

**ASSEMBLY SUBSTITUTE AMENDMENT 1,
TO 2003 ASSEMBLY BILL 378**

AN ACT *to renumber* 79.005 (1); *to amend* 20.835 (1) (d), 79.005 (3), 79.04 (1) (intro.), 79.04 (1) (a), 79.04 (1) (b) 2., 79.04 (1) (c) 1., 79.04 (1) (c) 3., 79.04 (2) (a), 79.04 (2) (am) 2. and 79.04 (4); and *to create* 20.835 (1) (dm), 79.005 (1b), 79.005 (1d), 79.005 (1f), 79.005 (1g), 79.005 (2m), 79.005 (4), 79.01 (2m), 79.04 (3m), 79.04 (5), 79.04 (6), 79.04 (7) and 196.20 (7) of the statutes; **relating to:** payments to local governments for public utilities and making an appropriation.

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

1 **SECTION 1.** 20.835 (1) (d) of the statutes is amended to read:
2 20.835 **(1)** (d) *Shared revenue account.* A sum sufficient to meet the
3 requirements of the shared revenue account established under s. 79.01 (2) to provide
4 for the distributions from the shared revenue account to counties, towns, villages and
5 cities under ss. 79.03, 79.04 (1) to (4) and 79.06.

6 **SECTION 2.** 20.835 (1) (dm) of the statutes is created to read:

1 20.835 **(1)** (dm) *Public utility distribution account.* Beginning in 2005, a sum
2 sufficient to make the payments under s. 79.04 (5), (6), and (7).

3 **SECTION 3.** 79.005 (1) of the statutes is renumbered 79.005 (1m).

4 **SECTION 4.** 79.005 (1b) of the statutes is created to read:

5 79.005 **(1b)** “Alternative energy resource” means a renewable resource, as
6 defined in s. 196.378 (1) (h); garbage, as defined in s. 289.01 (9); or
7 nonvegetation–based industrial, commercial, or household waste.

8 **SECTION 5.** 79.005 (1d) of the statutes is created to read:

9 79.005 **(1d)** “Baseload electric generating facility” means an electric
10 generating facility that has a capacity factor that is greater than 60%, as determined
11 by the public service commission.

12 **SECTION 6.** 79.005 (1f) of the statutes is created to read:

13 79.005 **(1f)** “Capacity factor” means the anticipated actual annual output of an
14 electric generating facility expressed as a percentage of the facility’s potential
15 output. For purposes of this subchapter, the public service commission may review
16 the capacity factor of an electric generating facility at any time.

17 **SECTION 6m.** 79.005 (1g) of the statutes is created to read:

18 79.005 **(1g)** “Cogeneration production plant” means an electric generating
19 facility that produces electricity and another form of thermal energy, including heat
20 or steam, that is used for industrial, commercial, heating, or cooling purposes.

21 **SECTION 7.** 79.005 (2m) of the statutes is created to read:

22 79.005 **(2m)** “Power generation unit” means a complete set of electric
23 generating equipment, as defined in s. 196.52 (9) (a) 1., that, collectively, is sufficient
24 to generate electric power.

25 **SECTION 8.** 79.005 (3) of the statutes is amended to read:

1 79.005 (3) “Production plant” ~~also includes~~ does not include substations and
2 general structures.

3 **SECTION 9.** 79.005 (4) of the statutes is created to read:

4 79.005 (4) “Repowered” means any of the following:

5 (a) Replacing the boiler on an existing fossil fuel steam unit with a combustion
6 turbine and heat recovery steam generator and reusing the steam turbine and heat
7 rejection system.

8 (b) Adding a heat recovery steam generator to a simple cycle combustion
9 turbine.

10 (c) Demolishing or abandoning an existing power generation unit and replacing
11 it with a new power generation unit at the same site.

12 (d) Replacing steam generating equipment at a combustion–based renewable
13 facility, as defined in s. 196.378 (1) (g), to increase efficiency or capacity, if the facility
14 remains a combustion–based renewable facility, as defined in s. 196.378 (1) (g), after
15 replacing the equipment.

16 **SECTION 10.** 79.01 (2m) of the statutes is created to read:

17 79.01 (2m) There is established an account in the general fund entitled the
18 “Public Utility Distribution Account,” referred to in this chapter as the “public utility
19 account.” There shall be appropriated to the public utility account the sums specified
20 in s. 79.04 (5), (6), and (7).

21 **SECTION 11.** 79.04 (1) (intro.) of the statutes is amended to read:

22 79.04 (1) (intro.) Annually, except for production plants that begin operation
23 after December 31, 2003, or begin operation as a repowered production plant after
24 December 31, 2003, the department of administration, upon certification by the

25 department of revenue, shall distribute to a municipality having within its
1 boundaries a production plant ~~or a~~ general structure, ~~including production plants~~
2 ~~and general structures under construction~~ or substation, used by a light, heat, or
3 power company assessed under s. 76.28 (2) or 76.29 (2), except property described in
4 s. 66.0813 unless the production plant or substation is owned or operated by a local
5 governmental unit located outside of the municipality, or by an electric cooperative
6 assessed under ss. 76.07 and 76.48, respectively, or by a municipal electric company
7 under s. 66.0825 the amount determined as follows:

8 **SECTION 12.** 79.04 (1) (a) of the statutes is amended to read:

9 79.04 (1) (a) An amount from the shared revenue account determined by
10 multiplying by 3 mills in the case of a town, and 6 mills in the case of a city or village,
11 the first \$125,000,000 of the amount shown in the account, plus leased property, of
12 each public utility except qualified wholesale electric companies, as defined in s.
13 76.28 (1) (gm), on December 31 of the preceding year for either “production plant,
14 exclusive of land” ~~and,~~ “general structures”, or “work in progress” ~~for production~~
15 ~~plants and general structures under construction,~~ and “substations.” in the case of
16 light, heat and power companies, electric cooperatives or municipal electric
17 companies, for all property within a municipality in accordance with the system of
18 accounts established by the public service commission or rural electrification
19 administration, less depreciation thereon as determined by the department of
20 revenue and less the value of treatment plant and pollution abatement equipment,
21 as defined under s. 70.11 (21) (a), as determined by the department of revenue plus
22 an amount from the shared revenue account determined by multiplying by 3 mills
23 in the case of a town, and 6 mills in the case of a city or village, of the first
24 \$125,000,000 of the total original cost of production plant, general structures, and

25 ~~work-in-progress~~ substations less depreciation, land and approved waste treatment
1 facilities of each qualified wholesale electric company, as defined in s. 76.28 (1) (gm),
2 as reported to the department of revenue of all property within the municipality. The
3 total of amounts, as depreciated, from the accounts of all public utilities for the same
4 production plant is also limited to not more than \$125,000,000. The amount
5 distributable to a municipality under this subsection and sub. (6) in any year shall
6 not exceed \$300 times the population of the municipality.

7 **SECTION 13.** 79.04 (1) (b) 2. of the statutes is amended to read:

8 79.04 (1) (b) 2. When a light, heat or power company no longer uses property
9 described under par. (a) as production plant, substation, or general structure in a
10 municipality, the amount established under subd. 1. shall be reduced by the
11 proportion that the property that is no longer used bears to the total value of all
12 property described in par. (a) in the municipality. The proportion shall be determined
13 according to the proportional value of the property when the light, heat or power
14 company stops using the property.

15 **SECTION 14.** 79.04 (1) (c) 1. of the statutes is amended to read:

16 79.04 (1) (c) 1. The payment for any municipality in which a production plant
17 is located, which the public service commission certifies to the department of revenue
18 will produce a nominal rated capacity of 200 megawatts or more, shall be no less than
19 \$75,000 annually, except that the amount distributable to a municipality in any year
20 shall not exceed the per capita limit specified in par. (a). ~~Payments under this~~
21 ~~paragraph may be extended to decommissioned production plants as provided in~~
22 ~~subd. 3.~~

23 **SECTION 15.** 79.04 (1) (c) 3. of the statutes is amended to read:

24 79.04 (1) (c) 3. If a production plant with a nominal rated capacity of 200
25 megawatts or more is decommissioned or becomes nonutility property, the \$75,000
1 minimum guaranteed payment under subd. 1. shall continue but diminish by \$7,500
2 annually, except that the minimum guaranteed payment under this subdivision
3 shall cease in the year following the first year in which the property becomes taxable
4 by the taxation district. In this subdivision, “nonutility property” has the meaning
5 set forth in the uniform system of accounts established by the public service
6 commission. This subdivision does not apply after the distributions in 2004.

7 **SECTION 16.** 79.04 (2) (a) of the statutes is amended to read:

8 79.04 (2) (a) Annually, except for production plants that begin operation after
9 December 31, 2003, or begin operation as a repowered production plant after
10 December 31, 2003, the department of administration, upon certification by the
11 department of revenue, shall distribute from the shared revenue account to any
12 county having within its boundaries a production plant ~~or a~~ general structure,
13 ~~including production plants and general structures under construction or~~ or
14 substation, used by a light, heat or power company assessed under s. 76.28 (2) or
15 76.29 (2), except property described in s. 66.0813 unless the production plant or
16 substation is owned or operated by a local governmental unit that is located outside
17 of the municipality in which the production plant or substation is located, or by an
18 electric cooperative assessed under ss. 76.07 and 76.48, respectively, or by a
19 municipal electric company under s. 66.0825 an amount determined by multiplying
20 by 6 mills in the case of property in a town and by 3 mills in the case of property in
21 a city or village the first \$125,000,000 of the amount shown in the account, plus
22 leased property, of each public utility except qualified wholesale electric companies,
23 as defined in s. 76.28 (1) (gm), on December 31 of the preceding year for either

24 “production plant, exclusive of land” and, “general structures”, or “work in progress”
25 for production plants and general structures under construction,” and
1 “substations,” in the case of light, heat and power companies, electric cooperatives
2 or municipal electric companies, for all property within the municipality in
3 accordance with the system of accounts established by the public service commission
4 or rural electrification administration, less depreciation thereon as determined by
5 the department of revenue and less the value of treatment plant and pollution
6 abatement equipment, as defined under s. 70.11 (21) (a), as determined by the
7 department of revenue plus an amount from the shared revenue account determined
8 by multiplying by 6 mills in the case of property in a town, and 3 mills in the case of
9 property in a city or village, of the total original cost of production plant, general
10 structures, and work-in-progress substations less depreciation, land and approved
11 waste treatment facilities of each qualified wholesale electric company, as defined in
12 s. 76.28 (1) (gm), as reported to the department of revenue of all property within the
13 municipality. The total of amounts, as depreciated, from the accounts of all public
14 utilities for the same production plant is also limited to not more than \$125,000,000.
15 The amount distributable to a county under this subsection and sub. (6) in any year
16 shall not exceed \$100 times the population of the county.

17 **SECTION 17.** 79.04 (2) (am) 2. of the statutes is amended to read:

18 79.04 (2) (am) 2. When a light, heat or power company no longer uses property
19 described under par. (a) as production plant, substation, or general structure in a
20 county, the amount established under subd. 1. shall be reduced by the proportion that
21 the property that is no longer used bears to the total value of all property described
22 in par. (a) in the county. The proportion shall be determined according to the

23 proportional value of the property when the light, heat or power company stops using
24 the property.

25 **SECTION 18.** 79.04 (3m) of the statutes is created to read:

1 79.04 **(3m)** For purposes of determining the amount of the payments under
2 subs. (1) and (2), the payments for a municipality and county in which an ash disposal
3 facility that is owned and operated by an electric cooperative is operating prior to the
4 effective date of this subsection ... [revisor inserts date], shall be calculated to
5 include an amount that is equal to the net book value of the ash disposal facility
6 multiplied by 2.

7 **SECTION 19.** 79.04 (4) of the statutes is amended to read:

8 79.04 **(4)** (a) Annually, in addition to the ~~amount~~ amounts distributed under
9 ~~sub. (1)~~ subs. (1), (5), (6), and (7), the department of administration shall distribute
10 \$50,000 to a municipality if spent nuclear fuel is stored within the municipality on
11 December 31 of the preceding year. If a spent nuclear fuel storage facility is located
12 within one mile of a municipality, that municipality shall receive \$10,000 annually
13 and the municipality where that storage facility is located shall receive \$40,000
14 annually.

15 (b) Annually, in addition to the ~~amount~~ amounts distributed under ~~sub. (2)~~
16 subs. (2), (5), (6), and (7), the department of administration shall distribute \$50,000
17 to a county if spent nuclear fuel is stored within the county on December 31 of the
18 preceding year. If a spent nuclear fuel storage facility is located at a production plant
19 located in more than one county, the payment shall be apportioned according to the
20 formula under sub. (1) (c) 2., except that the formula, as it applies to municipalities
21 in that subdivision, applies to counties in this paragraph. The payment under this
22 paragraph may not be less than \$10,000 annually.

23 **SECTION 20.** 79.04 (5) of the statutes is created to read:

24 79.04 (5) (a) Beginning with the distributions in 2005, if property that was
25 exempt from the property tax under s. 70.112 (4) and that was used to generate power
1 by a light, heat, or power company, except property under s. 66.0813, unless the
2 production plant is owned or operated by a local governmental unit located outside
3 of the municipality, or by an electric cooperative, or by a municipal electric company
4 under s. 66.0825, is decommissioned, the municipality shall be paid, from the public
5 utility account, an amount calculated by subtracting an amount equal to the
6 property taxes paid for that property during the current year to the municipality for
7 its general operations from the following percentages of the payment that the
8 municipality received under this section during the last year that the property was
9 exempt from the property tax:

- 10 1. In the first year that the property is taxable, 100%.
- 11 2. In the 2nd year that the property is taxable, 80%.
- 12 3. In the 3rd year that the property is taxable, 60%.
- 13 4. In the 4th year that the property is taxable, 40%.
- 14 5. In the 5th year that the property is taxable, 20%.

15 (b) Beginning with the distributions in 2005, if property that was exempt from
16 the property tax under s. 70.112 (4) and that was used to generate power by a light,
17 heat, or power company, except property under s. 66.0813, unless the production
18 plant is owned or operated by a local governmental unit located outside of the
19 municipality, or by an electric cooperative, or by a municipal electric company under
20 s. 66.0825, is decommissioned, the county shall be paid, from the public utility
21 account, an amount calculated by subtracting an amount equal to the property taxes
22 paid for that property during the current year to the county for its general operations

23 from the following percentages of the payment the county received under this section
24 during the last year that the property was exempt from the property tax:

- 25 1. In the first year that the property is taxable, 100%.
- 1 2. In the 2nd year that the property is taxable, 80%.
- 2 3. In the 3rd year that the property is taxable, 60%.
- 3 4. In the 4th year that the property is taxable, 40%.
- 4 5. In the 5th year that the property is taxable, 20%.

5 **SECTION 21.** 79.04 (6) of the statutes is created to read:

6 79.04 **(6)** (a) Annually, beginning in 2005, for production plants that begin
7 operation after December 31, 2003, or begin operation as a repowered production
8 plant after December 31, 2003, the department of administration, upon certification
9 by the department of revenue, shall distribute payments from the public utility
10 account, as determined under par. (b), to each municipality and county in which a
11 production plant is located, if the production plant has a name–plate capacity of at
12 least one megawatt and is used by a light, heat, or power company assessed under
13 s. 76.28 (2) or 76.29 (2), except property described in s. 66.0813, unless the production
14 plant is owned or operated by a local governmental unit located outside of the
15 municipality; by a qualified wholesale electric company, as defined in s. 76.28 (1)
16 (gm); by a wholesale merchant plant, as defined in s. 196.491 (1) (w); by an electric
17 cooperative assessed under ss. 76.07 and 76.48, respectively; or by a municipal
18 electric company under s. 66.0825.

19 (b) Subject to pars. (c) and (d), each municipality entitled to a payment under
20 par. (a) and each county in which such a municipality is located shall receive a
21 payment equal to a portion of an amount that is equal to the number of megawatts
22 that represents the production plant’s name–plate capacity, multiplied by \$2,000.

23 (c) 1. If the production plant is located in a city or village, the city or village
24 receives a payment equal to two-thirds of the amount determined under par. (b) and
25 the county in which the city or village is located receives a payment equal to
1 one-third of the amount determined under par. (b). If the production plant is located
2 in a town, the town receives a payment equal to one-third of the amount determined
3 under par. (b), and the county in which the town is located receives a payment equal
4 to two-thirds of the amount determined under par. (b). If a municipality is located
5 in more than one county, the county in which the production plant is located shall
6 receive the county portion of the payment.

7 2. For the purpose of determining the amount of the payment under par. (b),
8 if a production plant is located in more than one municipality, the payment amount
9 under par. (b) shall be divided among the municipalities in which the plant is located
10 based on the net book value of that portion of the plant located in each municipality
11 as of December 31, 2004, or as of the date on which the plant is operational,
12 whichever is later.

13 (d) The total amount distributable to a municipality under this subsection and
14 sub. (1) in any fiscal year shall not exceed an amount equal to the municipality's
15 population multiplied by \$300, and the total amount distributable to a county under
16 this subsection and sub. (2) in any year shall not exceed an amount equal to the
17 county's population multiplied by \$100.

18 **SECTION 22.** 79.04 (7) of the statutes is created to read:

19 79.04 (7) (a) Beginning with payments in 2005, if a production plant, as
20 described in sub. (6) (a), other than a nuclear-powered production plant, is built on
21 the site of, or on a site adjacent to, an existing or decommissioned production plant;
22 or is built on a site purchased by a public utility before January 1, 1980, that was

23 identified in an advance plan as a proposed site for a production plant; or is built on,
24 or on a site adjacent to, brownfields, as defined in s. 560.13 (1) (a), after December
25 31, 2003, and has a name–plate capacity of at least one megawatt, each municipality
1 and county in which such a production plant is located shall receive annually from
2 the public utility account a payment in an amount that is equal to the number of
3 megawatts that represents the production plant’s name–plate capacity, multiplied
4 by \$600.

5 (b) 1. Beginning with payments in 2005, if a production plant, as described in
6 sub. (6) (a), that is a baseload electric generating facility is built after December 31,
7 2003, and has a name–plate capacity of at least 50 megawatts, each municipality and
8 county in which such a production plant is located shall receive annually from the
9 public utility account a payment in an amount that is equal to the number of
10 megawatts that represents the production plant’s name–plate capacity, multiplied
11 by \$600.

12 2. If a baseload electric generating facility as described in subd. 1. is located on
13 a site that is contiguous to a municipality in which the facility is not located, the
14 contiguous municipality shall receive annually from the public utility account a
15 payment in an amount that is equal to the number of megawatts that represents the
16 production plant’s name–plate capacity, multiplied by \$100. A municipality that
17 receives a payment under this subdivision may not receive a mitigation payment as
18 defined in s. 196.20 (7) (a).

19 (c) 1. Except as provided in subd. 2., beginning with payments in 2005, if a
20 production plant, as described in sub. (6) (a), that derives energy from an alternative
21 energy resource is built after December 31, 2003, and has a name–plate capacity of
22 at least one megawatt, each municipality and county in which such a production

23 plant is located shall receive annually from the public utility account a payment in
24 an amount that is equal to the number of megawatts that represents the production
25 plant's name-plate capacity, multiplied by \$1,000.

1 1m. Beginning with payments in 2005, if a cogeneration production plant, as
2 described in sub. (6) (a), is built and completed after December 31, 2003, and before
3 December 31, 2006, and has a name-plate capacity of at least one megawatt, each
4 municipality and county in which such a cogeneration production plant is located
5 shall receive annually from the public utility account a payment in an amount that
6 is equal to the number of megawatts that represents the cogeneration production
7 plant's name-plate capacity, multiplied by \$1,000. Any municipality or county that
8 receives a payment under this subdivision in any year may not receive a payment
9 under subd. 1. in that year.

10 2. If a production plant as described under subd. 1. fires an alternative energy
11 resource together with a fuel other than an alternative energy resource, the number
12 of megawatts used to calculate the payment under subd. 1. is the number of
13 megawatts that represents the production plant's name-plate capacity multiplied by
14 a percentage that represents the energy content of the alternative energy resource
15 in the year prior to the year in which the payment is made as compared to the total
16 energy content of the alternative energy resource and the other fuel in the year prior
17 to the year in which the payment is made.

18 **SECTION 23.** 196.20 (7) of the statutes is created to read:

19 196.20 (7) (a) In this subsection, "mitigation payment" means, as approved by
20 the commission, an unrestricted or recurring monetary payment to a local unit of
21 government in which an electric generating facility is located to mitigate the impact
22 of the electric generating facility on the local unit of government. "Mitigation

23 payment” does not include payments made or in-kind contributions for restricted
24 purposes to directly address health or safety impacts of the electric generating
25 facility on the local unit of government.

1 (b) Except as provided in par. (c), an electric public utility may not recover in
2 rates any of the following:

3 1. The cost of mitigation payments paid by the utility.

4 2. The cost of mitigation payments paid by the owner or operator of an electric
5 generating facility that the owner or operator recovers from the utility by selling
6 electricity to the utility, by leasing the facility to the utility, or by any agreement
7 between the owner or operator of the electric generating facility and the public
8 utility.

9 (c) The commission shall only approve a mitigation payment agreement that
10 is received by the commission before June 10, 2003, and, if the commission finds the
11 agreement to be reasonable, shall not subsequently modify the agreement.

12 **SECTION 24. Initial applicability.**

13 (1) The treatment of sections 20.835 (1) (d) and (dm), 79.005 (1), (1b), (1d), (1f),
14 (2m), (3), and (4), 79.01 (2m), and 79.04 (1) (intro.), (a), (b) 2., and (c) 1., (2) (a) and
15 (am) 2., (3m), (4), (5), (6), and (7) of the statutes first applies to distributions made
16 on the 4th Monday in July, 2005.

17 (END)