2019 DRAFTING REQUEST

Bill

For:	**Administration-Budget**	Drafter:	**mkunkel**
By:	**Sherwin**	Secondary Drafters:	
Date:	**2/11/2019**	May Contact:	
Same as LRB:			

Submit via email: **YES**
Requester's email:
Carbon copy (CC) to: **derek.sherwin@wisconsin.gov**
DOASBOStatLanguage@wisconsin.gov

Pre Topic:

~~DOA:......Sherwin, BB0332 -~~

Topic:

Focus on energy spending

Instructions:

See attached

Drafting History:

Vers.	Drafted	Reviewed	Submitted	Jacketed	Required
/?	mkunkel 2/12/2019	anienaja 2/12/2019			
/P1	mkunkel 2/14/2019	anienaja 2/15/2019	dwalker 2/12/2019		
/P2			dwalker 2/15/2019		

FE Sent For: **<END>**

Kunkel, Mark

From: Sherwin, Derek - DOA
Sent: Tuesday, February 12, 2019 1:08 PM
To: Kunkel, Mark
Subject: RE: Statutory Language Drafting Request - 2019-21

Hi Mark-

Our intent is to exclude these factors.

Thanks,
Derek

From: Kunkel, Mark - LEGIS <mark.kunkel@legis.wisconsin.gov>
Sent: Tuesday, February 12, 2019 1:01 PM
To: Sherwin, Derek - DOA <Derek.Sherwin@wisconsin.gov>
Subject: FW: Statutory Language Drafting Request - 2019-21

Derek:

The law that was repealed in 2011 allowed the PSC (subject to JCF passive review described below) to require spending more than 1.2%, but the PSC had to base the higher percentage on its consideration of the following factors:

a. Studies of potential energy-efficiency improvements that could be made in this state, including at least one study completed within the preceding 2 years that provides a prospective 5-year and 10-year estimate of such potential that is cost-effective.

b. The potential short-term and long-term impacts on electric and natural gas rates and alternative means to mitigate such impacts.

c. The impact on the continuation and effectiveness of existing energy efficiency and renewable resource programs, and the ability of such programs to capture time-limited and cost-effective energy-efficiency opportunities.

d. The impact on the reliability and adequacy of systems for the generation and transmission of electricity and the transmission of natural gas.

e. Societal impacts.

f. The potential for displacing or delaying construction of electric generating plants and transmission lines.

g. Economic impacts that are likely to accrue from reducing state and private expenditures on coal, natural gas, fuel oil, and other fossil fuel imports.

h. Any other relevant factors.

You do not mention the above factors in the request below. Should I leave them out, or do you want to include them?

--Mark

From: Hanaman, Cathlene <Cathlene.Hanaman@legis.wisconsin.gov>
Sent: Monday, February 11, 2019 12:57 PM
To: Kunkel, Mark <Mark.Kunkel@legis.wisconsin.gov>
Subject: FW: Statutory Language Drafting Request - 2019-21

From: Sherwin, Derek - DOA <Derek.Sherwin@wisconsin.gov>
Sent: Monday, February 11, 2019 12:29 PM
To: Hanaman, Cathlene <Cathlene.Hanaman@legis.wisconsin.gov>
Cc: Kraus, Jennifer - DOA <Jennifer.Kraus@wisconsin.gov>; Sherwin, Derek - DOA <Derek.Sherwin@wisconsin.gov>
Subject: Statutory Language Drafting Request - 2019-21

Biennial Budget: 2019-21

Topic: Focus on Energy Spending

Tracking Code: BB0332

SBO Team: GGCF

SBO Analyst: Derek Sherwin
Phone: 608-266-3382
E-mail: derek.sherwin@wisconsin.gov

Agency Acronym: 155

Agency Number: 155

Priority: High

Intent:

> Specify that PSC may require energy utilities to spend more than 1.2% of annual operating revenues on energy efficiency programs as defined in s. 196.371(3)(b)2. if the commission submits a proposal to Joint Finance under 10 business day passive review. If within 10 days, the JCF co-chairs do not notify PSC that the committee has scheduled a meeting to review the proposal, the commission may move forward. If within 10 days, the committee notifies PSC that a meeting has been scheduled, but within 90 days of providing the notice, the committee does not object to the proposal, JCF may require each utility to spend the percentage identified in the PSC proposal. If within 90 days, JCF objects to the proposal, the commission may not require the utilities to spend the amount specified. This language in s.196.374 (3) was repealed in 2011 Act 32.

Attachments: False

Please send completed drafts to SBOStatlanguage@spmail.enterprise.wistate.us

State of Wisconsin
2019 - 2020 LEGISLATURE

LRB-1952/? P1
MDK:... amn

DOA:......Sherwin, BB0332 - Focus on energy spending

FOR 2019-2021 BUDGET -- NOT READY FOR INTRODUCTION

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Pwf'

No gen

AN ACT ...; **relating to:** the budget.

Analysis by the Legislative Reference Bureau

STATE GOVERNMENT

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PUBLIC UTILITY REGULATION

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The bill allows the PSC to require investor-owned electric and natural gas public utilities to spend more than 1.2 percent of their annual operating revenues on certain energy efficiency, conservation, and renewable resource programs, which are commonly referred to as Focus on Energy programs. Current law limits the PSC's authority to requiring spending 1.2 percent of the revenues on those programs. The bill requires the PSC to submit to JCF a proposal for requiring spending a greater percentage on the programs. If the cochairpersons of JCF do not notify the PSC within ten working days after submission of such a proposal that JCF has scheduled a meeting to review the proposal, the PSC may require that the utilities spend the greater percentage. If the cochairpersons of JCF do notify the PSC within ten working days after submission of such a proposal that JCF has scheduled a meeting to review the proposal, but JCF does not object to the proposal within 90 days of providing the notification to the PSC, the PSC may require that the utilities spend the greater percentage. However, if JCF objects to the proposal within such 90-day period, the PSC may not require that the utilities spend the greater percentage.

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

SECTION 1. 196.374 (3) (b) 2. of the statutes is amended to read:

196.374 **(3)** (b) 2. The commission shall require each energy utility to spend 1.2 percent of its annual operating revenues derived from retail sales to fund the utility's programs under sub. (2) (b) 1., the utility's ordered programs, the utility's share of the statewide energy efficiency and renewable resource programs under sub. (2) (a) 1., and the utility's share, as determined by the commission under subd. 4., of the costs incurred by the commission in administering this section. Subject to approval under subd. 3., the commission may require each energy utility to spend a larger percentage of its annual operating revenues to fund these programs and costs.

History: 1983 a. 27; 1999 a. 9; 2001 a. 30; 2005 a. 141; 2007 a. 17, 20; 2009 a. 180, 276, 332; 2011 a. 32; 2015 a. 299.

Cross-reference: See also ch. PSC 137, Wis. adm. code.

SECTION 2. 196.374 (3) (b) 3. of the statutes is created to read:

196.374 **(3)** (b) 3. The commission shall submit to the joint committee on finance any proposal to require each energy utility to spend a larger percentage of its annual operating revenues than the percentage specified in subd. 2. to fund the programs specified in subd. 2. If the cochairpersons of the committee do not notify the commission within 10 working days after the commission submits such a proposal that the committee has scheduled a meeting to review the proposal, the commission may require each energy utility to spend the percentage specified in the proposal. If, within 10 working days after the commission submits a proposal, the cochairpersons of the committee notify the commission that the committee has scheduled a meeting to review the proposal, but, within 90 days of providing the notice, the committee does not object to the proposal, the commission may require each energy utility to spend the percentage specified in the proposal. If, within 90 days after providing the notice, the committee objects to the proposal, the commission may not require each energy utility to spend the percentage specified in the proposal.

(END)

per Derek – add reference to approval to address issue described in this memo. – MDK

State of Wisconsin

LEGISLATIVE REFERENCE BUREAU

Stephen R. Miller
Chief

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November 23, 2010

MEMORANDUM

To: Director Bob Lang, Legislative Fiscal Bureau

From: Rick A. Champagne, Senior Legislative Attorney
Phone: (608) 266–9930, E–mail: rick.champagne@legis.wisconsin.gov

Subject: Joint Committee on Finance Action under Energy Efficiency and Renewable Resource Programs

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Currently, under s. 196.374 (3) (b) 2., investor–owned electric and natural gas utilities (energy utilities) must spend 1.2% of their annual operating revenues on certain energy efficiency, conservation, and renewable programs. In addition, the Public Service Commission (PSC), under s. 196.374 (5) (a), must ensure in its rate–making orders that energy utilities recover from ratepayers the amounts spent on the programs.

The PSC may also require energy utilities to spend an even greater percentage of their annual operating revenues on the programs. To do this, under s. 196.374 (3) (b) 3., the PSC must submit a proposal specifying the greater percentage to the Joint Committee on Finance (JCF). During a period of 10 working days after the PSC submits the proposal, the JCF cochairpersons may notify the PSC that JCF has scheduled a meeting to review the proposal. If the cochairpersons do not notify the PSC, the PSC can require energy utilities to spend the greater percentage. If the cochairpersons notify the PSC within the 10–working–day deadline, however, then another deadline applies. If JCF does not object to the proposal within 90 days of notifying the PSC, then the PSC can require energy utilities to spend the greater percentage. But if JCF objects to the proposal within the 90 day period, then the PSC cannot require energy utilities to spend the greater percentage.

A question has arisen concerning the effect of JCF's approving the PSC's proposal before the 90 day review period has lapsed. More specifically, it has been asked, does JCF's *approving* PSC action constitute *not objecting* under s. 196.374 (3) (b) 3., thereby authorizing the PSC to require energy utilities to spend the greater percentage for energy efficiency, conservation, and renewable resource programs?

The answer to this question is not a simple one. The passive review procedure under s. 196.374 (3) (b) 3. allows JFC to block the PSC from requiring energy utilities to spend additional moneys on energy efficiency and renewable resource programs. If JCF does not block the PSC's proposal, by not objecting within the 90 day period, the PSC may proceed with its proposal. But if JCF does object within the 90 day period, the PSC may not proceed with its proposal. The passive review procedure therefore contemplates two possible JCF actions: objecting to the proposal within the 90 day period and not objecting to the proposal within the 90 day period. The passive review procedure is silent on what happens if JCF votes to approve a PSC proposal before the expiration of the 90 day period.

There is no case law on this specific issue, nor is there a JCF practice that gives guidance in determining the effect of a JCF approval on a PSC proposal. Read literally, the statute provides that the only way JCF can approve a PSC proposal, after notifying the PSC that it has scheduled a meeting, is to take no action for 90 days. The PSC must simply wait for the 90 day period to lapse, on the grounds that JCF could object at any time before the close of the 90 day period. However, if JCF has specifically approved the PSC proposal before the expiration of the 90 day period, then there does not seem to be any reason for the PSC to wait until the 90 day period is expired to require energy utilities to spend the greater percentage for energy efficiency, conservation, and renewable resource programs. After all, the purpose of the passive review procedure, which is to give JFC the power to block a PSC proposal, has been fulfilled when JCF chooses instead to approve the proposal.

If JCF votes to approve a PSC proposal before the expiration of the 90 day period, it would seem that the PSC could immediately require energy utilities to spend the greater percentage under the proposal and not wait until the expiration of the 90 day period. The actions of JCF have indicated that the committee has chosen not to object to the PSC proposal and has informed the PSC of that decision before the expiration of the 90 day period. The only reason for JCF to take action in approving the PSC proposal before the expiration of the 90 day period is to allow the PSC immediately to begin to require energy utilities to spend the greater percentage. After all, if JCF wanted the PSC to wait until the expiration of the 90 day period before taking action, JFC would simply do nothing. The 90 day period would run its course and the PSC could then act on its proposal.

The effect of a JCF approval action under s. 196.374 (3) (b) 3. seems to be to waive the 90 day period for JCF to object to the PSC proposal. The 90 day period is the time allotted JCF under the statutes to object to a PSC proposal to require energy utilities to spend the greater percentage for energy efficiency, conservation, and renewable resource programs. By approving the PSC proposal before the expiration of the 90 day period, however, JCF has effectively reduced the time available to it to object to the PSC proposal and, in so doing, has indicated by committee action that it does not to object to the PSC proposal. Thus, the most likely effect of a JCF vote to approve of a PSC proposal is a vote to not object to the proposal. The JCF has approved the proposal and has chosen to do so by affirmative action before the close of the 90 day period.

I hope this memorandum is helpful, and I stress again that this issue is not a simple one.

State of Wisconsin
2019 - 2020 LEGISLATURE

LRB-1952/~~P1~~ P2
MDK:amn

DOA:......Sherwin, BB0332 - Focus on energy spending

FOR 2019-2021 BUDGET -- NOT READY FOR INTRODUCTION

AN ACT ...; **relating to:** the budget.

Analysis by the Legislative Reference Bureau

STATE GOVERNMENT

PUBLIC UTILITY REGULATION

This bill allows the PSC to require investor-owned electric and natural gas public utilities to spend more than 1.2 percent of their annual operating revenues on certain energy efficiency, conservation, and renewable resource programs, which are commonly referred to as Focus on Energy programs. Current law limits the PSC's authority by capping the required spending at 1.2 percent of the revenues on those programs. The bill requires the PSC to submit to JCF a proposal for requiring the spending of a greater percentage on the programs. If the cochairpersons of JCF do not notify the PSC within ten working days after submission of such a proposal that JCF has scheduled a meeting to review the proposal, the PSC may require that the utilities spend the greater percentage. If the cochairpersons of JCF do notify the PSC within ten working days after submission of such a proposal that JCF has scheduled a meeting to review the proposal, ~~but~~ JCF does not object to the proposal within 90 days of providing the notification to the PSC, the PSC may require that the utilities spend the greater percentage. However, if JCF objects to the proposal within the

and

either approves or

90-day period, the PSC may not require that the utilities spend the greater percentage.

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

SECTION 1. 196.374 (3) (b) 2. of the statutes is amended to read:

196.374 **(3)** (b) 2. The commission shall require each energy utility to spend 1.2 percent of its annual operating revenues derived from retail sales to fund the utility's programs under sub. (2) (b) 1., the utility's ordered programs, the utility's share of the statewide energy efficiency and renewable resource programs under sub. (2) (a) 1., and the utility's share, as determined by the commission under subd. 4., of the costs incurred by the commission in administering this section. Subject to ~~approval~~ ~~under~~ subd. 3., the commission may require each energy utility to spend ~~a larger~~ ~~percentage~~ of its annual operating revenues to fund these programs and costs.

SECTION 2. 196.374 (3) (b) 3. of the statutes is created to read: more than 1.2 percent

196.374 **(3)** (b) 3. The commission shall submit to the joint committee on finance any proposal to require each energy utility to spend ~~a larger percentage~~ of its annual operating revenues ~~than the percentage specified in subd. 2.~~ to fund the programs specified in subd. 2. If the cochairpersons of the committee do not notify the commission within 10 working days after the commission submits such a proposal that the committee has scheduled a meeting to review the proposal, the commission may require each energy utility to spend the percentage specified in the proposal. If, within 10 working days after the commission submits a proposal, the cochairpersons of the committee notify the commission that the committee has scheduled a meeting to review the proposal, ~~but~~ and, within 90 days of providing the notice, the committee either approves or does not object to the proposal, the commission may require

more than 1.2 percent

each energy utility to spend the percentage specified in the proposal. If, within 90 days after providing the notice, the committee objects to the proposal, the commission may not require each energy utility to spend the percentage specified in the proposal.

(END)

State of Wisconsin
2019 - 2020 LEGISLATURE

LRB-1952/P2
MDK:amn

DOA:......Sherwin, BB0332 - Focus on energy spending

FOR 2019-2021 BUDGET -- NOT READY FOR INTRODUCTION

AN ACT ...; **relating to:** the budget.

Analysis by the Legislative Reference Bureau

STATE GOVERNMENT

PUBLIC UTILITY REGULATION

1. Focus on energy spending

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SECTION 2. 196.374 (3) (b) 3. of the statutes is created to read:

196.374 **(3)** (b) 3. The commission shall submit to the joint committee on finance any proposal to require each energy utility to spend more than 1.2 percent of its annual operating revenues to fund the programs specified in subd. 2. If the cochairpersons of the committee do not notify the commission within 10 working days after the commission submits such a proposal that the committee has scheduled a meeting to review the proposal, the commission may require each energy utility to spend the percentage specified in the proposal. If, within 10 working days after the commission submits a proposal, the cochairpersons of the committee notify the commission that the committee has scheduled a meeting to review the proposal, and, within 90 days of providing the notice, the committee either approves or does not object to the proposal, the commission may require each energy utility to spend the percentage specified in the proposal. If, within 90 days after providing the notice, the committee objects to the proposal, the commission may not require each energy utility to spend the percentage specified in the proposal.

(END)