

2001 DRAFTING REQUEST

Bill

Received: 12/21/2001

Received By: jkreye

Wanted: As time permits

Identical to LRB:

For: Dan Schooff (608) 266-9967

By/Representing: katie

This file may be shown to any legislator: NO

Drafter: jkreye

May Contact:

Addl. Drafters: champra
kunkemd

Subject: Tax - corp. inc. and fran.
Tax Credits - miscellaneous

Extra Copies:

Submit via email: YES

Requester's email: Rep.Schooff@legis.state.wi.us

Carbon copy (CC:) to: rick.champagne@legis.state.wi.us

Pre Topic:

No specific pre topic given

Topic:

Tax credit for business that purchase and operate distributed generation power generators

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>
/P1	jkreye 12/21/2001	csicilia 01/09/2002	pgreensl 01/10/2002	_____	lrb_docadmin 01/10/2002		State
	champra 01/07/2002	csicilia 01/11/2002		_____			
	jkreye 01/07/2002			_____			

Vers. Drafted Reviewed Typed Proofed Submitted Jacketed Required

/1

pgreensl _____
01/11/2002 _____

lrb_docadmin
01/11/2002

lrb_docadminState
01/15/2002

FE Sent For:

At Intro.

<END>

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		1 cjs	111 02	1/11 pg scf			

Vers. Drafted Reviewed Typed Proofed Submitted Jacketed Required

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/P1	jkreye 12/21/2001 champra	<i>/P1 gjs 1/9/01</i>	<i>1/10/01</i>	<i>1/10/01</i>			State

FE Sent For:

RS <END>

enter the request

Kunkel, Mark

From: Plona, Katie
Sent: Wednesday, December 19, 2001 11:11 AM
To: Kreye, Joseph; Kunkel, Mark; Champagne, Rick
Subject: Distributed Generation tax credit draft for Rep. Schooff

see the budget draft?

I just spoke with Rick, who said the three of you will be working on various parts of this draft from Rep. Scooff. I have attached language that we would like used for the definition of the distributed generation units. Also, I forgot to mention to Rick that that we would like to say that each recipient of a tax credit would be able to receive a maximum of \$400,000 in tax credits.

Please call if you have any questions.

Thank you all,

Katie Plona
Rep. Schooff's office
266-9967

Motion request with distributed generation specifications:

Have the Department of Commerce administer a tax credit program for businesses that allows them to deduct \$400,000 from their corporate and franchise income tax liability for the purchase and operation of distributed generation power generators that meet the following criteria.

1. "dual fuel (natural gas and diesel) and natural gas fired reciprocating engines with a thermal efficiency of at least 40% and NOx emission levels of 1.5 grams/bhp-hr or less."

grams brake horse power-hour
per*

talk to Rick

*needs to free up GPR
▷ DOR to calculate cost of the tax credit each year
(may be capped at \$2M — ~~per unit~~)*

*need criteria for how to allocate credits — Commerce
Coulter*

Champagne, Rick

From: Kunkel, Mark
Sent: Thursday, January 03, 2002 11:31 AM
To: Champagne, Rick
Subject: Standards

Rick:

Here's a stab at some standards, which are based on a California self-generation incentive program. The eligibility standards for the California program are described in section 2 of a handbook that can be found here:
http://www.sdenergy.org/docs/SDREO_SELFGEN_Handbook_072601.pdf

If this, or something like it, is okay, I would add a drafter's note explaining where I got this language and asking whether it's okay with the requester.

"The department shall promulgate rules establishing requirements and procedures for determining whether a claimant is eligible to make a claim under this subsection. The rules shall require a claimant to demonstrate to the satisfaction of the department that the distributed generation power generator is permanently installed on the customer's side of the utility meter, is connected to and operates in parallel to the electric utility distribution system, is not intended for back-up generation purposes, and will be operated in a safe and reliable manner."

Mark D. Kunkel
Legislative Attorney
Legislative Reference Bureau
(608) 266-0131



D-Nate
State of Wisconsin
2001 - 2002 LEGISLATURE

LRB-4472/P1
JK&RAC&MDK/.....

FRI

PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION

SA
7/2/01

stays
js
of administration

M 1-7-02

~~SOON~~

Gen cat

creating

and
requiring the
secretary to
reduce certain
expenditure estimates
for certain
general purpose
revenue
appropriations

1 AN ACT ... relating to: an income and franchise tax credit for businesses that
2 purchase and operate distributed generation power generators

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 \$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 greater of \$2,000,000 or the total amount that is claimed 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 greater of \$2,000,000 or the total
11 amount that is claimed under ss. 71.07 (5d), 71.28 (5d), and 71.47 (5d) in the prior
12 calendar year.

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

15 71.05 (6) (a) 15. The amount of the credits computed under s. 71.07 (2dd), (2de),
16 (2di), (2dj), (2dL), (2dm), (2dr), (2ds), (2dx), (3g), and (3s), and (5d) and not passed
17 through by a partnership, limited liability company, or tax-option corporation that

calendar

paid

paid

16

13

1 has added that amount to the partnership's, company's, or tax-option corporation's
2 income under s. 71.21 (4) or 71.34 (1) (g).

3 History: 2001 a. 16.

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

4 **71.07 (5d) DISTRIBUTED GENERATION POWER GENERATOR CREDIT.** (a) In this
5 subsection:

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

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

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

18 (c) The total amount of the credit for all claimants under this subsection and
19 ss. 71.28 (5d) and 71.47 (5d) may not exceed \$2,000,000 in any taxable year. If the
20 total amount of credits claimed by all claimants in any taxable exceeds \$2,000,000,
21 the department shall prorate the credit according to the amount of the purchase costs
22 and operating costs of a distributed generation power generator that are incurred by
23 all claimants during the taxable year.

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

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

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

12 71.10 (4) (fm) The distributed generation power generator credit under s. 71.07
13 (5d).

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

16 71.21 (4) Credits computed by a partnership under s. 71.07 (2dd), (2de), (2di),
17 (2dj), (2dL), (2dm), (2ds), (2dx), (3g), and (3s), and (5d) and passed through to
18 partners shall be added to the partnership's income.

19 History: 2001 a. 16.

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

21 71.26 (2) (a) *Corporations in general.* The "net income" of a corporation means
22 the gross income as computed under the Internal Revenue Code as modified under
23 sub. (3) minus the amount of recapture under s. 71.28 (1di) plus the amount of credit
24 computed under s. 71.28 (1), (3), (4), (5), plus the amount of the credit computed

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

History: 2001 a. 16.

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

13 **71.28 (5d) DISTRIBUTED GENERATION POWER GENERATOR CREDIT.** (a) In this
14 subsection:

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

20 (b) Subject to the limitations provided in this subsection, a claimant certified
21 under s. 560.186 may claim as a credit against the tax imposed under s. 71.23 an
22 amount, not exceeding ~~\$50,000~~ ^{400,000} in any taxable year, that is equal to the amount that
23 the claimant paid in the taxable year to purchase and operate a distributed
24 generation power generator.

SECTION 7

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

7 (d) Subsection (4) (e), (f), (g) ^{Fix comma} and (h), as it applies to the credit under sub. (4),
8 applies to the credit under this subsection.

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

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

18 71.30 (3) (dm) The distributed generation power generator credit under s.
19 71.28 (5d).

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

22 71.34 (1) (g) An addition shall be made for credits computed by a tax-option
23 corporation under s. 71.28 (1dd), (1de), (1di), (1dj), (1dL), (1dm), (1ds), (1dx), (3), and
24 (3g), and (5d) and passed through to shareholders.

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

2 **71.47 (5d) DISTRIBUTED GENERATION POWER GENERATOR CREDIT.** (a) In this
3 subsection:

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

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

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

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

20 (d) Section 71.28 (4) (e), (f), (g) ^{fix comma} and (h), as it applies to the credit under s. 71.28
21 (4), applies to the credit under this subsection.

22 (e) Partnerships, limited liability companies, and tax-option corporations may
23 not claim the credit under this subsection, but the eligibility for, and the amount of,
24 the credit are based on their payment of amounts under par. (b). A partnership,
25 limited liability company or tax-option corporation shall compute the amount of

1 credit that each of its partners, members, or shareholders may claim and shall
2 provide that information to each of them. Partners, members of limited liability
3 companies and shareholders of tax-option corporations may claim the credit in
4 proportion to their ownership interest.

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

6 71.49 (1) (dm) The distributed generation power generator credit under s.
7 71.47 (5d).

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

10 77.92 (4) "Net business income", with respect to a partnership, means taxable
11 income as calculated under section 703 of the Internal Revenue Code; plus the items
12 of income and gain under section 702 of the Internal Revenue Code, including taxable
13 state and municipal bond interest and excluding nontaxable interest income or
14 dividend income from federal government obligations; minus the items of loss and
15 deduction under section 702 of the Internal Revenue Code, except items that are not
16 deductible under s. 71.21; plus guaranteed payments to partners under section 707
17 (c) of the Internal Revenue Code; plus the credits claimed under s. 71.07 (2dd), (2de),
18 (2di), (2dj), (2dL), (2dm), (2dr), (2ds), (2dx), and (3g), and (3s), and (5d); and plus or
19 minus, as appropriate, transitional adjustments, depreciation differences, and basis
20 differences under s. 71.05 (13), (15), (16), (17), and (19); but excluding income, gain,
21 loss, and deductions from farming. "Net business income", with respect to a natural
22 person, estate, or trust, means profit from a trade or business for federal income tax
23 purposes and includes net income derived as an employee as defined in section 3121
24 (d) (3) of the Internal Revenue Code.

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

2 **560.186 Distributed generation power generators.** (1) In this section,
3 “distributed generation power generator” means a generator consisting of
4 reciprocating engines that are fueled by natural gas or a combination of natural gas
5 and diesel, that has a thermal efficiency of at least 40%, and that has a nitrogen oxide
6 emission level of no more than 1.5 grams per brake horsepower-hour. ✓

7 (2) The department shall promulgate rules establishing requirements and
8 procedures for certifying claimants who may make a claim under ss. 71.07 (5d), 71.28
9 (5d), and 71.47 (5d) and shall certify all claimants who satisfy the requirements. The
10 rules shall require a claimant to demonstrate to the satisfaction of the department
11 that the distributed generation power generator is permanently installed on the
12 customer’s side of the utility meter, is connected to and operates in parallel to the
13 electric utility distribution system, is not intended for back-up generation purposes,
14 and will be operated in a safe and reliable manner ✓

15 **SECTION 14. Initial applicability.** ✓

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

20

(END)

**DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU**

LRB-4472/P1dn
JK&RAC&MDK:/:....

js

The standards that the department of commerce must use to certify claimants for the tax credit are based on a California self-generation incentive program. The eligibility standards for the California program are described in section 2 of a handbook that can be found at www.sdenergy.org/docs/SDREO_SELFGEN_Handbook_072601.pdf Ⓞ

Mark D. Kunkel
Legislative Attorney
Phone: (608) 266-0131
E-mail: mark.kunkel@legis.state.wi.us

**DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU**

LRB-4472/P1dn
MDK:cjs:pg

January 10, 2002

The standards that the department of commerce must use to certify claimants for the tax credit are based on a California self-generation incentive program. The eligibility standards for the California program are described in section 2 of a handbook that can be found at www.sdenergy.org/docs/SDREO_SELFGEN_Handbook_072601.pdf.

Mark D. Kunkel
Legislative Attorney
Phone: (608) 266-0131
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State of Wisconsin
2001 - 2002 LEGISLATURE

LRB-4472/P1 /
JK&RAC&MDK:cjs:pg

NOW

RMR

ETMS

PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION

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only changes
on
p. 2

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

\$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 ~~greater~~ ^{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 ~~greater~~ ^{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.

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,

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

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) ~~(1dx)~~, 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

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:

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.

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

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)

Kreye, Joseph

From: Plona, Katie
Sent: Tuesday, January 15, 2002 2:58 PM
To: Kreye, Joseph
Subject: Schooff LRB 4472

Assm.

Joe,

Can you have LRB 4472 jacketed and sent over please?

Thanks again

Katie
6-9967



State of Wisconsin

LEGISLATIVE REFERENCE BUREAU

100 NORTH HAMILTON STREET
P. O. BOX 2037
MADISON, WI 53701-2037

LEGAL SECTION: (608) 266-3561
REFERENCE SECTION: (608) 266-0341
FAX: (608) 266-5648

STEPHEN R. MILLER
CHIEF

February 12, 2002

MEMORANDUM

To: Representative Schooff

From: Joseph T. Kreye, Legislative Attorney, (608) 266-2263

Subject: Technical Memorandum to **2001 AB-752** (LRB-4472/1)

We received the attached technical memorandum relating to your bill. This copy is for your information and your file. If you wish to discuss this memorandum or the necessity of revising your bill or preparing an amendment, please contact me.

MEMORANDUM

February 12, 2002

TO: Joseph Kreye
Richard Champagne
Mark Kunkel
Legislative Reference Bureau

FROM: Brian Pahnke
Department of Revenue

SUBJECT: Technical Memorandum on AB 752: Tax Credit for Business that Purchases and Operates Distributed Generation Power Generators

The word "year" should be inserted after the word "taxable" in three places in the bill: page 3, line 25, page 6, line 5 and page 7 line 19.

The author may wish to specify what types of purchases and operating costs of a distributed generation power generator qualify the claimant for the credit to ensure that these expenses are included in determining the credit amount.

It is unclear if the Department of Commerce or the Department of Revenue has the authority to determine which costs qualify for the credit. For clarity and to avoid both agencies auditing the same credit claims, the author may wish to specify which agency has the authority to determine if costs qualify for the credit.

The total amount of the credit for all claimants may not exceed \$2 million in any taxable year; the Department of Revenue is required to prorate the credits according to costs incurred by the claimants. The Department has several concerns regarding this language.

- It is unclear what "taxable year" means for purposes of the \$2 million limitation or how the author intends the provision to be implemented. The author may wish to specify that a taxable year begins with the calendar year for purposes of the \$2 million cap, as opposed to a taxable year based on the beginning date or the ending date of a return period.
- Regardless of the definition of taxable year for the credit cap, actual credit amounts that may be claimed by businesses may not be available for two or more years since businesses may file returns based on calendar years or other fiscal years. In addition, taxpayers may claim the credit any time within four years after the unextended due date to file their tax return. Therefore, if credits are prorated, it may be five years after businesses incur expenses before they know what their actual tax credit will be; businesses would be required to file

amended returns once the actual credit amount is determined.

- As a result of the timing for claiming the credit, the statute of limitations could expire for some claimants before the Department has the information to prorate the credits. Therefore, the statute of limitations should be extended until the Department has the information available to prorate the credits.

The proposed legislation makes no provision for the funding of the costs involved in administering the activities required. If the author wishes to provide funding, appropriation language could be developed and costs allocated in the following manner:

	<u>Chapter 20</u>	<u>Amount</u>	<u>FTE</u>
one-time	s. 20.566 (1) (a)	\$ 8,400	
annual	s. 20.566 (1) (a)	\$43,100	1.0

If you have any questions regarding this technical memorandum, please contact Pam Walgren at (608) 266-7817.