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## WISCONSIN LEGISLATIVE COUNCIL

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*Terry C. Anderson, Director*  
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TO: SENATOR ROBERT COWLES

FROM: David L. Lovell, Senior Analyst

RE: Summary of LRBs0511/2, a Substitute Amendment to 2005 Senate Bill 459, Relating to Energy Efficiency and Energy Derived From Renewable Resources

DATE: February 14, 2006

This memorandum describes the main provisions of LRBs0511/2, a substitute amendment to 2005 Senate Bill 459, relating to energy efficiency and energy derived from renewable resources.

### **ENERGY EFFICIENCY AND RENEWABLE RESOURCE PROGRAMS**

#### **Current Law**

In the 1980s and 1990s, the Public Service Commission (PSC) ordered the large electric utilities to conduct a variety of programs to promote energy efficiency and the use of energy derived from renewable resources (renewable energy), under its general rate-making authority and a statutory requirement that the utilities spend at least 0.5% of their annual operating revenues on such programs. 1999 Wisconsin Act 9 (Act 9) replaced these programs with similar programs known generically as “public benefits” programs. Under that act, which is current law, the Department of Administration (DOA) administers statewide energy efficiency and renewable resource programs and contracts with third parties to implement the programs. Major components of the programs have been marketed under the name Focus on Energy and have become known by that name.

Act 9 requires retail electric utilities to fund the programs, through two mechanisms: a public benefits fee that the utilities collect from their customers; and “contributions” that the utilities are required to make to the programs. The amount of the contributions is based on levels of utility expenditures for the programs in effect prior to the enactment of Act 9. The fees generate approximately \$16.2 million annually, and the contributions amount to approximately \$45.8 million annually, for a total of approximately \$62 million. The revenues are deposited in the Utility Public Benefits Fund.

In addition, the five major electric utilities administer and fund a number of related programs, some of which are under PSC orders that were in place prior to Act 9 and others of which are under

orders the PSC has issued since then. These ordered programs include energy efficiency and renewable resource programs and additional programs, such as load management, which some considered to not be energy efficiency or renewable resource programs. Total utility expenditures on ordered programs in 2004 was approximately \$38.8 million.

LRBs0511/2 substantially revises the structure of the statewide energy efficiency and renewable resources programs currently administered by the DOA. The revised structure is based broadly on the structure of the programs that existed prior to Act 9 and so is sometimes referred to as the “pre-Act 9 model.”

### **Statewide Programs**

The substitute amendment requires that the investor-owned electric and gas public utilities in this state (termed “energy utilities”) collectively create and fund statewide energy efficiency and renewable resource programs. It further requires the energy utilities to contract with one or more persons to administer the programs. The substitute amendment identifies certain components and initiatives that must be included in the statewide programs, including an earmark of 10% of all program funds for components to reduce energy costs incurred by local units of government and agricultural producers.

Energy utilities have no obligations regarding the statewide programs other than creating and funding the programs and contracting for their administration; the substitute amendment states that an energy utility is in compliance with the requirements of the new program if it spends the full amount it is required to spend. All other responsibilities lie with the PSC and contract administrators.

### **Utility-Administered Programs**

The substitute amendment recognizes three kinds of utility-administered energy efficiency and renewable resource programs. First, it allows an energy utility, with PSC approval, to *retain* a portion of the revenue it is required to spend for the statewide programs to administer or fund a new energy efficiency program for large commercial, industrial, institutional, or agricultural customers of the energy utility. Second, it allows an energy utility, with PSC approval, to administer or fund an energy efficiency or renewable resource program that is *in addition to* the statewide programs. The substitute amendment prohibits the PSC to order an energy utility to administer or fund either of these kinds of programs.

The third kind of utility-administered program, termed “*ordered programs*,” are programs that the PSC has ordered a utility to initiate since 2001 and that is in effect on the effective date of the substitute amendment. There are two such orders; one applies to WE Energies and the other applies to Wisconsin Public Service Corp. The substitute amendment does not address other current utility programs operating under PSC orders.

The substitute amendment prohibits the PSC to order an energy utility to administer or fund any energy efficiency or renewable resource program that is in addition to the statewide and utility-administered programs described here.

### **Customer Programs**

As described below, utilities recover the cost of energy efficiency and revenue resource programs from their customers, through rates. Each bill includes an amount that is that customer's share of the utility's cost recovery. The substitute amendment allows a utility customer to implement and fund an energy efficiency or renewable resource project on its own facilities and, with PSC approval, deduct the cost of the project from its share of the utility's cost recovery. In addition, the substitute amendment provides that the utility may deduct the cost of the project from the amount that it is required to spend on statewide or utility-administered programs.

### **Funding**

The substitute amendment requires that each energy utility spend 1.2% of its annual operating revenues for energy efficiency and renewable resource programs. The total operating revenues of all energy utilities in 2004 was \$6.87 billion; 1.2% of that amount is about \$82.4 million.

The substitute amendment states that the 1.2% of annual operating revenues is to pay for a utility's share of the cost of the statewide programs plus the cost of any energy efficiency program for large customers that the utility requests to administer, any ordered program the utility administers, and any customer programs. In effect, the cost of utility-administered and customer programs is credited against a utility's required expenditure for statewide programs.

Subject to review by the Joint Committee on Finance, the PSC may specify a higher funding level. The substitute amendment requires that the PSC base a proposal for a higher funding level on a list of criteria.

### **Cost Recovery; Ratepayer Impact**

As stated previously, the substitute amendment directs the PSC to ensure that utilities recover the cost of the energy efficiency and renewable resource programs in rates. Under Act 9, the amount that a customer is required to pay in any month for the public benefits fee is capped at the lesser of 3% of all charges on the customer's bill or \$750; the amount the customer pays for the utility's recovery of the "contribution" portion of program funding is not capped.

The substitute amendment converts the public benefits fee into a low-income assistance fee and retains the cap. It converts the "contribution" into the requirement that utilities fund the statewide programs, but does not cap the amount a customer may be required to pay for the utility's recovery of this cost. Rather, it freezes this amount at the average amount that the customer paid in 2005 for the costs of the "contributions," if in any month of 2005 the customer paid more than \$750 for that purpose. The substitute amendment also directs the PSC to study alternative ways of setting caps and to make policy recommendations on this to the Legislature.

### **Commitment-to-Community Programs**

Under Act 9, municipal electric utilities and rural electric cooperatives are required to conduct energy efficiency and renewable resource programs, termed "commitment-to-community" programs, that are similar to Focus on Energy. As an alternative, a municipal utility or electric cooperative may

contribute the revenue it is required to raise for these programs to the state programs administered by the DOA.

The substitute amendment does not change the general nature of these programs, but makes some modifications. The modifications include requiring that commitment-to-community programs provide for an annual independent audit of the programs and prepare more detailed annual reports than required under Act 9.

### **Role of PSC**

The substitute amendment provides that the PSC shall have oversight of the statewide and utility-administered programs, and directs the PSC to coordinate those programs with other energy efficiency and renewable resource programs. It directs the PSC to conduct, at least every four years, a proceeding to evaluate the statewide and utility-administered programs and to set or revise goals, priorities, and measurable targets for the programs.

Other PSC duties include the review and approval of contracts for administration of the statewide programs and of requests to create, modify, or discontinue utility-administered and customer programs. It must promulgate rules establishing minimum requirements for statewide and utility-administered programs, among other topics.

The PSC does not oversee commitment-to-community programs.

### **Other Provisions Related to Energy Efficiency and Renewable Resource Programs**

The substitute amendment:

- Prohibits discrimination against service providers in the implementation of energy efficiency and renewable resource programs and promotes competition among service providers.
- Requires that all Wisconsin residents have comparable access to the programs' benefits, and that the benefits of the program to any class of customers are proportional to the amount that customer class pays for the programs in rates.
- Requires an energy utility to annually provide its customer with a statement, prepared by the PSC, describing the programs, including cost and benefit information.
- Directs the PSC to annually provide for independent financial and performance audits statewide of the programs and to prepare a report to the Legislature.
- Ensures continuity in statewide programs by requiring that initial contracts be negotiated with current contractholders under Focus on Energy, unless a current contractor is not performing adequately.
- Directs the PSC to make policy recommendations to the Legislature regarding what cost items should be itemized on utility customers' bills.

### **LOW-INCOME ENERGY ASSISTANCE PROGRAM**

Act 9 consolidated low-income energy assistance programs administered by utilities and by the DOA into a single program administered by the DOA. The substitute amendment makes extensive changes to the statute governing the current program's administration, to separate the energy efficiency and renewable resource programs from the low-income assistance program, but makes substantive changes only in the area of program funding. Act 9 established the same structure for state funding of this program as it created for the energy efficiency and renewable resource programs (a combination of public benefits fees collected from utility customers and additional amounts contributed by utilities; the program also receives federal funding). The substitute amendment provides that state funding of the low-income assistance program's funding will be entirely public benefits fees. It retains the current cap on fees a customer pays in any month, \$750 or 3% of all other charges on the bill, but provides that the \$750 figure shall be adjusted annually for inflation. It also requires that the low-income assistance fee be shown as a separate line on customers' bills.

### **RENEWABLE PORTFOLIO STANDARD**

Act 9 created requirements that electric utilities and rural electric cooperatives (collectively termed "electric providers") sell minimum amounts of renewable electricity, expressed as a percentage of the total electricity a utility or cooperative sells. Such a policy is termed a renewable portfolio standard or RPS.

The substitute amendment establishes a different and more ambitious standard. It establishes baselines, based on an electric provider's current sales of renewable electricity, and requires that, by 2010, an electric provider increase its sales of renewable electricity by two percentage points above its baseline and, by 2015, increase such sales by six percentage points above its baseline.

Act 9 allowed an electric provider that generates more renewable electricity than it needs to comply with the RPS to create a credit from the extra amount, which the electric provider can save for use in complying with the RPS in a later year or can sell to another electric provider to use in complying with the RPS. The substitute amendment expands on this provision, further elaborating how a renewable resource credit trading program shall be conducted, and directs the PSC to promulgate rules for this purpose.

The substitute amendment allows the PSC, at the request of an energy provider, to authorize a delay in an electric provider's compliance with the RPS if compliance would impose unreasonable costs on its ratepayers or the electric provider is unable to comply for one of several other reasons. It also allows wholesale entities that sell electricity to municipal utilities or rural electric cooperatives (termed a "wholesale supplier") to request a delay on behalf of the municipal utilities or rural electric cooperatives, and it allows certain customer groups to request a delay on behalf of an energy provider.

The substitute amendment states that the PSC may not impose any requirement on an electric provider that increases the amount of renewable electricity the provider sells to its customers above the level it is required to sell under the RPS, and prohibits the PSC to require an electric provider to administer or fund any additional renewable resource program.

## **STATE ENERGY POLICY**

Under current law, the PSC is required to implement a priority list of energy sources in making all energy-related decisions and orders. The priority list has as the first priority energy conservation and efficiency, followed by renewable energy resources; carbon-based fuels are the last priority. Consequently, when reviewing a request by a utility for approval to buy or build utility facilities, it must give consideration to energy efficiency and renewable resources as potential components of or alternatives to the proposed project.

The substitute amendment contains three parallel provisions. First, the PSC is not required to consider ***energy conservation and efficiency*** in reviewing a request for approval to buy or build ***nontransmission facilities*** if the PSC has fulfilled all of its duties and responsibilities regarding the energy efficiency programs established by the substitute amendment and one of the following applies:

- If the applicant is an investor-owned utility, the applicant has fully complied with its obligations to fund the statewide energy efficiency and renewable resource programs.
- If the applicant is a wholesale supplier, the applicant's members are in the aggregate substantially in compliance with the requirement to implement commitment-to-community programs.

Second, the PSC is not required to consider ***renewable resources*** in reviewing such a request if the PSC has fulfilled all of its duties and responsibilities regarding administration of the RPS program and one of the following applies:

- If the applicant is an investor-owned utility, the applicant is in compliance with the RPS.
- If the applicant is a wholesale supplier, the applicant's members are in the aggregate substantially in compliance with the RPS.

Third, the PSC is not required to consider the ***entire energy priority list*** in reviewing a request for approval to buy or build electric ***transmission facilities*** or associated equipment.

## **STATE FACILITIES AND CODES**

With regard to energy used in state facilities, the substitute amendment:

- Directs the DOA to set goals for the use of renewable energy by the six state agencies that consume the great majority of electricity purchased by the state. The goals shall be designed to accomplish the overall goals that, by the end of 2007, 10% of the electricity purchased by the state be derived from renewable resources and, by the end of 2011, 20% be derived from renewable resources.
- Directs the same six agencies to biennially prepare energy cost reduction plans. The plans must include all system and equipment upgrades that will pay for themselves in energy cost reductions over the life of the systems or equipment.

- Directs the DOA to establish and annually review energy efficiency standards for equipment installed in state buildings that exceed the requirements of the State Building Code and other model standards. The DOA must ensure that the standards are adhered to in all state building projects, including build-to-lease contracts.
- Directs the DOA to ensure that geothermal technologies are used for space and water heating in all state building projects, to the greatest extent cost-effective and technically feasible.

With regard to the energy efficiency code of the state commercial building code, the substitute amendment:

- Directs the Department of Commerce to review the energy efficiency code on a three-year cycle, as opposed to the current five-year cycle.
- Directs the Department of Commerce to consider incorporating elements of the International Energy Conservation Code when revising the code.

### **OTHER PROVISIONS**

In other provisions, the substitute amendment:

- Directs the Department of Agriculture, Trade, and Consumer Protection to include in its 2007-09 biennial budget request to the DOA a proposal to provide additional funding to specified programs for the research and development of anaerobic digestors.
- Directs the DOA to conduct a pilot program during the 2006-07 winter heating season to determine the feasibility and cost-effectiveness of using equipment that burns corn plant matter for residential space heating, and to report its findings to the Legislature.

### **EFFECTIVE DATES**

In general, the act takes effect on July 1, 2007. Certain provisions, including the treatment of the RPS and provisions affecting state facilities and building codes, take effect on the day after publication.

If you have any questions regarding the substitute amendment, please feel free to contact us at the Legislative Council staff offices.

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