

2019 DRAFTING REQUEST**Bill**

For: **Legislative Fiscal Bureau** Drafter: **mgallagh**
 By: Secondary Drafters:
 Date: **4/2/2020** May Contact:

Same as LRB:

Submit via email: **YES**
 Requester's email: **eric.hepler@legis.wisconsin.gov**
 Carbon copy (CC) to: **michael.gallagher@legis.wisconsin.gov**
konrad.paczuski@legis.wisconsin.gov
Tad.Ottman@legis.wisconsin.gov
eric.mueller@legis.wisconsin.gov

Pre Topic:

No specific pre topic given

Topic:

BCPL loans to public utilites

Instructions:

See attached

Drafting History:

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
/?	mgallagh 4/3/2020				
/P1	mgallagh 4/5/2020	ccarmich 4/3/2020	anienaja 4/3/2020		
/P2		anienaja 4/6/2020	mbarman 4/6/2020		

FE Sent For:

<END>

Barman, Mike

From: Ottman, Tad
Sent: Thursday, April 02, 2020 2:59 PM
To: Gallagher, Michael
Subject: RE: COVID-19 relief for public utilities

Mike,

Can you draft language that would make BCPL eligible to loan to municipal public utilities with an end date of 60 days after the end of the state declared Public Health Emergency? And could you share the draft with Fiscal Bureau. They are coordinating other pieces of the draft.

Thanks,

Tad

From: Gallagher, Michael <Michael.Gallagher@legis.wisconsin.gov>
Sent: Thursday, April 02, 2020 1:05 PM
To: Ottman, Tad <Tad.Ottman@legis.wisconsin.gov>
Subject: COVID-19 relief for public utilities

Tad, here is a summary of my research so far on this issue:

1. Community development block grant funding.

Generally, only local units of government are eligible for CDBG funding. See Wis. Admin. Code chs. Adm 90 and 93. So, public utilities owned by municipalities may be eligible under one of the CDBG programs administered by DOA, subject to application to DOA by the municipality and satisfaction of federal requirements for use of CDBG funding. For a breakdown of the various CDBG programs see DOA's website at: <https://doa.wi.gov/Pages/LocalGovtsGrants/CommunityDevelopmentPrograms.aspx> Because eligibility for and use of CDBG funding is limited by federal law, it is not clear to me that a state statutory change is an option. Let me know if you want me to look at this further.

2. Board of Commissioners of Public Lands

The BCPL manages the normal and common school funds as trustee. The permitted uses of those funds are limited under the Wisconsin Constitution to the benefit of libraries and the University of Wisconsin. However, the BCPL may invest the funds as provided by law. Under Wis. Stat. § 24.61 (3), the BCPL is authorized to make loans to various public entities and authorities. If a BCPL loan is an option for the kind of emergency relief you are looking at, a statutory change would be required to add that as a loan option for BCPL.

I hope this information helps. Let me know if you have any questions or if you would like to explore different avenues for a potential draft.

Mike

Michael P. Gallagher
Senior Legislative Attorney

Wisconsin Legislative Reference Bureau
(608) 504-5811

Barman, Mike

From: Ottman, Tad
Sent: Thursday, April 02, 2020 3:03 PM
To: Gallagher, Michael
Subject: FW: Issue related to the Gov. order #11 allowing non-payment to electric utilities
Attachments: WPPI Energy Letter on Municipal Utility Liquidity During COVID-19.pdf

Mike,

This is the letter outlining the concerns from municipal utilities if this helps.

Thanks,

Tad

From: THOMAS MOORE <temoore@tmga.us>
Sent: Wednesday, March 25, 2020 1:39 PM
To: Ottman, Tad <Tad.Ottman@legis.wisconsin.gov>
Subject: Issue related to the Gov. order #11 allowing non-payment to electric utilities

Hey Tad -

I represent WPPI Energy and I wanted to get an issue on your radar screen related to the Gov. EO #11 from last weekend. Under this order, residential and commercial utility customers are not required to pay for service until after the health crisis.

There is not a problem on the residential side but there are some issues related to some large commercial customers and we are looking for a temporary solution. I talked with Steve Fawcett today and we are reaching out to the Gov's team and PSC on the issue.

We have some small city utility members who have large industrial customers which have already indicated they will not pay the electric bill while the order is in place. In one case, the load accounts for 25% of the monthly revenue.

We are looking for the ability to access some short term financing which a couple of these small utilities could access until their customers begin paying again.

If there is a relief package before the Legislature we may be looking for help there.

I've attached a letter from Joseph Owen with WPPI with some suggestions and options. Alternatively, LFB may have some ideas.

When you have a minute maybe you could take a look at the letter and I would be happy to have some follow up. For what it is worth, I think Sen. Fitzgerald has the most WPPI member communities in his district of any WI Senator.

Thanks.

Tom Moore
for WPPI Energy

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March 25, 2020

Dear Wisconsin Legislative Leadership,

On March 22, 2020, Governor Tony Evers issued Emergency Order #11 (Order) to further address the COVID-19 pandemic. The Order suspended certain PSCW rules to ensure no customer is left without utility service during this public health emergency, and WPPI Energy is supportive of that objective.

WPPI Energy's 41 not-for-profit, municipally-owned members across the State are working tirelessly to maintain our critical infrastructure in order to ensure a constant supply of electricity to Wisconsin residents. As locally-owned entities, municipal utility employees work, live and play in the communities we serve and are committed to doing everything possible to keep our communities safe during these unprecedented times.

Though we support the Order's intent to keep electricity running at homes and businesses across Wisconsin, we are concerned about potential liquidity issues for municipal utilities due to the Order's provisions allowing for deferred payment agreements for all customers and suspending disconnections on commercial and industrial customers. One municipal electric utility has already received notification from a large customer (representing 25% of the utility's monthly revenue) indicating that the customer will be deferring payment on its six-figure/month utility bill until further notice. The resulting lost revenue will require the utility to tap into its financial reserves to meet utility operating costs each month. Utilities will have less cash available to fund emergency system repairs and important capital projects. Our concern is that this will continue to happen with increasing numbers of customers and lead to untenable financial and operational conditions for municipal utilities providing critical service during a public health disaster.

As non-profits, municipal utilities do not qualify for federal SBA loans as we are not classified as a business or a private, non-profit. In order to ensure municipal utilities are able to pay vendors and operate as they need to during this crisis, it may be necessary for municipal utilities to have timely and certain access to funding to maintain liquidity.

As with many other aspects of the COVID-19 crisis, it is difficult to identify both an existing source of funding that would meet the potential immediate need and also the extent to which the funds would be needed and at what amount. However, there are three existing programs that seem as if they could work, perhaps with the need of some legislative assistance:

- Wisconsin Disaster Fund created under 2005 Wisconsin Act 269
- Community Development Block Grant Emergency Assistance Program – Public Facilities
- Board of Commissioners of Public Lands State Trust Loan

None of these options may precisely address the specific issue our member utilities are potentially facing as a result of the COVID-19 pandemic and the resulting Order, and we will continue to look specifically at how best to tailor each of the options above. I wanted to raise the issue as soon as we realized it was a concern and we will continue thinking through it. Generally, what we anticipate needing is quick and certain access to funding.

Thank you for your attention to this important issue and please contact me with any questions. Thanks for your leadership during this difficult time and stay safe.

Best Regards,

A handwritten signature in black ink, appearing to read "Joseph Owen". The signature is fluid and cursive, with a long horizontal stroke at the end.

Joseph Owen
Director of Government Affairs
WPPI Energy



State of Wisconsin
2019 - 2020 LEGISLATURE

LRB-6102/P1
MPG:cdc

PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION

1 **AN ACT relating to:** loans to public utilities during the COVID-19 public health
2 emergency.

Analysis by the Legislative Reference Bureau

PUBLIC UTILITIES

Loans for the purpose of maintaining liquidity

Under current law, the Board of Commissioners of Public Lands manages the common school fund, the normal school fund, the university fund, and the agricultural college fund (trust funds). Current law authorizes the BCPL to manage and invest moneys belonging to the trust funds in good faith and with the care an ordinary prudent person in a like position would exercise under similar circumstances.

On March, 11, 2020, the governor issued emergency order 11 in connection with the COVID-19 public health emergency. EO 11 suspended certain rules of the Public Service Commission to ensure that customers of public utilities do not experience a loss of service during the public health emergency. EO 11 also required that deferred payment agreements be made available not only to residential customers but also commercial, farm, and industrial customers of public utilities.

Barman, Mike

From: Ferguson, Paul
Sent: Sunday, April 05, 2020 3:05 PM
To: Gallagher, Michael
Cc: Hepler, Eric
Subject: FW: Draft review: LRB -6102/P1
Attachments: 19-6102/P1.pdf

Mike,

Good afternoon or good morning, whenever you're seeing this. As this package is developing quickly, I hope you'll forgive the Sunday email blast, but I wanted to make sure changes get considered as quickly as possible Monday morning.

On the BCPL draft, I do like the use of a nonstatutory provision to limit the duration of these loans, and I think the draft works well for its purposes. I just wondered if it would be more reflective of the request to use a narrower definition for the municipal utilities to be covered. Would something like s. 196.377 (2)(a)3 for "municipal utilities" be consistent with the request? My concern is the current public utility definition opens it up to more investor-owned utilities. Although I would grant they're probably unlikely to petition for loans, it would be a bit outside the normal clientele for these loans, and put BCPL in the position of having to decide how much or whether to lend to these entities.

I'm only going on the earlier email forwarded from Sen. Fitzgerald's office, so I'll defer to you both on any other details that may speak toward the draft as is. I'll be back in the office Monday for any follow-up discussion.

Thanks!

--Paul

From: Hepler, Eric <Eric.Hepler@legis.wisconsin.gov>
Sent: Friday, April 03, 2020 5:28 PM
To: Lang, Bob <Bob.Lang@legis.wisconsin.gov>; Ferguson, Paul <Paul.Ferguson@legis.wisconsin.gov>
Subject: FW: Draft review: LRB -6102/P1

See the attached BCPL draft.

From: LRB.Legal <lrblegal@legis.wisconsin.gov>
Sent: Friday, April 3, 2020 5:16 PM
To: Hepler, Eric <Eric.Hepler@legis.wisconsin.gov>
Subject: Draft review: LRB -6102/P1

Following is the PDF version of draft LRB -6102/P1.



State of Wisconsin
2019 - 2020 LEGISLATURE

LRB-6102/P2
MPG:cdc&amn

PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION

1 **AN ACT relating to:** loans to municipal utilities during the COVID-19 public
2 health emergency.

Analysis by the Legislative Reference Bureau

PUBLIC UTILITIES

Loans to municipal utilities for the purpose of maintaining liquidity

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On March, 11, 2020, the governor issued emergency order 11 in connection with the COVID-19 public health emergency. EO 11 suspended certain rules of the Public Service Commission to ensure that customers of public utilities do not experience a loss of service during the public health emergency. EO 11 also required that deferred payment agreements be made available not only to residential customers but also commercial, farm, and industrial customers of public utilities.

This bill authorizes the BCPL to loan moneys belonging to the trust funds to municipal utilities to ensure that municipal utilities are able to maintain liquidity during the COVID-19 public health emergency. A municipal utility is a public utility

