



Legislative Fiscal Bureau

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Joint Committee on Finance

Paper #556

Eliminate Rental Unit Energy Efficiency Program (Safety and Professional Services -- Departmentwide)

[LFB 2017-19 Budget Summary: Page 395, #9]

CURRENT LAW

As of January 1, 1985, the rental unit energy efficiency program, also known as the rental weatherization program, requires that most rental dwelling units must comply with rental energy efficiency standards promulgated by the Department of Safety and Professional Services (DSPS) in administrative code before the ownership of the rental unit is transferred. The provisions apply to rental dwellings that are: (a) buildings constructed on or before December 1, 1978, that contain up to two dwelling units; and (b) buildings constructed on or before April 15, 1976, that contain more than two dwelling units. Certain dwellings are excluded from the requirements.

DSPS is required to: (a) promulgate and administer a code of minimum energy efficiency standards for rental dwelling units; (b) establish requirements for rental units to be inspected and certified as meeting the standards; (c) certify inspectors who inspect rental units subject to the rule; (d) establish, by rule, a maximum fee schedule for inspection and certification of rental units by inspectors not employed by the Department; (e) provide training and information to inspectors; (f) review the rules at least once every five years and determine whether the rules should be amended to require use of new energy conservation technologies; (g) issue special orders or citations when necessary to secure compliance with the program; (h) hear petitions regarding the enforcement of rules and special orders; and (i) submit an annual report, before March 1, to the Legislature regarding the impact of the requirements of the program.

The rental weatherization code includes required weatherization standards for windows, patio doors and inward-swinging exterior doors, weatherstripping, caulking, moisture control, and insulation. The standards are required to have a payback of five years or less, in terms of saved energy over a five-year period after installation.

When ownership of a rental property subject to the requirements is transferred, the County Register of Deeds may only record the transfer of ownership if one of the following applies: (a) a state-certified inspector hired by the owner has inspected the unit and has issued a certificate stating that the unit satisfies applicable energy efficiency standards under DSPS rules; (b) the buyer has filed a stipulation stating that the owner of the rental unit will bring it into compliance with the energy efficiency standards no later than one year after the first transfer of the rental unit after the standards go into effect; (c) DSPS or an inspector employed by the local government in which the rental unit is located, issues a waiver to the energy efficiency standards if the unit is scheduled for demolition within two years; or (d) the property is shown to be exempt from the code. If a buyer files a stipulation, the buyer must then complete the weatherization work, have the property re-inspected, obtain a certificate of compliance from the inspector if all requirements are met, and send the certificate to the Register of Deeds and DSPS to satisfy the stipulation.

No city or village may enforce a code of minimum energy efficiency standards for rental units unless the requirements of the code are at least as strict as the requirements of the state energy efficiency code for rental units.

DSPS collects fees related to the program, such as for certification of rental weatherization inspectors, inspections, and certificates of compliance. DSPS collected \$176,500 in 2015-16 for rental weatherization fees, and estimates it would collect \$160,000 annually in 2016-17 through 2018-19 under current law. The fees are deposited in the Division of Industry Services safety and buildings operations program revenue (PR) appropriation, which receives revenue from several building permit, plan review, inspection, and credentialing activities related to building construction. DSPS administers the program with \$23,800 PR for 0.5 PR full-time equivalent (FTE) of a license permit program associate.

GOVERNOR

Repeal the rental unit energy efficiency program, the rental weatherization code, DSPS administrative requirements, requirements for buyers and sellers to bring rental units into compliance for properties that transfer after the effective date, and requirements for Registers of Deeds. Delete \$23,800 PR annually with 0.5 PR position. Reduce revenue by an estimated \$121,000 PR-REV annually from program fees currently received for inspection and certification of rental units under the program.

Specify that the provisions would be effective on the first day of the fourth month after the effective date of the budget. Specify that all DSPS orders issued before the effective date of the provision would remain in effect until their specified expiration date or until modified or rescinded by DSPS. Authorize DSPS to issue special orders after the effective date of the provision for violations of the program that occur before the effective date. Authorize DSPS to, after the effective date of the provision, enforce special orders, hear petitions, hold hearings, and issue subpoenas related to violations that occurred before the effective date.

DISCUSSION POINTS

1. The administration indicates the rationale for eliminating the program is to reduce the regulatory burden involved in the sales of rental properties by removing requirements applying to sales or transfers.

2. DSPS suggests that most buildings originally targeted by the program have likely been brought up to the required energy efficiency standards, given that ownership of rental units transfers approximately every 11.5 years. The DSPS February, 2016, and March 1, 2017, annual rental weatherization program reports to the Legislature indicate that, in 1985, the first year of the program, it was estimated that the volume of rental units transferred would be about 15,000 properties annually, but the actual number was 5,692, and has averaged 5,200 transfers annually for the past 10 years.

3. DSPS does not have statistics about how many rental units have been brought into compliance, and how many rental units that would transfer owners in the future have not yet been brought into compliance with the weatherization standards.

4. The DSPS website information about the program states that benefits of the weatherization standards for residential rental properties include: (a) overall demand for heating fuels is reduced, helping to stabilize fuel costs for everyone; (b) Wisconsin's dependence on imported heating fuels is decreased; (c) the utilization of Wisconsin's weatherization workforce and products is increased; (d) the burden of energy-inefficient rental units is shifted from tenants, who are necessarily limited in any corrective action, to landlords by requiring them to upgrade their buildings at the time of property transfer; and (e) the cost of upgrading the building to the carefully chosen standards is usually recovered in lowered heating costs, providing continued savings, and making the building more valuable.

5. DSPS estimates revenues received under the current law program are approximately \$160,000 per year instead of the \$121,000 estimated by the administration. This corrected estimate is included as part of approval of the Governor's recommended repeal of the program [Alternative 1].

6. Under the bill, rental dwellings would no longer have to meet the rental unit energy efficiency code standards. However, dwellings would have to meet the requirements of the Uniform Dwelling Code (for one- and two-family dwellings) or the Commercial Building Code (for dwellings with three or more units). The requirements of these codes depend on when the building is built or altered, and the extent of alterations, rather than on whether the use of the property after transfer of ownership is as a rental unit or not. The Uniform Dwelling Code includes minimum energy efficiency standards for dwellings built after December 1, 1978. The Commercial Building Code includes minimum energy efficiency standards that went into effect January 1, 1975, for construction or alterations.

7. The DSPS March 1, 2017, program report to the Legislature indicates there are 60 registered agents, mostly local government agencies, authorized by DSPS to validate stipulations and waivers for property owners. There are 333 certified rental weatherization inspectors. DSPS indicates the Department has no way of knowing if these inspectors have another occupation or

perform weatherization inspections as their full-time job.

8. The DSPS March 1, 2017, report indicates that in 2016, the following were issued: (a) 6,876 stipulations, under which the buyer agrees to bring the rental unit into compliance within a year after the transfer of ownership; (b) 1,768 satisfactions of stipulation; (c) 149 waivers; and (d) 4,456 certificates of compliance. In 2016, DSPS sent 2,722 letters to owners who have a stipulation that will come due within six months, to remind them that they must come into compliance with the weatherization standards within 12 months of the transfer of ownership.

9. The DSPS March 1, 2017, report also states that in 2016, there were 42,211 open stipulations statewide and that 33,151 open stipulations were older than December 31, 2015. DSPS indicates the owner might have brought the property into compliance but never sent the Department a certificate of compliance to record and satisfy the stipulation. Further, some of these older open stipulations might be for properties that were never brought into compliance with program requirements. The Department does not have information on how many open stipulations are for rental units that have, or have not, been brought into compliance with program requirements.

10. The bill would authorize DSPS to enforce violations of the program and stipulations entered into before the effective date of the repeal of the program. DSPS indicates it is unable to estimate the workload related to enforcement. The only enforcement activity mentioned in the DSPS annual report is the mailing of reminder letters to advise owners when there is six months remaining on their stipulation or waiver. The Department has not recently enforced unmet stipulations, and the last time a citation was issued was in the year 2000.

11. Some might argue that the program is outdated and no longer needed, and it presents an obstacle to the transfer of rental dwellings. Further, as current building codes contain energy efficiency requirements, and as property owners may adopt energy efficiency improvements to make properties more desirable to prospective tenants, the program could be viewed as unnecessary. Under this argument, the Committee could consider approving the recommended repeal of the program, with the reestimated revenue decrease [Alternative 1].

12. Some might question whether the bill would provide an unfair advantage for buyers and sellers who wait to close on the sale of a rental property that would otherwise be subject to the weatherization standards until after the repeal of the program goes into effect so the buyer or seller would not have to bring the rental unit into compliance with the standards. In comparison, under the bill, if a transfer of ownership of property subject to the standards occurs any time before the provision goes into effect, the buyer or seller would have to bring the rental unit into compliance within one year after the transfer of ownership.

13. DSPS has not been seeking compliance with the requirements to satisfy open stipulations, other than sending reminder letters. Thus, it is unknown how many open stipulations have been satisfied and subject properties brought into compliance. The bill would retain the authority for DSPS to enforce open stipulations and violations of property transfers that occurred prior to the effective date of the repeal. If the Committee chooses to approve the repeal of the program, it could consider amending the bill to eliminate the requirement that stipulations or waivers open as of the effective date of the repeal would have to come into compliance with the requirements of the program [Alternative 2]. This may recognize that enforcement of stipulations

has been uneven, and might be considered as leveling the requirements for owners of rental units that transferred before the effective date of the repeal in comparison with rental unit property transfers that occur as of the effective date.

14. Some might argue that the rental weatherization program should continue to exist because it continues to provide the benefits described on the DSPPS website related to energy efficiency. The Committee could consider maintaining the current law program [Alternative 3].

ALTERNATIVES

1. Approve the Governor's recommendation to repeal the rental unit energy efficiency program on the first day of the fourth month after the effective date of the bill, including repeal of the rental weatherization code, DSPPS administrative requirements, requirements for buyers and sellers to bring rental units into compliance for properties that transfer after the effective date, and requirements for Registers of Deeds. Approve the Governor's recommendation to delete \$23,800 PR annually with 0.5 PR position. Approve the Governor's recommendation to maintain the authority for DSPPS to enforce violations, stipulations, and orders that occurred before the effective date of the program repeal. Modify the Governor's recommendation to reestimate the revenue decrease to \$160,000 PR-REV annually from program fees, instead of \$121,000 PR-REV annually under the bill.

ALT 1	Change to Base			Change to Bill		
	Revenue	Funding	Positions	Revenue	Funding	Positions
PR	-\$320,000	-\$47,600	- 0.50	-\$78,000	\$0	0.00

2. In addition to Alternative 1, delete the authority for DSPPS to enforce violations, stipulations, and orders that occurred before the effective date of the program repeal.

3. Maintain current law.

ALT 3	Change to Base			Change to Bill		
	Revenue	Funding	Positions	Revenue	Funding	Positions
PR	\$0	\$0	0.00	\$242,000	\$47,600	0.50

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