



Stays

DOA:.....Kraus, BAB0030 - Sale of state-owned power plants and wastewater treatment facilities

**FOR 2011-13 BUDGET -- NOT READY FOR INTRODUCTION**

SN

do Not go

- 1 AN ACT ...; relating to: sale or contractual operation of state-owned heating,
- 2 cooling, and power plants and wastewater treatment facilities.

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*Analysis by the Legislative Reference Bureau*  
**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,~~

permits a or facility

*INSEAT MK-ANALYSIS*

~~2012~~ The bill exempts such sales and contracts from the requirement for PSC approval that may otherwise apply under current law. ~~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 operational 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 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.

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

- 1 ~~SECTION 1. 13.48 (2) (k) 1. of the statutes is renumbered 13.48 (2) (k).~~
- 2 ~~SECTION 2. 13.48 (2) (k) 2. of the statutes is repealed.~~
- 3 SECTION 3. 16.84 (1) of the statutes is amended to read:
- 4 16.84 (1) Have charge of, operate, maintain and keep in repair the state capital
- 5 building, the executive residence, the light, heat and power plant, the state office
- 6 buildings and their power plants, the grounds connected therewith, and such other <sup>state</sup> ~~state~~ <sub>with those proper ties</sub> <sup>servung</sup> <sub>those properties</sub>

*WS  
2A*

1 state properties as are designated by law. All costs of such operation and  
2 maintenance shall be paid from the appropriations under s. 20.505 (5) (ka) and (kb),  
3 except for debt service costs paid under s. 20.866 (1) (u). The department shall  
4 transfer moneys from the appropriation under s. 20.505 (5) (ka) to the appropriation  
5 account under s. 20.505 (5) (kc) sufficient to make principal and interest payments  
6 on state facilities and payments to the United States under s. 13.488 (1) (m).

7 **SECTION 4.** 16.85 (4) of the statutes is repealed. X

8 **SECTION 5.** 16.895 of the statutes is repealed. X

9 **SECTION 6.** 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) Notwithstanding

12 ss. 13.48 (14) (am) and 16.705 (1), ~~no later than June 30, 2018~~, the department shall

13 sell ~~each~~ <sup>any</sup> state-owned heating, cooling, and power plant <sup>or</sup> and wastewater treatment

14 facility ~~or shall~~ <sup>may</sup> contract with a private entity for the operation of ~~each~~ <sup>any</sup> such plant or

15 facility ~~for the period beginning no later than June 30, 2018~~ <sup>for any amount that the department determines to be in</sup>, subject to approval

16 under sub. (4), whenever required. Notwithstanding ss. 196.49 and 196.80, no

17 approval or certification of the public service commission is necessary for a public

18 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

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1 financial assistance, the department shall repay to the federal government any of the  
2 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) 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  
21 services at the plant or facility and whose positions were terminated as a result of  
22 the contract.

23 ~~SECTION 7. 16.90 of the statutes is repealed.~~

24 ~~SECTION 8. 16.91 of the statutes is repealed.~~

25 ~~SECTION 9. 16.93 (2) and (3) of the statutes are amended to read:~~

JWS  
4-22

X  
X  
X

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.

12 **SECTION 10.** 20.225 (1) (b) of the statutes is amended to read:

13 20.225 (1) (b) *Energy costs; energy-related assessments.* The amounts in the  
14 schedule to pay for utilities and for fuel, heat, and air conditioning, to pay  
15 assessments levied by the department of administration under s. 16.847 (3) for costs  
16 incurred and savings generated at facilities of the board, and to pay costs incurred  
17 under ~~ss. s. 16.858 and 16.895~~, by or on behalf of the board.

18 **SECTION 11.** 20.245 (1) (c) of the statutes is amended to read:

19 20.245 (1) (c) *Energy costs; energy-related assessments.* The amounts in the  
20 schedule to pay for utilities and for fuel, heat, and air conditioning, to pay  
21 assessments levied by the department of administration under s. 16.847 (3) for costs  
22 incurred and savings generated at facilities of the society, and to pay costs incurred  
23 by or on behalf of the historical society under ~~ss. s. 16.858 and 16.895~~.

24 **SECTION 12.** 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 ~~*energy-related assessments.* The amounts in the schedule to be used at the facilities~~  
4 ~~of the Wisconsin Educational Services Program for the Deaf and Hard of Hearing and~~  
5 ~~the Wisconsin Center for the Blind and Visually Impaired to pay for utilities and for~~  
6 ~~fuel, heat and air conditioning, to pay assessments levied by the department of~~  
7 ~~administration under s. 16.847 (3) for costs incurred and savings generated at~~  
8 ~~departmental facilities, and to pay costs incurred by or on behalf of the department~~  
9 ~~under ss. s. 16.858 and 16.895.~~

10       **SECTION 13.** 20.285 (1) (c) of the statutes is amended to read:

11       20.285 (1) (c) *Energy costs; energy-related assessments.* The amounts in the  
12 schedule to pay for utilities and for fuel, heat, and air conditioning, to pay  
13 assessments levied by the department of administration under s. 16.847 (3) for costs  
14 incurred and savings generated at university facilities, and to pay costs incurred  
15 under ss. 16.858 and 16.895, ~~including all operating costs recommended by the~~  
16 ~~department of administration that result from the installation of pollution~~  
17 ~~abatement equipment in state-owned or operated heating, cooling, or power plants,~~  
18 ~~by or on behalf of the board of regents, and including the cost of purchasing~~  
19 ~~electricity, steam, and chilled water generated by the cogeneration facility~~  
20 ~~constructed pursuant to an agreement under 2001 Wisconsin Act 109, section 9156~~  
21 ~~(2z) (g).~~

22       **SECTION 14.** 20.410 (1) (f) of the statutes is amended to read:

23       20.410 (1) (f) *Energy costs; energy-related assessments.* The amounts in the  
24 schedule to be used at state correctional institutions to pay for utilities and for fuel,  
25 heat and air conditioning, to pay assessments levied by the department of

1 administration under s. 16.847 (3) for costs incurred and savings generated at  
2 departmental facilities, and to pay costs incurred by or on behalf of the department  
3 under ~~ss. s. 16.858 and 16.895.~~

4 **SECTION 15.** 20.410 (1) (gm) of the statutes is amended to read:

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

11 **SECTION 16.** 20.435 (2) (f) of the statutes is amended to read:

12 20.435 (2) (f) *Energy costs; energy-related assessments.* The amounts in the  
13 schedule to be used at mental health institutes and centers for the developmentally  
14 disabled to pay for utilities and for fuel, heat and air conditioning, to pay assessments  
15 levied by the department of administration under s. 16.847 (3) for costs incurred and  
16 savings generated at departmental facilities, and to pay costs incurred by or on  
17 behalf of the department under ~~ss. s. 16.858 and 16.895.~~

18 **SECTION 17.** 20.465 (1) (f) of the statutes is amended to read:

19 20.465 (1) (f) *Energy costs; energy-related assessments.* The amounts in the  
20 schedule to be used at military buildings under control of the department to pay for  
21 utilities and for fuel, heat and air conditioning, to pay assessments levied by the  
22 department of administration under s. 16.847 (3) for costs incurred and savings  
23 generated at departmental facilities, and to pay costs incurred by or on behalf of the  
24 department under ~~ss. s. 16.858 and 16.895.~~

25 **SECTION 18.** 20.485 (4) (r) of the statutes is amended to read:

1       20.485 (4) (r) *Cemetery energy costs; energy-related assessments.* From the  
2 veterans trust fund, the amounts in the schedule to be used at the veterans memorial  
3 cemeteries operated under s. 45.61 for utilities and for fuel, heat and air  
4 conditioning, to pay assessments levied by the department of administration under  
5 s. 16.847 (3) for costs incurred and savings generated at departmental facilities, and  
6 for costs incurred by or on behalf of the department of veterans affairs under ss. s.  
7 16.858 and ~~16.895~~.

8       **SECTION 19.** 20.505 (5) (ka) of the statutes is amended to read:

9       20.505 (5) (ka) *Facility operations and maintenance; police and protection*  
10 *functions.* The amounts in the schedule for the purpose of financing the costs of  
11 operation of state-owned or operated facilities that are not funded from other  
12 appropriations, including custodial and maintenance services; minor projects;  
13 utilities, fuel, heat and air conditioning; assessments levied by the department  
14 under s. 16.847 (3) for costs incurred and savings generated at departmental  
15 facilities; costs incurred under ss. 16.858 and 16.895 by or on behalf of the  
16 department; and supplementing the costs of operation of child care facilities for  
17 children of state employees under s. 16.841; and for police and protection functions  
18 under s. 16.84 (2) and (3). All moneys received from state agencies for the operation  
19 of such facilities, parking rental fees established under s. 16.843 (2) (bm) and  
20 miscellaneous other sources, ~~all moneys received from assessments under s. 16.895,~~  
21 all moneys received for the performance of gaming protection functions under s.  
22 16.84 (3), and all moneys transferred from the appropriation account under s. 20.865  
23 (2) (e) for this purpose shall be credited to this appropriation account.

24       **SECTION 20.** 45.365 (2m) (a) of the statutes is amended to read:



1 45.365 (2m) (a) The department may enter into agreements for furnishing and  
2 charging for water and sewer service from facilities constructed at and for the home  
3 to public and private properties lying in the immediate vicinity of the home.

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

5 ~~(M) SALE OR CONTRACTUAL OPERATION OF STATE-OWNED HEATING, COOLING, AND~~  
6 ~~POWER PLANTS AND WASTEWATER TREATMENT FACILITIES.~~

7 (7) (a) ~~Definition~~ In this subsection, "state agency" has the meaning given under  
8 ~~section 20.001 (1) of the statutes.~~ *es.*

9 (b) ~~Reallocation of operating moneys for purchase of services.~~ Notwithstanding  
10 ~~section 16.50 (1) of the statutes,~~ the secretary ~~of administration~~ shall require  
11 submission of expenditure estimates under ~~section 16.50 (2) of the statutes~~ for each  
12 state agency that proposes to expend moneys ~~prior to July 1, 2013, that are not~~  
13 ~~encumbered on the effective date of this paragraph~~ from any appropriation for the

14 operation of a state-owned heating, cooling, <sup>and</sup> power plant or wastewater treatment  
15 facility. <sup>during any fiscal biennium in which the plant or facility</sup> Notwithstanding ~~section 16.50 (2) of the statute,~~ the secretary shall  
16 disapprove any such estimate for any period during which that plant or facility is  
17 owned or operated by a private entity. The secretary may then require the use of the <sup>in</sup> amounts of any disapproved expenditure estimates for the purpose of purchase of <sup>the</sup> contractual services relating to heating, cooling, power, or wastewater treatment for <sup>department</sup> state facilities or payment of the costs of purchasing heating, cooling, power, or <sup>contracts</sup> wastewater treatment for the state agencies or facilities for which the amounts were <sup>for</sup> appropriated. <sup>operation</sup> <sup>of</sup> <sup>the</sup> <sup>plant or</sup> <sup>facility</sup>

23 (c) ~~Decreases in authorized full-time equivalent positions.~~ If the department  
24 ~~of administration~~ sells or contracts for the operation of any state-owned heating,  
25 cooling and power plant, or any wastewater treatment facility under ~~section 16.896~~ <sup>Sub</sup>

Change to text: Treat

(1) ~~of the statutes, as created by this act~~, the secretary ~~of administration~~ may identify any full-time equivalent positions authorized for the state agency that has operating authority for the plant or facility, the duties of which primarily relate to the management or operation of the plant or facility, and may decrease the authorized full-time equivalent positions for that <sup>state</sup> agency by the number of positions so identified effective on the date that the state agency no longer has operating authority for the plant or facility.

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

Notwithstanding ~~sections~~ <sup>ss.</sup> 20.001 (3) (a) to (c) and 25.40 (3) ~~of the statutes~~, the secretary ~~of administration~~ may lapse or transfer to the general fund from the unencumbered balances of appropriations to any state agency, other than sum sufficient appropriations and appropriations of federal revenues, any amount appropriated to a state agency that is determined by the secretary to be allocated for the purpose of management or operation of a plant or facility that is sold or the operation of which is contracted under ~~section 16.896~~ <sup>sub.</sup> (1) ~~of the statutes, as created~~ <sup>by this act</sup> effective on the date that the state agency to which the moneys are appropriated no longer has operating authority for the plant or facility.

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

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

**SECTION 9401. Effective dates; Administration.**

(1) ~~SALE OR CONTRACTUAL OPERATION OF STATE-OWNED HEATING, COOLING, AND POWER PLANTS AND WASTEWATER TREATMENT FACILITIES. The treatment of sections 18.48~~  
~~(2) (a) 1. and 2.; 16.84 (1), 16.85 (4), 16.895, 16.90, 16.91, 16.93 (2) and (3), 20.255 (1)~~

Change to text: tra

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10-20

1 (b), ~~20.245 (1) (c), 20.255 (1) (c), 20.285 (1) (c), 20.410 (1) (f) and (gm), 20.435 (2) (f),~~  
2 ~~20.465 (1) (f), 20.485 (4) (r), 20.505 (5) (ka), and 45.365 (2m) (a)~~ of the statutes takes  
3 effect on July 1, 2013.

4

(END)

2  
INSERT  
MK 11-4

1

**INSERT MK ANALYSIS:**

The bill also allows DOA, at any time, to petition the PSC to regulate as a public utility any person who purchases or contracts for the operation of any plant or facility under the bill (purchaser or contractor). Under current law, the PSC has regulatory authority over public utilities, including the authority to set rates for utility service. Current law defines "public utility" as, in part, a person who provides utility service directly or indirectly to or for the public. This bill allows DOA to petition the PSC if the purchaser or contractor fails to satisfy the definition of public utility because the purchaser or contractor does not provide utility service directly or indirectly to or for the public. Upon a petition by DOA, the bill requires the PSC to regulate the purchaser or contractor as a public utility if the PSC determines that such regulation is in the public interest.

2

**INSERT MK TO INS 2A:**

The bill also requires any such contract to require the purchaser or contractor to submit to the jurisdiction of the PSC if the PSC determines to regulate the purchaser or contractor as a public utility in response to a DOA petition that is described above.

3

**INSERT MK TO INS 4-22:**

4

Any such contract shall also require the purchaser or contractor to submit to the jurisdiction of the public service commission under ch. 196 if the commission determines to regulate the purchaser or contractor as a public utility under s. 196.025 (7).

8

**INSERT MK 11-4:**

9

**SECTION 1.** 196.025 (7) of the statutes is created to read:

10

196.025 (7) REGULATION OF CERTAIN PLANTS AND FACILITIES. If the department of

11

administration sells or contracts for the operation of any plant or facility under s.

12

16.896 (1), and the purchaser or contractor is not a public utility because the

13

purchaser or contractor does not use the plant or facility to provide service directly

14

or indirectly to or for the public, the commission shall, upon petition at any time by

15

the department of administration, regulate the purchaser or contractor as a public

- 1 utility under this chapter if the commission determines that such regulation is in the
- 2 public interest. ✓

2011-2012 DRAFTING INSERT  
FROM THE  
LEGISLATIVE REFERENCE BUREAU

LRB-1130/2ins  
JTK.....

INS 2A: 9  
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The bill also provides that any contract for the sale or operation of a plant or facility must provide that, unless otherwise expressly agreed between the parties, the purchaser or contractor will continue to operate the plant or facility and keep it in good repair, and will continue to provide adequate and sufficient heating, cooling, and power or wastewater ~~treatment~~ treatment sufficient to meet the state's current and future needs.

INSERT MK TO INS 2A

INS 3-8:

**SECTION 1.** 16.895 (2) (h) of the statutes is amended to read:

16.895 (2) (h) Periodically assess to agencies their proportionate cost of the expenses incurred by the department under this subsection and ss. 16.85 (4), 16.896 (1), 16.90, 16.91 and 16.92 in accordance with a method of apportionment determined by the department.

History: 1989 a. 31 ss. 135, 140.

INS 4-22:

(6) If the department sells or contracts for the operation of any state-owned heating, cooling, and power plant or any wastewater treatment facility under sub. (1), the department may attach such conditions to the sale or contract as it finds to be in the best interest of the state. Any such contract shall provide that, unless otherwise expressly agreed between the parties, the purchaser or contractor will continue to operate the plant or facility and keep it in good repair, and will continue to provide adequate and sufficient heating, cooling, and power or wastewater treatment to meet the state's current and future needs.

INSERT  
MK TO INS 4-22

JW 510-20

Section #. 36.11 (1) (b) of the statutes is amended to read:

s. 16.896 (1) and

36.11 (1) (b) Except as provided in this paragraph, the board may purchase, have custody of, hold, control, possess, lease, grant easements and enjoy any lands, buildings, books, records and all other property of any nature which may be necessary and required for the purposes, objects and uses of the system authorized by law. Any lease is subject to the powers of the University of Wisconsin Hospitals and Clinics Authority under s. 233.03 (13) and the rights of the authority under any lease agreement, as defined in s. 233.01 (6). The board shall not permit a facility that would be privately owned or operated to be constructed on state-owned land without obtaining prior approval of the building commission under s. 13.48 (12). ~~The board may sell or dispose of such property as provided by law, or any part thereof when in its judgment it is for the best interests of the system and the state. All purchases and sales of real property shall be subject to the approval of the building commission. The provision of all leases of real property to be occupied by the board shall be the responsibility of the department of administration under s. 16.84 (5).~~

History: 1973 c. 335; 1975 c. 39, 41, 224, 400; 1977 c. 29, 418; 1979 c. 32 s. 92 (8); 1979 c. 221; 1981 c. 20; 1983 a. 27, 366; 1983 a. 435 s. 7; 1983 a. 484; 1985 a. 62, 120; 1985 a. 332 ss. 47, 49, 50; 1985 a. 332 s. 251 (1); 1987 a. 27, 287; 1989 a. 31, 56, 121, 177, 359; 1991 a. 39, 203, 250, 269, 285, 315; 1993 a. 16, 213, 227, 399; 1995 a. 27 ss. 1757 to 1762y, 9130 (4); 1995 a. 201, 404, 448; 1997 a. 3, 27, 128, 237; 1999 a. 9, 29; 1999 a. 150 ss. 7, 351; 2001 a. 16, 22; 2003 a. 33, 69, 149, 282; 2005 a. 25, 253, 324, 470; 2007 a. 20, 85, 125; 2009 a. 28, 59, 302.

## Kuesel, Jeffery

---

**From:** Hetzel, Shayna - DOA [Shayna.Hetzel@wisconsin.gov]  
**Sent:** Tuesday, February 08, 2011 10:53 AM  
**To:** Kuesel, Jeffery  
**Cc:** Kunkel, Mark  
**Subject:** RE: 1130/2

That is correct.

Thanks,

*Shayna*

Shayna Hetzel  
608-266-0239 (office) | 608-267-0372 (fax)  
608-266-0239 (office) | 608-267-0372 (fax)

---

**From:** Kraus, Jennifer - DOA  
**Sent:** Tuesday, February 08, 2011 10:52 AM  
**To:** Hetzel, Shayna - DOA; Thornton, Scott - DOA  
**Subject:** RE: 1130/2

yes

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**From:** Hetzel, Shayna - DOA  
**Sent:** Tuesday, February 08, 2011 9:39 AM  
**To:** Kraus, Jennifer - DOA; Thornton, Scott - DOA  
**Subject:** FW: 1130/2

Can you confirm Jeff's question?

*Shayna*

Shayna Hetzel  
608-266-0239 (office) | 608-267-0372 (fax)

---

**From:** Kuesel, Jeffery [mailto:Jeffery.Kuesel@legis.wisconsin.gov]  
**Sent:** Tuesday, February 08, 2011 9:38 AM  
**To:** Hetzel, Shayna - DOA  
**Cc:** Kunkel, Mark - LEGIS  
**Subject:** RE: 1130/2

Shayna,

Confirming, you want the state to continue to own and operate the wastewater treatment facilities.

**Jeffery T. Kuesel**  
**Wisconsin Legislative Reference Bureau**  
**P.O. Box 2037**  
**Madison, WI 53701-2037**  
**(608) 266-6778**  
**Jeffery.Kuesel@legis.wisconsin.gov**



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**From:** Hetzel, Shayna - DOA [mailto:Shayna.Hetzel@wisconsin.gov]  
**Sent:** Tuesday, February 08, 2011 9:25 AM  
**To:** Kuesel, Jeffery  
**Subject:** 1130/2

Jeff:

I talked to Jenny and waste water is no longer supposed to be included in this draft.

Thanks,

*Shayna*

Shayna Hetzel  
Division of Executive Budget and Finance  
Wisconsin State Department of Administration  
101 E Wilson Street, 10th floor  
Madison WI 53707-7864  
608-266-0239 (office) | 608-267-0372 (fax)



State of Wisconsin  
2011 - 2012 LEGISLATURE



LRB-1130/3

JTK&MDK:cjs:md

*Wanted Tue 2/8*

*Stays*

DOA:.....Kraus, BAB0030 - Sale of state-owned power plants ~~and wastewater treatment facilities~~

**FOR 2011-13 BUDGET -- NOT READY FOR INTRODUCTION**

*LPS: Fix request sheet as shown on request sheet*

*do NOT gm*

*SA*

1 AN ACT ...; relating to: sale or contractual operation of state-owned heating,  
2 cooling, and power plants ~~and wastewater treatment facilities.~~

**Analysis by the Legislative Reference Bureau  
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 permits DOA to sell or contract for the operation of any state-owned heating, cooling, and power plant ~~or wastewater treatment facility~~. The bill exempts

such sales and contracts from the requirement for PSC approval that may otherwise apply under current law. 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 also allows DOA, at any time, to petition the PSC to regulate as a public utility any person who purchases or contracts for the operation of any plant ~~or facility~~ under the bill (purchaser or contractor). Under current law, the PSC has regulatory authority over public utilities, including the authority to set rates for utility service. Current law defines "public utility" as, in part, a person who provides utility service directly or indirectly to or for the public. This bill allows DOA to petition the PSC if the purchaser or contractor fails to satisfy the definition of public utility because the purchaser or contractor does not provide utility service directly or indirectly to or for the public. Upon a petition by DOA, the bill requires the PSC to regulate the purchaser or contractor as a public utility if the PSC determines that such regulation is in the public interest.

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 also provides that any contract for the sale or operation of a plant or facility must provide that, unless otherwise expressly agreed between the parties, the purchaser or contractor will continue to operate the plant or facility and keep it in good repair, and will continue to provide adequate and sufficient heating, cooling, and power or wastewater treatment sufficient to meet the state's current and future needs. The bill also requires any such contract to require the purchaser or contractor to submit to the jurisdiction of the PSC if the PSC determines to regulate the purchaser or contractor as a public utility in response to a DOA petition that is described above. 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 operational 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 services relating to heating, cooling, power, or wastewater treatment services for state facilities.~~

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

---

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

1           **SECTION 1.** 16.84 (1) of the statutes is amended to read:

2           16.84 (1) Have charge of, operate, maintain and keep in repair the state capitol  
3 building, the executive residence, ~~the light, heat and power plant,~~ the state office  
4 buildings ~~and their power plants, any heating, cooling, and power plants owned and~~  
5 operated by the state serving those properties, the grounds connected ~~therewith~~ with  
6 those properties, and such other state properties as are designated by law. All costs  
7 of such operation and maintenance shall be paid from the appropriations under s.  
8 20.505 (5) (ka) and (kb), except for debt service costs paid under s. 20.866 (1) (u). The  
9 department shall transfer moneys from the appropriation under s. 20.505 (5) (ka) to  
10 the appropriation account under s. 20.505 (5) (kc) sufficient to make principal and  
11 interest payments on state facilities and payments to the United States under s.  
12 13.488 (1) (m).

13           **SECTION 2.** 16.895 (2) (h) of the statutes is amended to read:

14           16.895 (2) (h) Periodically assess to agencies their proportionate cost of the  
15 expenses incurred by the department under this subsection and ss. 16.85 (4), 16.896  
16 (1), 16.90, 16.91 and 16.92 in accordance with a method of apportionment determined  
17 by the department.

18           **SECTION 3.** 16.896 of the statutes is created to read:

19           **16.896 Sale or contractual operation of state-owned heating, cooling,**  
20 **and power plants** ~~and wastewater treatment facilities.~~<sup>e</sup> (1) Notwithstanding  
21 ss. 13.48 (14) (am) and 16.705 (1), the department may sell any state-owned heating,

1 cooling, and power plant ~~or wastewater treatment facility~~ or may contract with a  
 2 private entity for the operation of any such plant ~~or facility~~, with or without  
 3 solicitation of bids, for any amount that the department determines to be in the best  
 4 interest of the state ~~subject to approval under sub. (4), whenever required.~~  
 5 Notwithstanding ss. 196.49 and 196.80, no approval or certification of the public  
 6 service commission is necessary for a public utility to purchase, or contract for the  
 7 operation of, such a plant ~~or facility~~.

8 (2) If there is any outstanding public debt used to finance the acquisition,  
 9 construction, or improvement of any plant ~~or facility~~ that is sold under sub. (1), the  
 10 department shall deposit a sufficient amount of the net proceeds from the sale of the  
 11 property in the bond security and redemption fund under s. 18.09 to repay the  
 12 principal and pay the interest on the debt, and any premium due upon refunding of  
 13 the debt. If the property was acquired, constructed, or improved with federal  
 14 financial assistance, the department shall repay to the federal government any of the  
 15 net proceeds required by federal law.

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

20 (4) If the department proposes to sell any property under sub. (1) having a fair  
 21 market value of at least \$20,000, the department shall notify the joint committee on  
 22 finance in writing of its proposed action. If the cochairpersons of the committee do  
 23 not notify the department that the committee has scheduled a meeting for the  
 24 purpose of reviewing the proposed sale within 14 working days after the date of the  
 25 department's notification, the property may be sold by the department. If, within 14

1 ~~working days after the date of the department's notification, the cochairpersons of~~  
 2 ~~the committee notify the department that the committee has scheduled a meeting for~~  
 3 ~~the purpose of reviewing the proposed sale, the property may be sold under sub. (1)~~  
 4 ~~only upon approval of the committee.~~

5 ~~(4)(5) Any contract entered into under sub. (1) for the initial operation of a~~  
 6 ~~state-owned heating, cooling, <sup>and</sup> power plant or wastewater treatment facility that~~  
 7 ~~was operated by the state prior to the effective date of the contract shall require the~~  
 8 ~~purchaser or contractor to offer employment to those state employees who performed~~  
 9 ~~services at the plant or facility and whose positions were terminated as a result of~~  
 10 ~~the contract.~~

11 ~~(B) (4)(8)~~ If the department sells or contracts for the operation of any state-owned  
 12 heating, cooling, and power plant ~~or any wastewater treatment facility~~ under sub.  
 13 (1), the department may attach such conditions to the sale or contract as it finds to  
 14 be in the best interest of the state. Any such contract shall provide that, unless  
 15 otherwise expressly agreed between the parties, the purchaser or contractor will  
 16 continue to operate the plant ~~or facility~~ and keep it in good repair, and will continue  
 17 to provide adequate and sufficient heating, cooling, and power ~~or wastewater~~  
 18 ~~treatment~~ to meet the state's current and future needs. Any such contract shall also  
 19 require the purchaser or contractor to submit to the jurisdiction of the public service  
 20 commission under ch. 196 if the commission determines to regulate the purchaser  
 21 or contractor as a public utility under s. 196.025 (7).

22 ~~(B) (5)(a)~~ (a) In this subsection, "state agency" has the meaning given under s. 20.001  
 23 (1).

24 (b) Notwithstanding s. 16.50 (1), the secretary shall require submission of  
 25 expenditure estimates under s. 16.50 (2) for each state agency that proposes to

## SECTION 3

1 expend moneys from any appropriation for the operation of a state-owned heating,  
2 cooling, and power plant ~~or wastewater treatment facility~~ during any fiscal biennium  
3 in which the plant ~~or facility~~ is sold or in which the department contracts for  
4 operation of the plant ~~or facility~~. Notwithstanding s. 16.50 (2), the secretary shall  
5 disapprove any such estimate for any period during which that plant ~~or facility~~ is  
6 owned or operated by a private entity. The secretary may then require the use of the  
7 amounts of any disapproved expenditure estimates for the purpose of purchase of  
8 contractual services relating to heating, cooling, <sup>or</sup> power ~~or wastewater treatment~~ for  
9 state facilities or payment of the costs of purchasing heating, cooling, <sup>or</sup> power ~~or~~  
10 ~~wastewater treatment~~ for the state agencies or facilities for which the amounts were  
11 appropriated.

12 (c) If the department sells or contracts for the operation of any state-owned  
13 heating, cooling, and power plant ~~or any wastewater treatment facility~~ under sub.  
14 (1), the secretary may identify any full-time equivalent positions authorized for the  
15 state agency that has operating authority for the plant ~~or facility~~, the duties of which  
16 primarily relate to the management or operation of the plant ~~or facility~~, and may  
17 decrease the authorized full-time equivalent positions for that state agency by the  
18 number of positions so identified effective on the date that the state agency no longer  
19 has operating authority for the plant ~~or facility~~.

20 (d) Notwithstanding ss. 20.001 (3) (a) to (c) and 25.40 (3), the secretary may  
21 lapse or transfer to the general fund from the unencumbered balances of  
22 appropriations to any state agency, other than sum sufficient appropriations and  
23 appropriations of federal revenues, any amount appropriated to a state agency that  
24 is determined by the secretary to be allocated for the purpose of management or  
25 operation of a plant ~~or facility~~ that is sold or the operation of which is contracted

1 under sub. (1) effective on the date that the state agency to which the moneys are  
2 appropriated no longer has operating authority for the plant ~~or facility~~.

3 (e) The secretary shall notify the cochairpersons of the joint committee on  
4 finance of any action taken by the secretary under this subsection.

5 **SECTION 4.** 36.11 (1) (b) of the statutes is amended to read:

6 36.11 (1) (b) Except as provided in s. 16.896 (1) and this paragraph, the board  
7 may purchase, have custody of, hold, control, possess, lease, grant easements and  
8 enjoy any lands, buildings, books, records and all other property of any nature which  
9 may be necessary and required for the purposes, objects and uses of the system  
10 authorized by law. Any lease is subject to the powers of the University of Wisconsin  
11 Hospitals and Clinics Authority under s. 233.03 (13) and the rights of the authority  
12 under any lease agreement, as defined in s. 233.01 (6). The board shall not permit  
13 a facility that would be privately owned or operated to be constructed on state-owned  
14 land without obtaining prior approval of the building commission under s. 13.48 (12).  
15 ~~The~~ Except as provided in s. 16.896 (1), the board may sell or dispose of such property  
16 as provided by law, or any part thereof when in its judgment it is for the best interests  
17 of the system and the state. All purchases and sales of real property shall be subject  
18 to the approval of the building commission. The provision of all leases of real  
19 property to be occupied by the board shall be the responsibility of the department of  
20 administration under s. 16.84 (5).

21 **SECTION 5.** 196.025 (7) of the statutes is created to read:

22 196.025 (7) REGULATION OF CERTAIN PLANTS ~~AND FACILITIES~~. If the department of  
23 administration sells or contracts for the operation of any plant ~~or facility~~  
24 16.896 (1), and the purchaser or contractor is not a public utility because the  
25 purchaser or contractor does not use the plant ~~or facility~~ to provide service directly



**SECTION 5**

1 or indirectly to or for the public, the commission shall, upon petition at any time by  
2 the department of administration, regulate the purchaser or contractor as a public  
3 utility under this chapter if the commission determines that such regulation is in the  
4 public interest.

5 (END)



State of Wisconsin  
2011 - 2012 LEGISLATURE



LRB-1130/3  
JTK&MDK:cjs:md

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DOA:.....Kraus, BAB0030 - Sale of state-owned power plants

**FOR 2011-13 BUDGET -- NOT READY FOR INTRODUCTION**

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- 1 AN ACT ...; relating to: sale or contractual operation of state-owned heating,
- 2 cooling, and power plants.

*Analysis by the Legislative Reference Bureau*

**STATE GOVERNMENT**

**OTHER STATE GOVERNMENT**

Currently, this state owns and operates numerous heating, cooling, and power plants that were constructed by the state to provide heating, cooling, and power 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. 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 permits DOA to sell or contract for the operation of any state-owned heating, cooling, and power plant. The bill exempts such sales and contracts from the requirement for PSC approval that may otherwise apply under current law. 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 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, is deposited in the budget stabilization fund.

The bill also allows DOA, at any time, to petition the PSC to regulate as a public utility any person who purchases or contracts for the operation of any plant under the bill (purchaser or contractor). Under current law, the PSC has regulatory authority over public utilities, including the authority to set rates for utility service. Current law defines "public utility" as, in part, a person who provides utility service directly or indirectly to or for the public. This bill allows DOA to petition the PSC if the purchaser or contractor fails to satisfy the definition of public utility because the purchaser or contractor does not provide utility service directly or indirectly to or for the public. Upon a petition by DOA, the bill requires the PSC to regulate the purchaser or contractor as a public utility if the PSC determines that such regulation is in the public interest.

The bill provides that any contract for the sale or operation of a plant must provide that, unless otherwise expressly agreed between the parties, the purchaser or contractor will continue to operate the plant and keep it in good repair, and will continue to provide adequate and sufficient heating, cooling, and power sufficient to meet the state's current and future needs. The bill also requires any such contract to require the purchaser or contractor to submit to the jurisdiction of the PSC if the PSC determines to regulate the purchaser or contractor as a public utility in response to a DOA petition that is described above. 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 before the effective date of a sale or contract for operational 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, 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 to be used instead for the purpose of purchase of heating, cooling, or power or for the purchase of contractual services relating to heating, cooling, or power services for state facilities.

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

---

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

- 1           **SECTION 1.** 16.84 (1) of the statutes is amended to read:
- 2           16.84 (1) Have charge of, operate, maintain and keep in repair the state capitol
- 3 building, the executive residence, ~~the light, heat and power plant,~~ the state office

1 ~~buildings and their power plants, any heating, cooling, and power plants owned and~~  
2 ~~operated by the state serving those properties, the grounds connected therewith with~~  
3 ~~those properties~~, and such other state properties as are designated by law. All costs  
4 of such operation and maintenance shall be paid from the appropriations under s.  
5 20.505 (5) (ka) and (kb), except for debt service costs paid under s. 20.866 (1) (u). The  
6 department shall transfer moneys from the appropriation under s. 20.505 (5) (ka) to  
7 the appropriation account under s. 20.505 (5) (kc) sufficient to make principal and  
8 interest payments on state facilities and payments to the United States under s.  
9 13.488 (1) (m).

10 **SECTION 2.** 16.895 (2) (h) of the statutes is amended to read:

11 16.895 (2) (h) Periodically assess to agencies their proportionate cost of the  
12 expenses incurred by the department under this subsection and ss. 16.85 (4), 16.896  
13 (1), 16.90, 16.91 and 16.92 in accordance with a method of apportionment determined  
14 by the department.

15 **SECTION 3.** 16.896 of the statutes is created to read:

16 **16.896 Sale or contractual operation of state-owned heating, cooling,**  
17 **and power plants.** (1) Notwithstanding ss. 13.48 (14) (am) and 16.705 (1), the  
18 department may sell any state-owned heating, cooling, and power plant or may  
19 contract with a private entity for the operation of any such plant, with or without  
20 solicitation of bids, for any amount that the department determines to be in the best  
21 interest of the state. Notwithstanding ss. 196.49 and 196.80, no approval or  
22 certification of the public service commission is necessary for a public utility to  
23 purchase, or contract for the operation of, such a plant.

24 (2) If there is any outstanding public debt used to finance the acquisition,  
25 construction, or improvement of any plant that is sold under sub. (1), the department

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3-9

1 shall deposit a sufficient amount of the net proceeds from the sale of the property in  
2 the bond security and redemption fund under s. 18.09 to repay the principal and pay  
3 the interest on the debt, and any premium due upon refunding of the debt. If the  
4 property was acquired, constructed, or improved with federal financial assistance,  
5 the department shall repay to the federal government any of the net proceeds  
6 required by federal law.

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

11 (4) If the department sells or contracts for the operation of any state-owned  
12 heating, cooling, and power plant under sub. (1), the department may attach such  
13 conditions to the sale or contract as it finds to be in the best interest of the state. Any  
14 such contract shall provide that, unless otherwise expressly agreed between the  
15 parties, the purchaser or contractor will continue to operate the plant and keep it in  
16 good repair, and will continue to provide adequate and sufficient heating, cooling,  
17 and power to meet the state's current and future needs. Any such contract shall also  
18 require the purchaser or contractor to submit to the jurisdiction of the public service  
19 commission under ch. 196 if the commission determines to regulate the purchaser  
20 or contractor as a public utility under s. 196.025 (7).

21 (5) (a) In this subsection, "state agency" has the meaning given under s. 20.001  
22 (1).

23 (b) Notwithstanding s. 16.50 (1), the secretary shall require submission of  
24 expenditure estimates under s. 16.50 (2) for each state agency that proposes to  
25 expend moneys from any appropriation for the operation of a state-owned heating,

1 cooling, and power plant during any fiscal biennium in which the plant is sold or in  
2 which the department contracts for operation of the plant. Notwithstanding s. 16.50  
3 (2), the secretary shall disapprove any such estimate for any period during which  
4 that plant is owned or operated by a private entity. The secretary may then require  
5 the use of the amounts of any disapproved expenditure estimates for the purpose of  
6 purchase of contractual services relating to heating, cooling, or power for state  
7 facilities or payment of the costs of purchasing heating, cooling, or power for the state  
8 agencies or facilities for which the amounts were appropriated.

9 (c) If the department sells or contracts for the operation of any state-owned  
10 heating, cooling, and power plant under sub. (1), the secretary may identify any  
11 full-time equivalent positions authorized for the state agency that has operating  
12 authority for the plant, the duties of which primarily relate to the management or  
13 operation of the plant, and may decrease the authorized full-time equivalent  
14 positions for that state agency by the number of positions so identified effective on  
15 the date that the state agency no longer has operating authority for the plant.

16 (d) Notwithstanding ss. 20.001 (3) (a) to (c) and 25.40 (3), the secretary may  
17 lapse or transfer to the general fund from the unencumbered balances of  
18 appropriations to any state agency, other than sum sufficient appropriations and  
19 appropriations of federal revenues, any amount appropriated to a state agency that  
20 is determined by the secretary to be allocated for the purpose of management or  
21 operation of a plant that is sold or the operation of which is contracted under sub. (1)  
22 effective on the date that the state agency to which the moneys are appropriated no  
23 longer has operating authority for the plant.

24 (e) The secretary shall notify the cochairpersons of the joint committee on  
25 finance of any action taken by the secretary under this subsection.

1           **SECTION 4.** 36.11 (1) (b) of the statutes is amended to read:

2           36.11 (1) (b) Except as provided in s. 16.896 (1) and this paragraph, the board  
3 may purchase, have custody of, hold, control, possess, lease, grant easements and  
4 enjoy any lands, buildings, books, records and all other property of any nature which  
5 may be necessary and required for the purposes, objects and uses of the system  
6 authorized by law. Any lease is subject to the powers of the University of Wisconsin  
7 Hospitals and Clinics Authority under s. 233.03 (13) and the rights of the authority  
8 under any lease agreement, as defined in s. 233.01 (6). The board shall not permit  
9 a facility that would be privately owned or operated to be constructed on state-owned  
10 land without obtaining prior approval of the building commission under s. 13.48 (12).  
11 ~~The Except as provided in s. 16.896 (1), the board may sell or dispose of such property~~  
12 ~~as provided by law, or any part thereof when in its judgment it is for the best interests~~  
13 ~~of the system and the state. All purchases and sales of real property shall be subject~~  
14 ~~to the approval of the building commission. The provision of all leases of real~~  
15 ~~property to be occupied by the board shall be the responsibility of the department of~~  
16 ~~administration under s. 16.84 (5).~~

17           **SECTION 5.** 196.025 (7) of the statutes is created to read:

18           196.025 (7) REGULATION OF CERTAIN PLANTS. If the department of administration  
19 sells or contracts for the operation of any plant under s. 16.896 (1), and the purchaser  
20 or contractor is not a public utility because the purchaser or contractor does not use  
21 the plant to provide service directly or indirectly to or for the public, the commission  
22 shall, upon petition at any time by the department of administration, regulate the  
23 purchaser or contractor as a public utility under this chapter if the commission  
24 determines that such regulation is in the public interest.

25

(END)

2011-2012 DRAFTING INSERT  
FROM THE  
LEGISLATIVE REFERENCE BUREAU

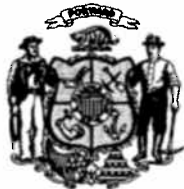
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JTK.....

INS 3-9:

SECTION 1. 16.848 (5) of the statutes is created to read:

16.848 (5) This section does not apply to the sale of any state-owned heating, cooling, and power plant. Any sale of such a plant is governed exclusively by s. 16.896.





State of Wisconsin  
2011 - 2012 LEGISLATURE



LRB-1130/4  
JTK&MDK:cjs:jf

DOA:.....Kraus, BAB0030 - Sale of state-owned power plants

**FOR 2011-13 BUDGET -- NOT READY FOR INTRODUCTION**

- 1 **AN ACT ...; relating to:** sale or contractual operation of state-owned heating,  
2 cooling, and power plants.

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*Analysis by the Legislative Reference Bureau*

**STATE GOVERNMENT**

**OTHER STATE GOVERNMENT**

Currently, this state owns and operates numerous heating, cooling, and power plants that were constructed by the state to provide heating, cooling, and power 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. 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 permits DOA to sell or contract for the operation of any state-owned heating, cooling, and power plant. The bill exempts such sales and contracts from the requirement for PSC approval that may otherwise apply under current law. 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 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, is deposited in the budget stabilization fund.

The bill also allows DOA, at any time, to petition the PSC to regulate as a public utility any person who purchases or contracts for the operation of any plant under the bill (purchaser or contractor). Under current law, the PSC has regulatory authority over public utilities, including the authority to set rates for utility service. Current law defines "public utility" as, in part, a person who provides utility service directly or indirectly to or for the public. This bill allows DOA to petition the PSC if the purchaser or contractor fails to satisfy the definition of public utility because the purchaser or contractor does not provide utility service directly or indirectly to or for the public. Upon a petition by DOA, the bill requires the PSC to regulate the purchaser or contractor as a public utility if the PSC determines that such regulation is in the public interest.

The bill provides that any contract for the sale or operation of a plant must provide that, unless otherwise expressly agreed between the parties, the purchaser or contractor will continue to operate the plant and keep it in good repair, and will continue to provide adequate and sufficient heating, cooling, and power sufficient to meet the state's current and future needs. The bill also requires any such contract to require the purchaser or contractor to submit to the jurisdiction of the PSC if the PSC determines to regulate the purchaser or contractor as a public utility in response to a DOA petition that is described above. 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 before the effective date of a sale or contract for operational 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, 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 to be used instead for the purpose of purchase of heating, cooling, or power or for the purchase of contractual services relating to heating, cooling, or power services for state facilities.

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

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

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- 2           16.84 (1) Have charge of, operate, maintain and keep in repair the state capitol
- 3 building, the executive residence, ~~the light, heat and power plant,~~ the state office

1 ~~buildings and their power plants, any heating, cooling, and power plants owned and~~  
2 ~~operated by the state serving those properties, the grounds connected therewith with~~  
3 ~~those properties,~~ and such other state properties as are designated by law. All costs  
4 of such operation and maintenance shall be paid from the appropriations under s.  
5 20.505 (5) (ka) and (kb), except for debt service costs paid under s. 20.866 (1) (u). The  
6 department shall transfer moneys from the appropriation under s. 20.505 (5) (ka) to  
7 the appropriation account under s. 20.505 (5) (kc) sufficient to make principal and  
8 interest payments on state facilities and payments to the United States under s.  
9 13.488 (1) (m).

10 **SECTION 2.** 16.848 (5) of the statutes is created to read:

11 16.848 (5) This section does not apply to the sale of any state-owned heating,  
12 cooling, and power plant. Any sale of such a plant is governed exclusively by s.  
13 16.896.

14 **SECTION 3.** 16.895 (2) (h) of the statutes is amended to read:

15 16.895 (2) (h) Periodically assess to agencies their proportionate cost of the  
16 expenses incurred by the department under this subsection and ss. 16.85 (4), 16.896  
17 (1), 16.90, 16.91 and 16.92 in accordance with a method of apportionment determined  
18 by the department.

19 **SECTION 4.** 16.896 of the statutes is created to read:

20 **16.896 Sale or contractual operation of state-owned heating, cooling,**  
21 **and power plants. (1)** Notwithstanding ss. 13.48 (14) (am) and 16.705 (1), the  
22 department may sell any state-owned heating, cooling, and power plant or may  
23 contract with a private entity for the operation of any such plant, with or without  
24 solicitation of bids, for any amount that the department determines to be in the best  
25 interest of the state. Notwithstanding ss. 196.49 and 196.80, no approval or

1 certification of the public service commission is necessary for a public utility to  
2 purchase, or contract for the operation of, such a plant.

3 (2) If there is any outstanding public debt used to finance the acquisition,  
4 construction, or improvement of any plant that is sold under sub. (1), the department  
5 shall deposit a sufficient amount of the net proceeds from the sale of the property in  
6 the bond security and redemption fund under s. 18.09 to repay the principal and pay  
7 the interest on the debt, and any premium due upon refunding of the debt. If the  
8 property was acquired, constructed, or improved with federal financial assistance,  
9 the department shall repay to the federal government any of the net proceeds  
10 required by federal law.

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

15 (4) If the department sells or contracts for the operation of any state-owned  
16 heating, cooling, and power plant under sub. (1), the department may attach such  
17 conditions to the sale or contract as it finds to be in the best interest of the state. Any  
18 such contract shall provide that, unless otherwise expressly agreed between the  
19 parties, the purchaser or contractor will continue to operate the plant and keep it in  
20 good repair, and will continue to provide adequate and sufficient heating, cooling,  
21 and power to meet the state's current and future needs. Any such contract shall also  
22 require the purchaser or contractor to submit to the jurisdiction of the public service  
23 commission under ch. 196 if the commission determines to regulate the purchaser  
24 or contractor as a public utility under s. 196.025 (7).

1           (5) (a) In this subsection, "state agency" has the meaning given under s. 20.001

2           (1).

3           (b) Notwithstanding s. 16.50 (1), the secretary shall require submission of  
4           expenditure estimates under s. 16.50 (2) for each state agency that proposes to  
5           expend moneys from any appropriation for the operation of a state-owned heating,  
6           cooling, and power plant during any fiscal biennium in which the plant is sold or in  
7           which the department contracts for operation of the plant. Notwithstanding s. 16.50  
8           (2), the secretary shall disapprove any such estimate for any period during which  
9           that plant is owned or operated by a private entity. The secretary may then require  
10          the use of the amounts of any disapproved expenditure estimates for the purpose of  
11          purchase of contractual services relating to heating, cooling, or power for state  
12          facilities or payment of the costs of purchasing heating, cooling, or power for the state  
13          agencies or facilities for which the amounts were appropriated.

14          (c) If the department sells or contracts for the operation of any state-owned  
15          heating, cooling, and power plant under sub. (1), the secretary may identify any  
16          full-time equivalent positions authorized for the state agency that has operating  
17          authority for the plant, the duties of which primarily relate to the management or  
18          operation of the plant, and may decrease the authorized full-time equivalent  
19          positions for that state agency by the number of positions so identified effective on  
20          the date that the state agency no longer has operating authority for the plant.

21          (d) Notwithstanding ss. 20.001 (3) (a) to (c) and 25.40 (3), the secretary may  
22          lapse or transfer to the general fund from the unencumbered balances of  
23          appropriations to any state agency, other than sum sufficient appropriations and  
24          appropriations of federal revenues, any amount appropriated to a state agency that  
25          is determined by the secretary to be allocated for the purpose of management or

1 operation of a plant that is sold or the operation of which is contracted under sub. (1)  
2 effective on the date that the state agency to which the moneys are appropriated no  
3 longer has operating authority for the plant.

4 (e) The secretary shall notify the cochairpersons of the joint committee on  
5 finance of any action taken by the secretary under this subsection.

6 **SECTION 5.** 36.11 (1) (b) of the statutes is amended to read:

7 36.11 (1) (b) Except as provided in s. 16.896 (1) and this paragraph, the board  
8 may purchase, have custody of, hold, control, possess, lease, grant easements and  
9 enjoy any lands, buildings, books, records and all other property of any nature which  
10 may be necessary and required for the purposes, objects and uses of the system  
11 authorized by law. Any lease is subject to the powers of the University of Wisconsin  
12 Hospitals and Clinics Authority under s. 233.03 (13) and the rights of the authority  
13 under any lease agreement, as defined in s. 233.01 (6). The board shall not permit  
14 a facility that would be privately owned or operated to be constructed on state-owned  
15 land without obtaining prior approval of the building commission under s. 13.48 (12).  
16 The Except as provided in s. 16.896 (1), the board may sell or dispose of such property  
17 as provided by law, or any part thereof when in its judgment it is for the best interests  
18 of the system and the state. All purchases and sales of real property shall be subject  
19 to the approval of the building commission. The provision of all leases of real  
20 property to be occupied by the board shall be the responsibility of the department of  
21 administration under s. 16.84 (5).

22 **SECTION 6.** 196.025 (7) of the statutes is created to read:

23 196.025 (7) REGULATION OF CERTAIN PLANTS. If the department of administration  
24 sells or contracts for the operation of any plant under s. 16.896 (1), and the purchaser  
25 or contractor is not a public utility because the purchaser or contractor does not use

1 the plant to provide service directly or indirectly to or for the public, the commission  
2 shall, upon petition at any time by the department of administration, regulate the  
3 purchaser or contractor as a public utility under this chapter if the commission  
4 determines that such regulation is in the public interest.

5

(END)