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**WISCONSIN LEGISLATIVE COUNCIL  
INFORMATION MEMORANDUM**

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**2005 Wisconsin Act 141:  
Energy Efficiency, Renewable Resources, and Energy Policy**

Wisconsin policy regarding energy efficiency and energy from renewable resources has been substantially shaped by two acts. 1993 Wisconsin Act 414 (Act 414) created a priority list of energy sources and required the PSC (and other agencies) to implement the priorities in making all energy-related decisions and orders. It also addressed the efficient use of energy in public and private buildings, small scale solar and wind energy generation, and related topics.

1999 Wisconsin Act 9 (Act 9) established programs to promote energy efficiency and renewable energy and to provide energy assistance to low-income households, both administered by the DOA. It also created a renewable portfolio standard (RPS), a requirement that electric utilities and retail electric cooperatives sell minimum amounts of renewable electricity, expressed as a percentage of the total electricity a utility or cooperative sells. The RPS established by Act 9 would reach its maximum at 2.2% in 2011.

2005 Wisconsin Act 141 modifies and builds on the policies created by those acts, but does not establish distinctly new energy policies. This act:

--Replaces the DOA energy efficiency and renewable resource programs with programs that the utilities create and fund through contracts with private program administrators.

--Establishes a new and more ambitious RPS, intended to result in 10% of state wide use of electricity being from renewable sources.

--Limits the application of the Act 414 energy priority list in certain PSC proceedings.

--Creates new initiatives to promote the efficient use of energy in state facilities, intended to result in 20% of the state's own use of electricity being from renewable sources, and new requirements regarding energy codes for private buildings.

The Senate Committee on Energy, Utilities, and Information Technology introduced the legislation as 2005 Senate Bill 459. The bill was based largely upon the recommendations contained in the *Final Report of the Governor's Task Force on Energy Efficiency and Renewables*, October 2004.

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

### **PRIOR LAW: 1999 WISCONSIN ACT 9**

In the 1980s and 1990s, the Public Service Commission (PSC) ordered the large electric and gas 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. The Legislature, through 1999 Wisconsin Act 9 (Act 9), replaced these programs with similar programs known generically as “public benefits” programs. The Act provides that the Department of Administration (DOA) administer statewide energy efficiency and renewable resource programs and contract with third parties to implement the programs. Major components of the programs were marketed under the name Focus on Energy and came to be known by that name.

Act 9 required retail electric utilities to fund the programs through two mechanisms: a public benefits fee that the utilities collected directly from their customers; and mandatory utility “contributions,” which the utilities recovered from customers in rates. The amount of the contributions was based on levels of utility expenditures for the programs in effect prior to the enactment of Act 9; the fee was in addition to that. The fees generated approximately \$16.2 million annually, and the contributions amounted to approximately \$45.8 million annually, for a total of approximately \$62 million. The revenues were deposited in the Utility Public Benefits Fund, administered by DOA.

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 programs include energy efficiency and renewable resource programs and additional programs, such as load management. Total utility expenditures on these programs in 2004 was approximately \$38.8 million.

2005 Act 141 (the act) substantially revises the structure of the statewide energy efficiency and renewable resources programs administered by the DOA and utilities. 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.”

It is important to note that, for fiscal years 2002-03 to 2006-07, the Governor and Legislature transferred or reallocated over \$108 million in total from the Utility Public Benefit Fund to the General Fund or for other specified uses. A desire to stop such transfers was one motivation for enactment of the act and was the basis for selecting the pre-Act 9 model. In brief, the concept is to have utilities pay directly for public benefits programs, so that the money is never placed in a state fund from which transfers could be made.

### **STATEWIDE PROGRAMS**

The act 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 act provides that the statewide programs must include components to address the energy needs of residential, commercial, agricultural, institutional, and industrial energy users and local units of government, and initiatives to address market barriers to the offering of goods and services relating to energy efficiency and renewable resources. It earmarks 10% of all program funds for components to reduce energy costs incurred by local units of government and agricultural producers.

Under the act, energy utilities will directly fund statewide energy efficiency and renewable resource programs.

Energy utilities have no obligations regarding the statewide programs other than creating and funding the programs and contracting for their administration; the act 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 for statewide programs lie with the PSC and contract administrators.

### **UTILITY-ADMINISTERED PROGRAMS**

The act 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 act prohibits the PSC from ordering 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 are in effect on July 1, 2007, the effective date of this provision. There are two such orders; one applies to WE Energies and expires at the end of 2008 and the other applies to Wisconsin Public Service Corp. and expires at the end of 2009. The act does not address other utility programs operating under PSC orders in effect on July 1, 2007.

The act prohibits the PSC from ordering 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.

### **LARGE CUSTOMER PROGRAMS**

Utilities recover the cost of energy efficiency and renewable 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 act allows a large 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 the amount the customer is required to pay the utility for cost recovery. The utility, in turn, deducts that amount from the amount that it is required to spend on statewide or utility-administered programs. A “large energy customer” is a customer that has a monthly energy demand of at least 1,000 kilowatts of electricity or 10,000 therms of natural gas and, in any month, has been billed at least \$60,000 for electricity, natural gas, or both for all of its facilities within a utility’s service territory.

### **FUNDING**

The act 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 for electric and gas service was \$6.87 billion; 1.2% of that amount is about \$82.4 million.

The act states that the 1.2% of annual operating revenues is to cover 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 and any ordered program the utility administers. In effect, the cost of utility-administered and customer programs is credited against a utility’s required expenditure for statewide programs.

The PSC may specify a higher funding level, subject to review by the Legislature’s Joint Committee on Finance. The act requires that the PSC base a proposal for a higher funding level on a list of criteria.

### **COST RECOVERY; RATEPAYER IMPACT**

The act directs the PSC to ensure that utilities recover the cost of the energy efficiency and renewable resource programs in rates; the same applies to the cost of low-income assistance programs, described later in this memorandum. **Act 9** created, in effect, two public benefits fees, the fee described above for energy efficiency and renewable resource programs and a fee to fund low-income assistance programs. It also created two mandatory utility “contributions,” one each to fund energy efficiency and renewable resource programs and low-income assistance programs. Act 9 capped the amount that a customer was required to pay in any month for the combined public benefits fees at the lesser of 3% of all charges on the customer’s bill or \$750; the amount the customer paid for the utility’s recovery of the contribution portion of program funding was not capped.

The **act** combines the two public benefits fees into a single fee to fund low-income assistance programs and retains the cap. It replaces the two contributions with the requirement that utilities fund the statewide energy efficiency and renewable resource 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 the amount that a large energy customer, using the definition of that term described above under Large Customer Programs, may be required to pay. For a customer that the PSC determines is a large energy customer on April 1, 2006, the effective date of this provision, the amount the customer must pay is set at the average amount the customer paid in 2005 for the utility’s recovery of its “contributions” to the energy and low-income programs

The act freezes the amount that the largest energy users must pay utilities for the cost of the programs.

and the cost of any ordered programs. For a customer that the PSC determines has become a large energy customer after April 1, 2006, the PSC sets the amount that customer must pay, ensuring that the amount is similar to that paid by other customers with similar energy costs.

The act directs the PSC to prepare and submit to the Legislature by December 31, 2008, a plan for allocation within customer classes (i.e., residential, commercial, industrial, etc.) of charges for utilities' recovery of program costs. If the Legislature does not take any action on the plan by July 1, 2009, large energy customers' charges will remain at the frozen levels, adjusted annually in proportion to the change in the utility's operating revenues or the consumer price index, whichever change is less.

### **ROLE OF PSC**

The act provides that the PSC has 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.

In other duties, the PSC must:

- Review and approve contracts for administration of the statewide programs and of requests to create, modify, or discontinue utility-administered and customer programs.
- Promulgate rules establishing minimum requirements for statewide and utility-administered programs, among other topics.
- Provide for an annual, independent audit of the programs and prepare an annual report to the Legislature describing the audit's findings and the programs' cost and benefits.

### **COMMITMENT-TO-COMMUNITY PROGRAMS**

Under **Act 9**, municipal electric utilities and retail 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 was required to raise for these programs to the state programs administered by the DOA.

The **act** does not change the general nature of these programs, but makes some modifications. It specifies that commitment-to-community programs include load management programs and requires that they provide for an annual independent audit of the programs and prepare more detailed annual reports than required under Act 9.

**Act 9** capped public benefit fees for commitment-to-community programs at the lesser of 3% of all other charges on a bill or \$750, but provided that the cap would not apply after June 30, 2008. The **act** retains the same cap on the aggregate of fees collected for both energy and low-income programs, and repeals the sunset. It provides that a municipal utility or electric cooperative that chooses not to conduct a commitment-to-community program shall

contribute the money it collects for this purpose to the statewide program created and funded by the investor-owned utilities.

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

**OTHER PROVISIONS RELATED TO ENERGY EFFICIENCY AND RENEWABLE RESOURCE PROGRAMS**

The act:

- Prohibits discrimination against utilities and their affiliates in the implementation of energy efficiency and renewable resource programs.
- Prohibits a utility or its affiliate from installing energy efficiency or renewable resource processes, equipment, or appliances if the utility or affiliate finances the program; rather, the installation must be by an independent contractor of the customer's choice.
- Requires that all Wisconsin residents have comparable access to the programs' benefits, and that the benefits of the program to any class of customers be 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 make policy recommendations to the Legislature regarding what cost items should be itemized on utility customers' bills.
- Ensures continuity in statewide programs by requiring that initial contracts be negotiated with current contract holders under Focus on Energy, unless a current contractor is not performing adequately.

**LOW-INCOME ENERGY ASSISTANCE PROGRAM**

**Act 9** consolidated some low-income energy assistance programs administered by utilities and those administered by the DOA into a single program administered by the DOA. The **act** makes extensive changes to the statute governing the 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.

As described earlier in this memorandum, **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 low-income assistance program also receives federal funding. The **act** provides that the state portion of the low-income assistance program's funding will be entirely from the low-income assistance fee charged to customers. It retains the formula in current law that determines the level of funding for the low-income assistance program, which determines the amount of the fee in any year. It also retains the cap on the fee, \$750 or 3% of all other charges on the bill in any month, by repealing a June 30, 2008, sunset

on the cap. The act 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 retail 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 RPS established by Act 9 reached its maximum at 2.2% in 2011. (Note that an RPS relates to the use of renewable resources by electric utilities and cooperatives while the renewable resource components of the statewide programs described earlier relate to energy generated by utility customers.)

The act establishes a more ambitious renewable portfolio standard with the expectation that by 2015, renewable electricity sales will represent about 10% of all electricity sold in Wisconsin.

The **act** establishes a different and more ambitious standard. It establishes baselines, based on an electric provider's 2001-2003 annual sales of renewable electricity, and requires that, by 2010, an electric provider increase its annual sales of renewable electricity by two percentage points above its baseline and, by 2015, increase such sales by six percentage points above its baseline. It is expected that this standard will result in renewable electricity sales representing about 10% of all electricity sold in Wisconsin.

**Act 9** allowed an electric provider that sells more renewable electricity than required to comply with the RPS to create a credit from the extra amount, which the electric provider could save for use in complying with the RPS in a later year or sell to another electric provider to use in complying with the RPS. The **act** 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 act 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 reasons relating to any of the following:

- Unavoidable adverse impacts on the reliability of the electric provider's system.
- Unavoidable delays in receiving required siting or permitting approvals for renewable energy projects.
- Unavoidable transmission constraints that interfere with delivery of renewable electricity to the electric provider's system.

The act also allows wholesale entities that sell electricity to municipal utilities or retail electric cooperatives (termed "wholesale suppliers") to request a delay on behalf of the municipal utilities or retail electric cooperatives, and it allows energy consumer advocacy groups to request a delay on behalf of an energy provider.

The act 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 from requiring an electric provider to administer or fund any additional renewable energy program.

The act directs the PSC to submit biennial reports to the Legislature and the Governor regarding the impact of the RPS policy on the rates and revenue requirements of electric providers compared to the anticipated rates and revenue requirements if the energy providers' renewable resource practices were subject only to market forces.

### STATE ENERGY POLICY

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, prior law required that the PSC give consideration to energy efficiency and renewable resources as potential components of or alternatives to the proposed project.

The act treats compliance by both the PSC and an investor-owned utility or wholesale supplier with all requirements of the energy efficiency and renewable resource programs and the RPS as implementation of the priority list in dockets to which the utility or wholesale provider is a party. Three parallel provisions limit the PSC's implementation of the priority list in such dockets. First, the PSC may not impose any energy conservation or efficiency requirements on a party if the PSC has fulfilled all of its duties and responsibilities regarding the energy efficiency programs established by the act and one of the following applies:

Energy efficiency and renewable resource programs replace consideration of the energy priority law in certain PSC proceedings.
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- If the party is an investor-owned utility, the applicant has fully complied with its obligations to fund the statewide energy efficiency and renewable resource programs and any utility-administered or ordered programs.
- If the party 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 may not impose any **renewable resource** requirements on a party 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 party is an investor-owned utility, the applicant is in compliance with the RPS.
- If the party is a wholesale supplier, the applicant's members are in the aggregate substantially in compliance with the RPS.

Third, in reviewing the request of an investor-owned utility or wholesale supplier for approval to buy or build electric transmission facilities or associated equipment, the PSC may not

impose **any** requirement on that party. (Note that, while the statute says that the PSC may not impose any requirement on such an approval, the legislative history and statutory context of this provision strongly suggest the Legislature intended to prohibit only the imposition of requirements relating to energy conservation or efficiency or renewable resources.)

### **STATE FACILITIES AND CODES**

With regard to energy used in state facilities, the act:

- 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 individual agency goals shall be designed to accomplish the overall goal 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 meet or exceed other model standards. The DOA must ensure that the standards are adhered to in all state building projects, including build-to-lease contracts, and all state purchases of energy-consuming equipment.
- 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.

The act sets the goal that, by 2011, 20% of the electricity purchased by the state be from renewable resources. It also creates new initiatives to increase the efficiency of state buildings.

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

- Directs the Department of Commerce to review the energy efficiency code on a three-year cycle, as opposed to the previous 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 act:

- 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 April 1, 2006.

### **ADDITIONAL RESOURCES**

For information regarding the Governor's Task Force on Energy Efficiency and Renewables, or to see its final report, see the DOA Division of Energy web site for the task force at: <http://energytaskforce.wi.gov/index.asp>.

For information regarding the Focus on Energy Program, see the Focus on Energy web site at <http://focusonenergy.com/index.jsp>; to see evaluations of the various program components, see the DOA Division of Energy web site at: <http://energytaskforce.wi.gov/index.asp>.

For information regarding the low-income assistance program, see DOA Division of Energy "Home Energy Plus" web site at: <http://www.homeenergyplus.wi.gov/>.

This memorandum is not a policy statement of the Joint Legislative Council or its staff. The memorandum was prepared by David L. Lovell, Senior Analyst, on March 30, 2006.

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