



## WISCONSIN LEGISLATIVE COUNCIL AMENDMENT MEMO

<b>2009 Assembly Bill 755</b>	<b>Assembly Substitute Amendment 2</b>
<i>Memo published:</i> March 23, 2010	<i>Contact:</i> Mary Matthias, Senior Staff Attorney (266-0932) David L. Lovell, Senior Analyst (266-1537)

### **THE BILL**

2009 Assembly Bill 755 (the bill) allows the Public Service Commission (PSC) to authorize an electric, natural gas, or water public utility (utility) to administer, fund, or provide administrative services for a program for investing in energy efficiency improvements and renewable resource applications at any type of premises served by the utility. In this memorandum, this new type of program is referred to as a “utility program.”

The bill also makes changes to several pre-existing energy efficiency and renewable resource programs administered by political subdivisions and utilities.

### **ASSEMBLY SUBSTITUTE AMENDMENT 2**

Set forth below are the major changes made to the bill by Assembly Substitute Amendment 2 (ASA 2) to the bill.

#### ***Political Subdivision Loans***

Under current law, a political subdivision is authorized to make a loan to a resident for making or installing an energy efficiency improvement or renewable resource application to the resident’s residential property. These loans are referred to in this memorandum as “political subdivision loans.” The bill and ASA 2 contain provisions affecting political subdivision loans, as described below.

### ***Eligible Premises; Purposes of Loans***

Under **current law**, a political subdivision is authorized to make a loan to a resident for making or installing an energy efficiency improvement or renewable resource application to the resident's residential property.

**ASA 2** specifies that a political subdivision may make this type of loan to an owner of *any* premises located in the political subdivision, not only residential premises.

**ASA 2** also specifies that political subdivision loans may be made for water efficiency improvements. **ASA 2** defines "water efficiency improvement" as an improvement to any type of premises that reduces the usage of water, or increases the efficiency of water usage, at the premises.

### ***Requirement to Use Contractors on Prequalification List***

**ASA 2** retains the bill's requirement that all work involved in making or installing an improvement or application pursuant to a political subdivision loan must be performed by a contractor or subcontractor that the PSC has included on a list of prequalified contractors and subcontractors. **ASA 2** requires the PSC to complete the initial version of the prequalification list by the first day of the third month beginning after the date on which the bill goes into effect.

### ***Audits and Cost-Effectiveness***

**ASA 2** makes changes to the audit requirements that apply to political subdivision loans under the bill. These changes are described in the section of this memorandum titled *Audits; Costs and Savings*.

### ***Third-Party Agreements; Special Charges***

**ASA 2** allows a political subdivision to enter into an agreement with an owner of premises located in the political subdivision regarding loan repayments to a third party for owner-arranged financing for this type of loan. **ASA 2** specifies that if a political subdivision enters into such an agreement, it may collect the loan repayment as a special charge under s. 66.0627 (8), Stats., as it may do under current law for loans that it makes for energy efficiency improvements or renewable resource applications.

**ASA 2** also specifies that if a loan by a political subdivision or a third-party loan collected by the political subdivision is collected as a special charge, it may be collected in annual installments.

### ***Use of Loan Repayments; Prioritization; Reports to the PSC***

The **bill** specifies that a political subdivision must use any repayments of political subdivision loans for the purpose of additional loans, specifies how a political subdivision must prioritize spending on these types of loans, and requires the PSC to promulgate rules implementing the priority requirements. The bill requires political subdivisions to make annual reports to the PSC regarding implementation of the prioritization requirements.

**ASA 2** specifies that these requirements apply only to political subdivision loans made from state or federal grant moneys, to the extent allowed under federal law. **ASA 2** also eliminates the PSC rule-making requirement and the requirement that political subdivisions make annual reports to the PSC.

### **Audits; Costs and Savings**

The **bill** establishes that, as a condition for eligibility for installation of an improvement or application under a utility program or for a political subdivision loan, an audit must be performed that demonstrates that the improvement or application is cost-effective. (The bill does not specify who is responsible for performing the audit.) It directs the PSC to promulgate rules for determining whether an improvement or application is cost-effective and specifies that the rules may include criteria comparing the cost of the improvement or application to the value of the premises, and criteria relating to energy savings resulting from an efficiency improvement and the time period for these savings to equal the cost of the improvement (the “pay-back” period). The bill also requires the PSC to promulgate rules requiring the performance of post-audits, to verify that the improvement or application was made or installed. Finally, the bill directs the PSC to promulgate rules specifying certification requirements applicable to a person who performs the required audits.

**ASA 2** replaces the audit requirements of the bill with a requirement, under the title *Costs and Savings*, that, as a condition for eligibility of a premises for installation of an improvement or application under a utility program or for a political subdivision loan, one of the following must apply:

1. **Cost-effectiveness test.** *An audit is performed that demonstrates that the improvement or application is cost-effective with respect to the normal operation of the premises.*

In the case of a political subdivision, the political subdivision may determine that the improvement or application is cost-effective if the energy or water savings resulting over the expected life of the improvement or applications equals or exceeds the cost of the political subdivision loan. The political subdivision must also consider the ability of the owner of the premises to repay the loan. A political subdivision must establish criteria for considering the owners ability to pay, including comparing the cost of the improvement or application to the owner’s equity in the premises. The political subdivision must perform a post-audit, to verify that the improvement or application was made or installed. The PSC is barred from promulgating rules relating to audits by a political subdivision or a political subdivision’s consideration of the owner’s ability to pay.

For utilities’ programs, the PSC is required to promulgate rules for determining whether an improvement or application is cost-effective. As in the bill, **ASA 2** specifies that the rules must require the performance of post-audits, to verify that the improvement or application was made or installed and must specify certification requirements applicable to a person who performs the required audits. The utility must also consider the ability of the owner of a premises to pay the costs billed by the utility for the improvement or application. The PSC rules must establish criteria for considering ability to pay, including comparing the cost of the improvement or application to the customer’s equity in the premises.

2. **Maximum payback period.** *The water or energy savings over the expected life of the improvement or application equals or exceeds the cost of the improvement or application.* For political subdivision loans, the political subdivision must specify criteria for making this determination; for utilities, the PSC must specify these criteria in rules. The respective entities are required to provide

uniformity in their criteria, specifying similar criteria for similar types of premises, improvements, and applications. Both entities must also consider the owner's ability to pay, as they are required under the cost-effectiveness test as described above.

3. **Performance contract.** *The improvement or application is subject to a performance contract, which is defined as a contract under which a qualified provider agrees to do all of the following:*

- a. Make an improvement or application on the property of another party.
- b. Guarantee a minimum level of cost savings that will result from reduced energy or water usage due to the improvement or application.
- c. Commit to pay to the other party the difference between the guaranteed and actual savings in the event that the guaranteed cost savings are not realized.
- d. Validate the savings guarantee by periodic measurement and verification.

To pursue this option, there must be a report from a qualified provider describing the proposed project, including details of the cost of the project from design through execution and including maintenance and repair costs. If the report demonstrates that the total costs of the project are not likely to exceed the amount to be saved in water, energy, and operational costs over the useful life of the improvement or application, it may be subject to a performance contract. As with the two preceding options, requirements and procedures for reports and performance contracts are to be developed by political subdivisions for their own use and by the PSC, by rule, for use by utilities.

### **Tariffs; Utility Costs and Earnings**

#### ***Tariffs***

The **bill** requires a utility that operates a program authorized under the bill to file a tariff specifying the terms and conditions of *utility and nonutility service provided to customers* at premises where improvements or applications are made under the program. **ASA 2** provides, instead, that the tariff shall specify the terms and conditions for *making or installing improvements or applications* at customer premises under the program.

#### ***Utility Costs***

In general, utilities recover the cost of providing service, including prudently incurred costs of programs conducted with PSC approval, such as this program, in rates charged for utility service. Under the **bill**, a utility recovers the cost of improvements to a property by an assessment on the benefitted property, collected through the utility bill for that property. In addition, the bill directs the PSC to ensure that the utility recovers the amount it spends for the program in rates charged to customers, generally.

**ASA 2** clarifies that the amount a utility collects as an assessment on a benefitted property is the cost incurred at the premises, and that the amount collected in general rates is the amount it spends for

the program less the amount it recovers as assessments on the benefitted properties. ASA 2 specifies that a utility may not bill a customer for any interest on any amount on which the utility is allowed to earn a return, as described below under Utility Earnings.

The **bill** prohibits a utility from recovering from ratepayers any bad debt related to nonutility services provided under the program. **ASA 2** deletes this prohibition but, with regard to billing and bill collection practices, authorizes utilities to treat assessments on bills to benefitted properties in the same manner that they treat the amounts billed for utility service.

Both the **bill** and **ASA 2** require that the costs of the programs that an energy utility implements under the bill, including costs for administrative services, is in addition to the amount the energy utility is required to spend for statewide energy efficiency and renewable resource programs under s. 196.374, Stats. (the principal component of which is the “Focus on Energy” program). **ASA 2** provides a definition of “administrative services,” essentially being internal program administrative activities and not including project, construction, and program management services or installations.

### ***Utility Earnings***

In general, utilities’ rates are designed to allow the utility to earn a return on its capital investments, calculated as a percentage, specified by the PSC, of the undepreciated value of those investments. The **bill** directs the PSC to allow a utility to earn a return, at the same rate, on the amount it spends for the program. **ASA 2** specifies that a utility may not earn a rate of return on any expenditure that is funded by a source other than the utility, including an expenditure funded by a federal or state grant or a customer contribution.

Both the bill and ASA 2 require a utility to use any payments it receives from customers for improvements and applications to invest in other improvements and applications under the program. ASA 2 requires the PSC to establish requirements for determining the portion of the payment on which the utility is eligible to earn a return. The portion must be based on the amount of the payment that is attributable to an expenditure for which a utility is eligible to earn a return.

### **Renewable Resource Credits**

**Current law** requires certain electric utilities and cooperatives to ensure that, in a given year, a specified percentage of the electricity it sells at retail is derived from renewable resources. These requirements are commonly referred to as the renewable portfolio standard (RPS). Current law also allows electric utilities and cooperatives to create renewable resource credits based on the amount of electricity derived from renewable resources that is sold at retail in a year and that exceeds the RPS for the year. Subject to certain restrictions, an electric utility or cooperative may use the credit in a subsequent year to help comply with the RPS, or sell the credit to another electric utility or cooperative to help the buyer comply with the RPS.

The **bill** requires the PSC to promulgate rules that allow an electric utility to create an additional renewable resource credit that can be used or sold as credits under the RPS program. The rules must allow an electric utility to create an additional credit based on reductions in energy usage, increases in efficiency of electricity usage, and generation of renewable energy that results from an energy efficiency improvement or renewable resource application under a new program.

**ASA 2** deletes all provisions of the bill relating to renewable resource credits.

**PSC Grants; References to Federal Block Grants**

The **bill** directs the PSC to make grants to political subdivisions and to utilities for programs authorized under the bill. The grants are to be made from certain federal block grants that the state receives under a program administered by the federal Department of Energy under the American Recovery and Reinvestment Act of 2009. The bill requires the PSC to allocate the federal grants in the manner required under the federal program.

**ASA 2** deletes the bill's provisions that require the PSC to make grants to political subdivisions and utilities from the federal program referenced above.

The **bill** also establishes spending priorities for funds obtained through the federal block grant program referenced above that are used for a utility program or political subdivision loans. **ASA 2** provides instead that the spending priorities apply to funds obtained under any federal or state grant that are used for these purposes, unless the terms of the federal or state grant provide otherwise.

**Contractor Prequalification Requirement--Clarification**

The **bill** generally requires the PSC to prohibit, by order or rule, the performance of any work under a contract under a statewide program under s. 196.374 (2) (a) 1., utility-administered programs under s. 196.374 (2) (b), or a large energy customer program under s. 196.374 (2) (c), by a contractor or subcontractor who is not on the PSC prequalification list.

**ASA 2** clarifies that for purposes of these programs, the work that is subject to the requirement is work on installing or making an energy efficiency improvement or renewable resource application.

**Water Efficiency Improvements--Clarification**

The **bill** authorizes water public utilities to participate in the utility program created by the bill.

**ASA 2** clarifies that water efficiency improvements may be included in a utility program. **ASA 2** defines "water efficiency improvement" as an improvement to any type of premises that reduces the usage of water, or increases the efficiency of water usage, at the premises.

**DOA Weatherization Assistance Program**

Under **current law**, the Department of Administration (DOA) administers federal funds available to Wisconsin under the weatherization assistance for low-income households program. The **bill** specifies that work done under contracts under that program may generally be performed only by contractors or subcontractors included in the prequalification list prepared by the PSC, as created in the bill in s. 196.3745 (5).

**ASA 2** deletes this provision.

**Initial Applicability**

Under **the bill**, with several exceptions, the provisions generally take effect the day after publication, which is generally within 10 days after it is signed by the governor.

Under **ASA 2**, the general effective date of the bill, with several exceptions, is the first day of the third month beginning after publication.

**Legislative History**

ASA 2 was offered on March 16, 2010, by Representative Mason. On March 17, 2010, the Assembly Committee on Jobs, the Economy and Small Business recommended adoption of ASA 2 on a vote of Ayes, 9; Noes, 4, and recommended passage of the bill, as amended, on a vote of Ayes, 8; Noes, 5.

MM:DLL:ksm