

2001 ASSEMBLY BILL 752

January 28, 2002 – Introduced by Representatives SCHOOFF, BALOW, MUSSER, PLALE, RILEY and SERATTI, cosponsored by Senators ROBSON, BURKE and WIRCH. Referred to Committee on Ways and Means.

1 **AN ACT** *to amend* 71.05 (6) (a) 15., 71.21 (4), 71.26 (2) (a), 71.34 (1) (g) and 77.92
2 (4); and *to create* 16.50 (8), 71.07 (5d), 71.10 (4) (fm), 71.28 (5d), 71.30 (3) (dm),
3 71.47 (5d), 71.49 (1) (dm) and 560.186 of the statutes; **relating to:** creating an
4 income and franchise tax credit for businesses that purchase and operate
5 distributed generation power generators and requiring the secretary of
6 administration to reduce expenditure estimates for certain general purpose
7 revenue appropriations.

Analysis by the Legislative Reference Bureau

This bill creates an income tax and franchise tax credit for businesses that purchase and operate distributed generation power generators. Under the bill, a “distributed generation power generator” is a generator that consists of reciprocating engines that are fueled by natural gas or a combination of natural gas and diesel, that has a thermal efficiency of at least 40%, and that has a nitrogen oxide emission level of no more than 1.5 grams per brake horsepower-hour.

Under the bill, a business that is certified by the department of commerce may claim a tax credit that is equal to the amount the business paid in the taxable year to purchase and operate a distributed generation power generator. However, the amount that a business may claim in any taxable year is limited to \$400,000. The total amount of the credit for all claimants in any taxable year is limited to

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\$2,000,000. If the total amount of credits claimed in any taxable exceeds \$2,000,000, the department of revenue must prorate the credit according to the amount of the purchase costs and operating costs of a distributed generation power generator that are incurred by businesses during the taxable year. If the credit claimed by a business exceeds the business's tax liability, the state will not issue a refund, but the business may carry forward any remaining credit to subsequent taxable years.

Finally, the bill requires the secretary of administration, after the close of each fiscal year, to identify all general purpose revenue appropriations that are made to reimburse the capital improvement fund and from which disbursements were made in the fiscal year in an amount less than the authorized expenditure estimate. From among these appropriations, the secretary must reduce the authorized expenditure estimates for the succeeding fiscal year by an amount equal to the lesser of \$2,000,000 or the total amount that is paid for the distributed generation power generator tax credit in the prior calendar year.

For further information see the *state* fiscal estimate, which will be printed as an appendix to this bill.

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

1 **SECTION 1.** 16.50 (8) of the statutes is created to read:

2 **16.50 (8) RE-ESTIMATES OF CERTAIN GENERAL PURPOSE REVENUE APPROPRIATIONS.**

3 (a) After the close of each fiscal year, the secretary shall identify all general purpose
4 revenue appropriations that are made to reimburse the capital improvement fund
5 and from which disbursements were made in the fiscal year in an amount less than
6 the estimated expenditure amount approved by the secretary under sub. (2) or the
7 governor under sub. (3) for that fiscal year.

8 (b) Notwithstanding sub. (2), from among the appropriations identified under
9 par. (a), the secretary shall reduce the estimated expenditure amounts for the
10 succeeding fiscal year by an amount equal to the lesser of \$2,000,000 or the total
11 amount that is paid under ss. 71.07 (5d), 71.28 (5d), and 71.47 (5d) in the prior
12 calendar year.

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1 **SECTION 2.** 71.05 (6) (a) 15. of the statutes, as affected by 2001 Wisconsin Act
2 16, is amended to read:

3 71.05 **(6)** (a) 15. The amount of the credits computed under s. 71.07 (2dd), (2de),
4 (2di), (2dj), (2dL), (2dm), (2dr), (2ds), (2dx), (3g), ~~and (3s)~~, and (5d) and not passed
5 through by a partnership, limited liability company, or tax-option corporation that
6 has added that amount to the partnership's, company's, or tax-option corporation's
7 income under s. 71.21 (4) or 71.34 (1) (g).

8 **SECTION 3.** 71.07 (5d) of the statutes is created to read:

9 71.07 **(5d)** DISTRIBUTED GENERATION POWER GENERATOR CREDIT. (a) In this
10 subsection:

11 1. "Claimant" means a sole proprietor, a partner, a member of a limited liability
12 company, or a shareholder of a tax-option corporation who files a claim under this
13 subsection.

14 2. "Distributed generation power generator" means a generator consisting of
15 reciprocating engines that are fueled by natural gas or a combination of natural gas
16 and diesel, that has a thermal efficiency of at least 40%, and that has a nitrogen oxide
17 emission level of no more than 1.5 grams per brake horsepower-hour.

18 (b) Subject to the limitations provided in this subsection, a claimant certified
19 under s. 560.186 may claim as a credit against the tax imposed under s. 71.02 an
20 amount, not exceeding \$400,000 in any taxable year, that is equal to the amount that
21 the claimant paid in the taxable year to purchase and operate a distributed
22 generation power generator.

23 (c) The total amount of the credit for all claimants under this subsection and
24 ss. 71.28 (5d) and 71.47 (5d) may not exceed \$2,000,000 in any taxable year. If the
25 total amount of credits claimed by all claimants in any taxable exceeds \$2,000,000,

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1 the department shall prorate the credit according to the amount of the purchase costs
2 and operating costs of a distributed generation power generator that are incurred by
3 all claimants during the taxable year.

4 (d) Section 71.28 (4) (e), (f), (g), and (h), as it applies to the credit under s. 71.28
5 (4), applies to the credit under this subsection.

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

14 **SECTION 4.** 71.10 (4) (fm) of the statutes is created to read:

15 71.10 (4) (fm) The distributed generation power generator credit under s. 71.07
16 (5d).

17 **SECTION 5.** 71.21 (4) of the statutes, as affected by 2001 Wisconsin Act 16, is
18 amended to read:

19 71.21 (4) Credits computed by a partnership under s. 71.07 (2dd), (2de), (2di),
20 (2dj), (2dL), (2dm), (2ds), (2dx), (3g), and (3s), and (5d) and passed through to
21 partners shall be added to the partnership's income.

22 **SECTION 6.** 71.26 (2) (a) of the statutes, as affected by 2001 Wisconsin Act 16,
23 is amended to read:

24 71.26 (2) (a) *Corporations in general.* The "net income" of a corporation means
25 the gross income as computed under the Internal Revenue Code as modified under

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1 sub. (3) minus the amount of recapture under s. 71.28 (1di) plus the amount of credit
2 computed under s. 71.28 (1), (3), (4), (5), plus the amount of the credit computed
3 under s. 71.28 (1dd), (1de), (1di), (1dj), (1dL), (1dm), (1ds), and (1dx). ~~(3g) (4dx)~~, and
4 (5d) and not passed through by a partnership, limited liability company, or
5 tax-option corporation that has added that amount to the partnership's, limited
6 liability company's, or tax-option corporation's income under s. 71.21 (4) or 71.34 (1)
7 (g) plus the amount of losses from the sale or other disposition of assets the gain from
8 which would be wholly exempt income, as defined in sub. (3) (L), if the assets were
9 sold or otherwise disposed of at a gain and minus deductions, as computed under the
10 Internal Revenue Code as modified under sub. (3), plus or minus, as appropriate, an
11 amount equal to the difference between the federal basis and Wisconsin basis of any
12 asset sold, exchanged, abandoned, or otherwise disposed of in a taxable transaction
13 during the taxable year, except as provided in par. (b) and s. 71.45 (2) and (5).

14 **SECTION 7.** 71.28 (5d) of the statutes is created to read:

15 71.28 **(5d)** DISTRIBUTED GENERATION POWER GENERATOR CREDIT. (a) In this
16 subsection:

17 1. "Claimant" means a corporation that files a claim under this subsection.

18 2. "Distributed generation power generator" means a generator consisting of
19 reciprocating engines that are fueled by natural gas or a combination of natural gas
20 and diesel, that has a thermal efficiency of at least 40%, and that has a nitrogen oxide
21 emission level of no more than 1.5 grams per brake horsepower-hour.

22 (b) Subject to the limitations provided in this subsection, a claimant certified
23 under s. 560.186 may claim as a credit against the tax imposed under s. 71.23 an
24 amount, not exceeding \$400,000 in any taxable year, that is equal to the amount that

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1 the claimant paid in the taxable year to purchase and operate a distributed
2 generation power generator.

3 (c) The total amount of the credit for all claimants under this subsection and
4 ss. 71.07 (5d) and 71.47 (5d) may not exceed \$2,000,000 in any taxable year. If the
5 total amount of credits claimed by all claimants in any taxable exceeds \$2,000,000,
6 the department shall prorate the credit according to the amount of the purchase costs
7 and operating costs of a distributed generation power generator that are incurred by
8 all claimants during the taxable year.

9 (d) Subsection (4) (e), (f), (g), and (h), as it applies to the credit under sub. (4),
10 applies to the credit under this subsection.

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

19 **SECTION 8.** 71.30 (3) (dm) of the statutes is created to read:

20 71.30 (3) (dm) The distributed generation power generator credit under s.
21 71.28 (5d).

22 **SECTION 9.** 71.34 (1) (g) of the statutes, as affected by 2001 Wisconsin Act 16,
23 is amended to read:

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1 71.34 **(1)** (g) An addition shall be made for credits computed by a tax-option
2 corporation under s. 71.28 (1dd), (1de), (1di), (1dj), (1dL), (1dm), (1ds), (1dx), (3), and
3 (3g), and (5d) and passed through to shareholders.

4 **SECTION 10.** 71.47 (5d) of the statutes is created to read:

5 71.47 **(5d)** DISTRIBUTED GENERATION POWER GENERATOR CREDIT. (a) In this
6 subsection:

7 1. “Claimant” means a corporation that files a claim under this subsection.

8 2. “Distributed generation power generator” means a generator consisting of
9 reciprocating engines that are fueled by natural gas or a combination of natural gas
10 and diesel, that has a thermal efficiency of at least 40%, and that has a nitrogen oxide
11 emission level of no more than 1.5 grams per brake horsepower-hour.

12 (b) Subject to the limitations provided in this subsection, a claimant certified
13 by the department of commerce under s. 560.186 may claim as a credit against the
14 tax imposed under s. 71.43 an amount, not exceeding \$400,000 in any taxable year,
15 that is equal to the amount that the claimant paid in the taxable year to purchase
16 and operate a distributed generation power generator.

17 (c) The total amount of the credit for all claimants under this subsection and
18 ss. 71.07 (5d) and 71.28 (5d) may not exceed \$2,000,000 in any taxable year. If the
19 total amount of credits claimed by all claimants in any taxable exceeds \$2,000,000,
20 the department shall prorate the credit according to the amount of the purchase costs
21 and operating costs of a distributed generation power generator that are incurred by
22 all claimants during the taxable year.

23 (d) Section 71.28 (4) (e), (f), (g), and (h), as it applies to the credit under s. 71.28
24 (4), applies to the credit under this subsection.

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

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

10 71.49 (1) (dm) The distributed generation power generator credit under s.
11 71.47 (5d).

12 **SECTION 12.** 77.92 (4) of the statutes, as affected by 2001 Wisconsin Act 16, is
13 amended to read:

14 77.92 (4) “Net business income”, with respect to a partnership, means taxable
15 income as calculated under section 703 of the Internal Revenue Code; plus the items
16 of income and gain under section 702 of the Internal Revenue Code, including taxable
17 state and municipal bond interest and excluding nontaxable interest income or
18 dividend income from federal government obligations; minus the items of loss and
19 deduction under section 702 of the Internal Revenue Code, except items that are not
20 deductible under s. 71.21; plus guaranteed payments to partners under section 707
21 (c) of the Internal Revenue Code; plus the credits claimed under s. 71.07 (2dd), (2de),
22 (2di), (2dj), (2dL), (2dm), (2dr), (2ds), (2dx), ~~and (3g), and (3s), and (5d)~~; and plus or
23 minus, as appropriate, transitional adjustments, depreciation differences, and basis
24 differences under s. 71.05 (13), (15), (16), (17), and (19); but excluding income, gain,
25 loss, and deductions from farming. “Net business income”, with respect to a natural

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1 person, estate, or trust, means profit from a trade or business for federal income tax
2 purposes and includes net income derived as an employee as defined in section 3121
3 (d) (3) of the Internal Revenue Code.

4 **SECTION 13.** 560.186 of the statutes is created to read:

5 **560.186 Distributed generation power generators. (1)** In this section,
6 “distributed generation power generator” means a generator consisting of
7 reciprocating engines that are fueled by natural gas or a combination of natural gas
8 and diesel, that has a thermal efficiency of at least 40%, and that has a nitrogen oxide
9 emission level of no more than 1.5 grams per brake horsepower-hour.

10 **(2)** The department shall promulgate rules establishing requirements and
11 procedures for certifying claimants who may make a claim under ss. 71.07 (5d), 71.28
12 (5d), and 71.47 (5d) and shall certify all claimants who satisfy the requirements. The
13 rules shall require a claimant to demonstrate to the satisfaction of the department
14 that the distributed generation power generator is permanently installed on the
15 customer’s side of the utility meter, is connected to and operates in parallel to the
16 electric utility distribution system, is not intended for back-up generation purposes,
17 and will be operated in a safe and reliable manner

18 **SECTION 14. Initial applicability.**

19 (1) This act first applies to taxable years beginning on January 1 of the year
20 in which this subsection takes effect, except that if this subsection takes effect after
21 July 31 this act first applies to taxable years beginning on January 1 of the year
22 following the year in which this subsection takes effect.

23 **(END)**