

2011 DRAFTING REQUEST

Senate Substitute Amendment (SSA-SB31)

Received: 09/29/2011

Received By: jkreye

Wanted: As time permits

Companion to LRB: s0191

For: Alberta Darling (608) 266-5830

By/Representing: jim

May Contact:

Drafter: jkreye

Subject: Tax, Business - credits

Adl. Drafters: fknepp

Extra Copies:

Submit via email: YES

Requester's email: Sen.Darling@legis.wisconsin.gov

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Pre Topic:

No specific pre topic given

Topic:

Tax credit for green data centers

Instructions:

See attached

Drafting History:

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Typed</u>	<u>Proofed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
/?	jkreye 09/30/2011	jdye 09/30/2011		_____			
/1			rschluet 09/30/2011	_____	lparisi 09/30/2011	lparisi 09/30/2011	

FE Sent For:

<END>

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jkreye

1 9/30 jld
4/30/11

FE Sent For:

<END>

Kreye, Joseph

From: Matthias, Mary
Sent: Wednesday, September 28, 2011 9:56 AM
To: Kreye, Joseph
Subject: SB 31

Joe-

FYI-

Sen. Darling is also going to request an amendment to SB 31. Her aide Andrew and I discussed it briefly after the hearing yesterday, but I have to work out the details with Jim Emerson in her office. What we discussed yesterday was:

1. Amend SEC. 13 to remove references to Commerce and replace them with references to WEDC. WEDC doesn't have authority to promulgate rules, so instead require WEDC to "adopt policies and procedures" to administer the program.
2. Rework the language on page 3 to make it clear that in order to qualify as a green data center eligible for the credit, the data center must have the components listed—ie., at least 2 of the items listed under #1., AND at least 2 of the items listed under # 2 AND equipment or components that have a reduced amount, or none, of at least 4 of the elements listed under #3. Then clarify that the credit is available for the amount paid for any of those items.
3. Clarify that the credit is available for costs of retrofitting an existing data center to make it green.
4. Clarify that the credit is not available for costs of operating a data center that already exists and is already green. The credit may be used for costs of operating a green data center that is newly-constructed or was made green through retrofitting. (Not sure how to word this...specify that construction or retrofitting must commence after effective date of the bill? The point is to ensure that the credit is used as an incentive not a reward for work already done)

Thanks! I'll let you know if Jim Emerson changes these instructions at all after I talk to him.

Mary Matthias

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Wisconsin Legislative Council Staff
Ph.(608)266-0932;Fax (608)266-3830



State of Wisconsin
2011 - 2012 LEGISLATURE



LRBs0191/1
JK&FFK:jld:rs

stays

50192/11

ASSEMBLY SUBSTITUTE AMENDMENT,
TO 2011 ASSEMBLY BILL 61
SENATE
31

in Friday 9-30

due Monday 10-3

LX

Regen

1 AN ACT *to amend* 71.05 (6) (a) 15., 71.21 (4), 71.26 (2) (a) 4., 71.34 (1k) (g), 71.45
2 (2) (a) 10. and 77.92 (4); and *to create* 71.07 (6n), 71.10 (4) (cs), 71.28 (6n), 71.30
3 (3) (dp), 71.47 (6n), 71.49 (1) (dp) and 238.21 of the statutes; **relating to:**
4 creating an income and franchise tax credit for constructing and operating a
5 data center that is designed for maximum energy efficiency and minimum
6 environmental impact.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

7 SECTION 1. 71.05 (6) (a) 15. of the statutes, as affected by 2011 Wisconsin Act
8 32, is amended to read:

9 71.05 (6) (a) 15. The amount of the credits computed under s. 71.07 (2dd), (2de),
10 (2di), (2dj), (2dL), (2dm), (2dr), (2ds), (2dx), (2dy), (3g), (3h), (3n), (3p), (3q), (3r),
11 (3rm), (3rn), (3s), (3t), (3w), (5e), (5f), (5h), (5i), (5j), (5k), (5n), (5r), (5rm), (6n), and

1 (8r) and not passed through by a partnership, limited liability company, or
2 tax-option corporation that has added that amount to the partnership's, company's,
3 or tax-option corporation's income under s. 71.21 (4) or 71.34 (1k) (g).

4 **SECTION 2.** 71.07 (6n) of the statutes is created to read:

5 71.07 **(6n)** GREEN DATA CENTER CREDIT. (a) *Definitions.* In this subsection:

6 1. "Claimant" means a person who files a claim under this subsection and who
7 is certified under s. 238.21.

8 2. "Green data center" has the meaning given in s. 238.21 (1).

9 (b) *Filing claims.* Subject to the limitations provided in this subsection and s.
10 238.21, for taxable years beginning after December 31, 2011, and before January 1,
11 2014, a claimant may claim as a credit against the taxes imposed under s. 71.02, up
12 to the amount of the taxes, the amount that the claimant paid in the taxable year for
13 any of the items listed under s. 238.21 (1) (a) 1. to 3., (b) 1. to 4., and (c) that are used
14 to construct a green data center or to retrofit a data center to become a green data
15 center.

16 (c) *Limitations.* 1. The maximum amount of all credits that may be claimed
17 under this subsection and ss. 71.28 (6n) and 71.47 (6n) is \$2,000,000. No claimant
18 may claim a credit under this subsection unless the claimant submits with the
19 claimant's return a copy of the claimant's certification for credits under s. 238.21.

20 2. Partnerships, limited liability companies, and tax-option corporations may
21 not claim the credit under this subsection, but the eligibility for, and the amount of,
22 the credit are based on their payment of amounts under par. (b). A partnership,
23 limited liability company, or tax-option corporation shall compute the amount of
24 credit that each of its partners, members, or shareholders may claim and shall
25 provide that information to each of them. Partners, members of limited liability

1 companies, and shareholders of tax-option corporations may claim the credit in
2 proportion to their ownership interests.

3 (d) *Administration.* Section 71.28 (4) (e) to (h), as it applies to the credit under
4 s. 71.28 (4), applies to the credit under this subsection.

5 **SECTION 3.** 71.10 (4) (cs) of the statutes is created to read:

6 71.10 (4) (cs) Green data center credit under s. 71.07 (6n).

7 **SECTION 4.** 71.21 (4) of the statutes, as affected by 2011 Wisconsin Act 32, is
8 amended to read:

9 71.21 (4) Credits computed by a partnership under s. 71.07 (2dd), (2de), (2di),
10 (2dj), (2dL), (2dm), (2ds), (2dx), (2dy), (3g), (3h), (3n), (3p), (3q), (3r), (3rm), (3rn), (3s),
11 (3t), (3w), (5e), (5f), (5g), (5h), (5i), (5j), (5k), (5n), (5r), (5rm), (6n), and (8r) and passed
12 through to partners shall be added to the partnership's income.

13 **SECTION 5.** 71.26 (2) (a) 4. of the statutes, as affected by 2011 Wisconsin Act 32,
14 is amended to read:

15 71.26 (2) (a) 4. Plus the amount of the credit computed under s. 71.28 (1dd),
16 (1de), (1di), (1dj), (1dL), (1dm), (1ds), (1dx), (1dy), (3g), (3h), (3n), (3p), (3q), (3r),
17 (3rm), (3rn), (3t), (3w), (5e), (5f), (5g), (5h), (5i), (5j), (5k), (5n), (5r), (5rm), (6n), (8r),
18 and (9s) and not passed through by a partnership, limited liability company, or
19 tax-option corporation that has added that amount to the partnership's, limited
20 liability company's, or tax-option corporation's income under s. 71.21 (4) or 71.34 (1k)
21 (g).

22 **SECTION 6.** 71.28 (6n) of the statutes is created to read:

23 71.28 (6n) GREEN DATA CENTER CREDIT. (a) *Definitions.* In this subsection:

24 1. "Claimant" means a person who files a claim under this subsection and who
25 is certified under s. 238.21.

1 2. “Green data center” has the meaning given in s. 238.21 (1).

2 (b) *Filing claims.* Subject to the limitations provided in this subsection and s.
3 238.21, for taxable years beginning after December 31, 2011, and before January 1,
4 2014, a claimant may claim as a credit against the taxes imposed under s. 71.23, up
5 to the amount of the taxes, the amount that the claimant paid in the taxable year for
6 any of the items listed under s. 238.21 (1) (a) 1. to 3., (b) 1. to 4., and (c) that are used
7 to construct a green data center or to retrofit a data center to become a green data
8 center.

9 (c) *Limitations.* 1. The maximum amount of all credits that may be claimed
10 under this subsection and ss. 71.07 (6n) and 71.47 (6n) is \$2,000,000. No claimant
11 may claim a credit under this subsection unless the claimant submits with the
12 claimant’s return a copy of the claimant’s certification for credits under s. 238.21.

13 2. Partnerships, limited liability companies, and tax-option corporations may
14 not claim the credit under this subsection, but the eligibility for, and the amount of,
15 the credit are based on their payment of amounts under par. (b). A partnership,
16 limited liability company, or tax-option corporation shall compute the amount of
17 credit that each of its partners, members, or shareholders may claim and shall
18 provide that information to each of them. Partners, members of limited liability
19 companies, and shareholders of tax-option corporations may claim the credit in
20 proportion to their ownership interests.

21 (d) *Administration.* Subsection (4) (e) to (h), as it applies to the credit under
22 sub. (4), applies to the credit under this subsection.

23 **SECTION 7.** 71.30 (3) (dp) of the statutes is created to read:

24 71.30 (3) (dp) Green data center credit under s. 71.28 (6n).

1 **SECTION 8.** 71.34 (1k) (g) of the statutes, as affected by 2011 Wisconsin Act 32,
2 is amended to read:

3 71.34 **(1k)** (g) An addition shall be made for credits computed by a tax-option
4 corporation under s. 71.28 (1dd), (1de), (1di), (1dj), (1dL), (1dm), (1ds), (1dx), (1dy),
5 (3), (3g), (3h), (3n), (3p), (3q), (3r), (3rm), (3rn), (3t), (3w), (5e), (5f), (5g), (5h), (5i), (5j),
6 (5k), (5n), (5r), (5rm), (6n), and (8r) and passed through to shareholders.

7 **SECTION 9.** 71.45 (2) (a) 10. of the statutes, as affected by 2011 Wisconsin Act
8 32, is amended to read:

9 71.45 **(2)** (a) 10. By adding to federal taxable income the amount of credit
10 computed under s. 71.47 (1dd) to (1dy), (3g), (3h), (3n), (3p), (3q), (3r), (3rm), (3rn),
11 (3w), (5e), (5f), (5g), (5h), (5i), (5j), (5k), (5n), (5r), (5rm), (6n), (8r), and (9s) and not
12 passed through by a partnership, limited liability company, or tax-option
13 corporation that has added that amount to the partnership's, limited liability
14 company's, or tax-option corporation's income under s. 71.21 (4) or 71.34 (1k) (g) and
15 the amount of credit computed under s. 71.47 (1), (3), (3t), (4), (4m), and (5).

16 **SECTION 10.** 71.47 (6n) of the statutes is created to read:

17 71.47 **(6n)** GREEN DATA CENTER CREDIT. (a) *Definitions.* In this subsection:

18 1. "Claimant" means a person who files a claim under this subsection and who
19 is certified under s. 238.21.

20 2. "Green data center" has the meaning given in s. 238.21 (1).

21 (b) *Filing claims.* Subject to the limitations provided in this subsection and s.
22 238.21, for taxable years beginning after December 31, 2011, and before January 1,
23 2014, a claimant may claim as a credit against the taxes imposed under s. 71.43, up
24 to the amount of the taxes, the amount that the claimant paid in the taxable year for
any of the items listed under s. 238.21 (1) ~~(A)~~ 1. to 3., [✓](b) 1. to 4., and (c) that are used

1 to construct a green data center or to retrofit a data center to become a green data
2 center.

3 (c) *Limitations.* 1. The maximum amount of all credits that may be claimed
4 under this subsection and ss. 71.07 (6n) and 71.28 (6n) is \$2,000,000. No claimant
5 may claim a credit under this subsection unless the claimant submits with the
6 claimant's return a copy of the claimant's certification for credits under s. 238.21.

7 2. Partnerships, limited liability companies, and tax-option corporations may
8 not claim the credit under this subsection, but the eligibility for, and the amount of,
9 the credit are based on their payment of amounts under par. (b). A partnership,
10 limited liability company, or tax-option corporation shall compute the amount of
11 credit that each of its partners, members, or shareholders may claim and shall
12 provide that information to each of them. Partners, members of limited liability
13 companies, and shareholders of tax-option corporations may claim the credit in
14 proportion to their ownership interests.

15 (d) *Administration.* Section 71.28 (4) (e) to (h), as it applies to the credit under
16 s. 71.28 (4), applies to the credit under this subsection.

17 **SECTION 11.** 71.49 (1) (dp) of the statutes is created to read:

18 71.49 (1) (dp) Green data center credit under s. 71.47 (6n).

19 **SECTION 12.** 77.92 (4) of the statutes, as affected by 2011 Wisconsin Act 32, is
20 amended to read:

21 77.92 (4) "Net business income," with respect to a partnership, means taxable
22 income as calculated under section 703 of the Internal Revenue Code; plus the items
23 of income and gain under section 702 of the Internal Revenue Code, including taxable
24 state and municipal bond interest and excluding nontaxable interest income or
25 dividend income from federal government obligations; minus the items of loss and

1 deduction under section 702 of the Internal Revenue Code, except items that are not
2 deductible under s. 71.21; plus guaranteed payments to partners under section 707
3 (c) of the Internal Revenue Code; plus the credits claimed under s. 71.07 (2dd), (2de),
4 (2di), (2dj), (2dL), (2dm), (2dr), (2ds), (2dx), (2dy), (3g), (3h), (3n), (3p), (3q), (3r),
5 (3rm), (3rn), (3s), (3t), (3w), (5e), (5f), (5g), (5h), (5i), (5j), (5k), (5n), (5r), (5rm), (6n),
6 and (8r); and plus or minus, as appropriate, transitional adjustments, depreciation
7 differences, and basis differences under s. 71.05 (13), (15), (16), (17), and (19); but
8 excluding income, gain, loss, and deductions from farming. “Net business income,”
9 with respect to a natural person, estate, or trust, means profit from a trade or
10 business for federal income tax purposes and includes net income derived as an
11 employee as defined in section 3121 (d) (3) of the Internal Revenue Code.

12 **SECTION 13.** 238.21 of the statutes is created to read:

13 **238.21 Green data center tax credit. (1)** In this section, “green data center”
14 means a repository for the storage, management, and dissemination of data, if the
15 mechanical, lighting, electrical, and computer systems of the real property in which
16 the repository is located are designed for maximum energy efficiency and minimum
17 environmental impact and if the repository uses all of the following:

18 (a) At least 2 of the following:

- 19 1. Low-emission building materials, including carpets and paints.
- 20 2. Sustainable landscaping.
- 21 3. An electronic waste recycling program, as defined by the corporation.

22 (b) At least 2 of the following:

- 23 1. Catalytic converters on back-up generators.
- 24 2. Photovoltaics.
- 25 3. Heat pumps.

1 4. Evaporative cooling.

2 (c) Equipment or equipment components that have at least 25 percent less than
3 the maximum amount allowed under federal law, or none, of at least 4 of the
4 following:

5 1. Mercury.

6 2. Cadmium.

7 3. Lead.

8 4. Chromium VI.

9 5. Polybrominated biphenyls.

10 6. Polybrominated diphenyl ether.

11 **(2)** The corporation shall implement a program to certify businesses for the
12 purposes of ss. 71.07 (6n), 71.28 (6n), and 71.47 (6n). A business shall submit an
13 application to the corporation in each calendar year for which the business desires
14 certification.

15 **(3)** The corporation may certify a business under this section if, in the
16 business's taxable year ending immediately before the date of the business's
17 application, the business paid for an item listed in sub. (1) (a) 1. to 3., (b) 1. to 4., or
18 (c) and the item was used to construct a green data center or to retrofit a data center
19 to become a green data center.

20 **(4)** If the corporation certifies a business under sub. (3), the corporation shall
21 determine the maximum amount of tax credits the business may claim under ss.
22 71.07 (6n), 71.28 (6n), and 71.47 (6n). The total amount of tax credits allocated to all
23 certified businesses under this section may not exceed \$2,000,000.

24 **(5)** The corporation shall notify the department of revenue of every certification
25 under this section, the maximum amount of tax credits a certified business may

1 claim under ss. 71.07 (6n), 71.28 (6n), and 71.47 (6n), and of the date on which a
2 certification is revoked or expires.

3 (6) The corporation shall compile a list of businesses certified under this section
4 and the taxable years for which the businesses are certified and shall make the list
5 available to the public at the corporation's Internet Web site.

6 **SECTION 14. Nonstatutory provisions.**

7 (1) GREEN DATA CENTER CREDIT PROGRAM.

8 (a) Not later than 30 days after the effective date of this subsection, the
9 Wisconsin Economic Development Corporation shall implement a program for
10 certifying businesses as eligible for tax credits under sections 71.07 (6n), 71.28 (6n),
11 and 71.47 (6n) of the statutes.

12 (b) If the Wisconsin Economic Development Corporation certifies a business as
13 eligible under paragraph (a), the corporation shall determine the maximum amount
14 of tax credits the business may claim. The total amount of tax credits allocated to
15 all eligible businesses may not exceed \$2,000,000.

16 (END)