 31, 53; 1989 a. 56 ss. 13, 259; 1989 a. 102; 1989 a. 107 ss. 11, 13, 17 to 37; 1989 a. 120, 122, 173, 199, 202, 318, 336, 359; 1991 a. 6, 39, 189, 269, 275, 290, 315, 322; 1993 a. 16, 27, 76, 98, 99, 168, 183, 377, 437, 445, 446, 450, 469, 479, 490, 491; 1995 a. 27 ss. 806 to 961r, 9126 (19); 1995 a. 77, 98; 1995 a. 216 ss. 26, 27; 1995 a. 266, 276, 289, 303, 404, 417, 440, 448, 464, 468; 1997 a. 27 ss. 211, 214, 216, 217, 527 to 609; 1997 a. 35, 105, 231, 237, 280, 293; 1999 a. 5, 9, 32, 52, 84, 103, 109, 113, 133, 185, 186; 2001 a. 16, 69, 103, 105; 2003 a. 33, 139, 186, 318, 320, 326, 327; 2005 a. 15, 22; 2005 a. 25 ss. 299 to 331, 2498 to 2500, 2510; 2005 a. 74, 107, 199, 228, 264, 388, 406, 434; 2007 a. 20 ss. 331 to 422, 9121 (6) (a); 2007 a. 39, 88, 107, 111, 130; 2009 a. 2, 15; 2009 a. 28 ss. 325 to 470, 485, 488, 490; 2009 a. 76, 180, 190, 219, 274, 276, 279, 318, 334.~~

INS 6-7:2

Section #. 20.465 (1) (f) of the statutes is amended to read:

20.465 (1) (f) *Energy costs; energy-related assessments.* The amounts in the schedule to be used at military buildings under control of the department to pay for utilities and for fuel, heat and air conditioning, to pay assessments levied by the department of administration under s. 16.847 (3) for costs incurred and savings generated at departmental facilities, and to pay costs incurred by or on behalf of the department under ~~ss. 16.858 and 16.895~~ ^{s.}

History: 1971 c. 125; 1975 c. 39, 224; 1977 c. 29; 1977 c. 418 s. 929 (55); 1981 c. 20, 207; 1983 a. 27; 1983 a. 333 s. 6; 1987 a. 27; 1987 a. 63 s. 13; 1989 a. 31 ss. 486 to 494, 504 to 514, 521, 522; 1989 a. 115; 1991 a. 39, 104; 1993 a. 16, 253, 490; 1995 a. 13, 27, 247; 1997 a. 27, 237; 1999 a. 9; 2001 a. 16, 109; 2003 a. 33, 186; 2005 a. 25, 269; 2007 a. 20, 200; 2009 a. 28, 42.

WS 6-7:3

Section #. 20.485 (4) (r) of the statutes is amended to read:

20.485 (4) (r) *Cemetery energy costs; energy-related assessments.* From the veterans trust fund, the amounts in the schedule to be used at the veterans memorial cemeteries operated under s. 45.61 for utilities and for fuel, heat and air conditioning, to pay assessments levied by the department of administration under s. 16.847 (3) for costs incurred and savings generated at departmental facilities, and for costs incurred by or on behalf of the department of veterans affairs under ~~ss. 16.858 and 16.895~~ ^{ss. 16.858 and 16.895}

History: 1971 c. 93, 125, 198, 215; 1973 c. 4, 90; 1973 c. 208 ss. 2, 3, 17; 1973 c. 333 s. 201m; 1973 c. 340; 1975 c. 26, 39; 198, 200, 224; 1977 c. 4, 29, 237; 1977 c. 418 s. 929 (55); 1977 c. 447; 1979 c. 4, 34, 155; 1981 c. 20 ss. 377g to 399, 2202 (55) (a); 1981 c. 93, 237; 1983 a. 27; 1983 a. 333 s. 6; 1985 a. 6, 29; 1987 a. 27, 399; 1989 a. 31; 1991 a. 39, 44, 165, 269; 1993 a. 16, 254, 490; 1995 a. 27, 225; 1997 a. 27; 1999 a. 2; 1999 a. 9 ss. 245m, 498t to 504; 1999 a. 63, 136; 2001 a. 16, 74, 103, 106; 2003 a. 33, 42; 2005 a. 22, 25, 254, 468; 2007 a. 20; 2009 a. 28, 177.

2056-7:4

Section #. 20.505 (5) (ka) of the statutes is amended to read:

20.505 (5) (ka) *Facility operations and maintenance; police and protection functions.* The amounts in the schedule for the purpose of financing the costs of operation of state-owned or operated facilities that are not funded from other appropriations, including custodial and maintenance services; minor projects; utilities, fuel, heat and air conditioning; assessments levied by the department under s. 16.847 (3) for costs incurred and savings generated at departmental facilities; costs incurred under ss. 16.858 and 16.895 by or on behalf of the department; and supplementing the costs of operation of child care facilities for children of state employees under s. 16.841; and for police and protection functions under s. 16.84 (2) and (3). All moneys received from state agencies for the operation of such facilities, parking rental fees established under s. 16.843 (2) (bm) and miscellaneous other sources, ~~all moneys received from assessments under s. 16.895;~~ ^{strike comma} all moneys received for the performance of gaming protection functions under s. 16.84 (3), and all moneys transferred from the appropriation account under s. 20.865 (2) (e) for this purpose shall be credited to this appropriation account.

~~History: 1971 c. 108, 125, 215; 1971 c. 270 s. 104; 1973 c. 90 and supp., 157, 305; 1975 c. 39 ss. 179 to 184f, 735 (5); 1975 Ex. Order No. 24; 1975 c. 224, 397; 1977 c. 29; 1977 c. 196 ss. 70, 131; 1977 c. 377 s. 30; 1977 c. 418 s. 929 (1), (55); 1979 c. 32 s. 92 (5); 1979 c. 34, 175, 221; 1979 c. 355 s. 241; 1979 c. 361; 1981 c. 20 ss. 400b to 421, 2202 (57) (b); 1981 c. 44 s. 3; 1981 c. 62, 121; 1981 c. 202 s. 23; 1981 c. 314, 374, 391; 1983 a. 27 ss. 439 to 456, 2202 (1); 1983 a. 36, 187, 282, 371, 393; 1985 a. 29, 31, 57, 120, 296, 297, 332; 1987 a. 27 ss. 296n, 296q, 297b, 297d, 299a to 299r, 300a, 301a, 418 to 432; 1987 a. 142, 147, 342, 399; 1989 a. 31, 56, 107, 122, 336, 339, 345, 366; 1991 a. 39 s. 469, 593q to 614; 1991 a. 105, 269, 315; 1993 a. 16 ss. 470g, 470m, 470r, 488 to 506m; 1993 a. 33, 75, 193, 349, 358, 374, 414, 437, 477, 491; 1995 a. 27, 56, 201, 216, 225, 227, 370, 403; 1997 a. 3; 1997 a. 27 ss. 199, 227 to 229m, 233, 666g to 692; 9456 (3m); 1997 a. 237, 283; 1999 a. 5; 1999 a. 9 ss. 508 to 587d, 9401 (2zt), (2zu); 1999 a. 24, 52, 105, 113, 148, 185; 2001 a. 16 ss. 684d, 685d, 800 to 905; 2001 a. 104 ss. 21, 141; 2001 a. 109; 2003 a. 33 ss. 364d, 365d, 369d, 370d, 374d, 376d, 378d, 380d to 384d, 567 to 615f, 639, 640, 642d to 644, 2811 to 2813; 2003 a. 48 ss. 10, 11; 2003 a. 84; 2003 a. 139 ss. 9 to 12; 2003 a. 206 s. 23; 2003 a. 326; 2005 a. 25 ss. 389 to 429m, 2493,~~

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

LRB-1130/1dn

JTK/1/1/.....

JTK

- date -

Jennifer Kraus:

1. One result of selling state-owned plants or facilities is, because these plants provide heat, air conditioning, and wastewater treatment service to state facilities by means of steam and chilled water lines and sewerage lines that interconnect the plants and treatment facilities with the state facilities, the state facilities will be captive customers of the new owners. It appears that under current law, the PSC does not have authority to regulate the rates charged by these owners to the state facilities. You may wish to consider requiring the PSC to regulate the rates charged to the state so the state will be able to obtain review of any disputes regarding the appropriateness of rates. *that,*

2. The draft does not account for the contingency that any energy costs may increase over the amount the state pays now for the same costs after a plant or facility is sold or placed under contractual operation. If you want to include a program supplement appropriation to account for this contingency, please let me know. *that*

3. I assume that DOA will sell the plants and facilities contingent upon a guarantee that they will continue to be operated and kept in good repair, and the operator will continue to provide adequate and sufficient heating, cooling, power, and wastewater treatment to meet the state's current and future needs. If you want any provision concerning this subject in the draft, please let me know.

Jeffery T. Kuesel
Managing Attorney
Phone: (608) 266-6778

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

LRB-1130/1dn
JTK:cjs:ph

January 28, 2011

Jennifer Kraus:

1. One result of selling state-owned plants or facilities is that, because these plants provide heat, air conditioning, and wastewater treatment service to state facilities by means of steam and chilled water lines and sewerage lines that interconnect the plants and treatment facilities with the state facilities, the state facilities will be captive customers of the new owners. It appears that under current law, the PSC does not have authority to regulate the rates charged by these owners to the state facilities. You may wish to consider requiring the PSC to regulate the rates charged to the state so that the state will be able to obtain review of any disputes regarding the appropriateness of rates.
2. The draft does not account for the contingency that any energy costs may increase over the amount the state pays now for the same costs after a plant or facility is sold or placed under contractual operation. If you want to include a program supplement appropriation to account for this contingency, please let me know.
3. I assume that DOA will sell the plants and facilities contingent upon a guarantee that they will continue to be operated and kept in good repair, and the operator will continue to provide adequate and sufficient heating, cooling, power, and wastewater treatment to meet the state's current and future needs. If you want any provision concerning this subject in the draft, please let me know.

Jeffery T. Kuesel
Managing Attorney
Phone: (608) 266-6778

Kuesel, Jeffery

From: Kraus, Jennifer - DOA [jennifer.kraus@wisconsin.gov]
Sent: Thursday, January 27, 2011 10:26 AM
To: Kuesel, Jeffery
Subject: RE: LRB-1130 (Sale of state-owned power, heating, and cooling plants and wastewater treatment facilities)

sounds good - thanks

From: Kuesel, Jeffery [mailto:Jeffery.Kuesel@legis.wisconsin.gov]
Sent: Thursday, January 27, 2011 10:24 AM
To: Kraus, Jennifer - DOA
Cc: Kunkel, Mark - LEGIS
Subject: RE: LRB-1130 (Sale of state-owned power, heating, and cooling plants and wastewater treatment facilities)

Jennifer,

The draft is in typing already and I think at this point they might as well finish since it is in a different format than the old budget amendment. So you will receive the draft that was requested originally and we can then make the changes on that draft.

Mark Kunkel will do #1. #2 is basically in the draft. #3 can easily be added. #4 (change to permissive authority) will require reworking the draft because there will no longer be a sale deadline and all the repealed and amended statutes will need to be retained. However, I think it's a wise decision because a forced sale or outsourcing of all of these plants by a specific date could be uncomfortable and unworkable in some cases. #5 (regent approval) is in the draft as it stands. I'll double check to ensure there is nothing in ch. 36, stats. that potentially stands in the way.

Jeff

From: Kraus, Jennifer - DOA [mailto:jennifer.kraus@wisconsin.gov]
Sent: Thursday, January 27, 2011 9:49 AM
To: Kuesel, Jeffery
Subject: RE: LRB-1130 (Sale of state-owned power, heating, and cooling plants and wastewater treatment facilities)

Jeff - I got some further guidance on this issue:

- 1) add permissive PSC regulation of rates upon petition by the state in the event of the sale of a facility.
- 2) allow the DOA Secretary to eliminate the FTE but to either lapse the related funds to the general fund or be reallocated to the energy appropriations if needed
- 3) I believe that this will be governed by the operating agreement but I see no problem also including it in the draft as long as that is not the only requirement that the state can have by contract

They also decided to drop any mention of a deadline and it should "allow" not "require" the sale.

We need to allow the DOA Secretary to sell the UW facilities without the Board of Regents approval.

Thanks - Jenny

From: Kuesel, Jeffery [mailto:Jeffery.Kuesel@legis.wisconsin.gov]
Sent: Tuesday, January 25, 2011 5:06 PM
To: Kraus, Jennifer - DOA
Cc: Kunkel, Mark - LEGIS

Subject: FW: LRB-1130 (Sale of state-owned power, heating, and cooling plants and wastewater treatment facilities)

Jenny,

1. I am forwarding an E mail from Mark Kunkel, our attorney who does the PSC drafting. One result of selling the state-owned plants is that because these plants provide heat and air conditioning by means of steam and chilled water lines that interconnect the plants with state-owned facilities, the facilities will be captive customers of the plant owners. It appears that, under current law, the rates set by the owners cannot be regulated by the PSC, so the state will be forced to pay whatever the owners require. You may wish to consider requiring the PSC to regulate the rates charged to the state so the state will be able to obtain review of any disputes regarding the appropriateness of the rates.

2. The draft will permit any savings realized from separating state employees to be lapsed to the general fund. However, over the longer term, it's possible that energy costs could in some cases increase over what the state pays now. If so, you will need to ask the legislature for supplemental appropriations or, if you wish, include a program supplement appropriation in the draft to handle any unbudgeted energy cost increases.

3. I assume that you will sell the plants and facilities contingent upon a guarantee that they will continue to be operated and kept in good repair, and the operator will continue to provide adequate and sufficient power, heat, light and wastewater treatment to meet the state's current and future needs. If you want any provision concerning this subject in the draft, please let me know.

Jeffery T. Kuesel
Wisconsin Legislative Reference Bureau
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January 25, 2011 4:37 PM

by
 steam plants

Jeff,

Regarding the proposal for privatizing UW plants that produce steam for the purpose of heating and cooling buildings, and that also treat wastewater, you asked whether a private entity that purchases the plants would be subject to regulation by the PSC.

The PSC has the authority to regulate a "public utility," which is defined, with certain exceptions that do not apply, as "every corporation, company, individual, association, their lessees, trustees or receivers appointed by any court, and every sanitary district, town, village or city that may own, operate, manage or control ... any part of a plant or equipment, within the state, for the production, transmission, delivery or furnishing of heat, light, water or power either directly or indirectly to or for the public." Section 196.01 (5) (a) (intro.). In addition, "public utility" includes a person, other than a governmental unit, "who furnishes services by means of a sewerage system either directly or indirectly to or for the public."

Because the UW plants furnish heat, they could qualify under the definition of public utility. In addition, if the plants provide sewerage service in treating wastewater, they could also qualify under the definition.

However, if the only customer for the heat or wastewater treatment is the UW, a court might conclude that such services are not furnished to or for the public. In *City of Sun Prairie v. PSC*, 37 Wis. 2d 96 (1967), the Wisconsin Supreme Court held that a landlord who furnishes heat, power, light and water to its tenants in its multiple apartment complex is not a public utility. The court quoted with approval a 1911 decision that stated: "The word 'public' must be construed to mean more than a limited class defined by the relation of landlord and tenant, or by nearness of location, as neighbors, or more than a few who by reason of any peculiar relation to the owner of the plant can be served by him." 37 Wis. 2d at 99-100, quoting *Cawker v. Meyer*, 147 Wis. 320, 324-26 (1911). If the

1/27/2011

new owner of the UW plants furnishes heat to only the UW, a court might conclude that the UW has a peculiar relation to the new owner that disqualifies the new owner from being considered a public utility.

If a court follows the reasoning in *City of Sun Prairie*, it would hold that the new owner is not a public utility.

-- Mark