

## 2007 SENATE BILL 73

February 27, 2007 – Introduced by Senators KANAVAS, DARLING and LEIBHAM, cosponsored by Representatives STRACHOTA, HAHN, PETROWSKI, PRIDEMORE, KLEEFISCH and GUNDERSON. Referred to Committee on Campaign Finance Reform, Rural Issues and Information Technology.

1     **AN ACT** *to amend* 71.05 (6) (a) 15., 71.08 (1) (intro.), 71.21 (4), 71.26 (2) (a), 71.34  
2           (1) (g), 71.45 (2) (a) 10. and 77.92 (4); and *to create* 71.07 (5i), 71.10 (4) (gab),  
3           71.28 (5i), 71.30 (3) (dq), 71.47 (5i) and 71.49 (1) (dq) of the statutes; **relating**  
4           **to:** creating an income and franchise tax credit for constructing and operating  
5           a data center that is designed for maximum energy efficiency and minimum  
6           environmental impact and providing an exemption from rule-making  
7           procedures.

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### ***Analysis by the Legislative Reference Bureau***

This bill creates an income and franchise tax credit in an amount equal to the amount a person paid in the taxable year for items that are either energy efficient or have a minimal environmental impact and that are used to construct or operate a “green data center.” Under the bill, a green data center is a repository for the storage, management, and dissemination of data, if the mechanical, lighting, electrical, and computer systems of the real property in which the repository is located are designed for maximum energy efficiency and minimum environmental impact.

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

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

1           **SECTION 1.** 71.05 (6) (a) 15. of the statutes is amended to read:

2           71.05 **(6)** (a) 15. The amount of the credits computed under s. 71.07 (2dd), (2de),  
3           (2di), (2dj), (2dL), (2dm), (2dr), (2ds), (2dx), (3g), (3n), (3s), (3t), (3w), (5b), (5d), and  
4           (5e), (5f), and (5h), and (5i) and not passed through by a partnership, limited liability  
5           company, or tax–option corporation that has added that amount to the partnership’s,  
6           company’s, or tax–option corporation’s income under s. 71.21 (4) or 71.34 (1) (g).

7           **SECTION 2.** 71.07 (5i) of the statutes is created to read:

8           71.07 **(5i)** GREEN DATA CENTER CREDIT. (a) *Definitions.* In this subsection:

9           1. “Claimant” means a person who files a claim under this subsection.

10          2. “Green data center” means a repository for the storage, management, and  
11          dissemination of data, if the mechanical, lighting, electrical, and computer systems  
12          of the real property in which the repository is located are designed for maximum  
13          energy efficiency and minimum environmental impact.

14          3. “Reduced amount” means an amount that is at least 25 percent less than the  
15          maximum amount allowed under federal law.

16          (b) *Filing claims.* Subject to the limitations provided in this subsection and  
17          2007 Wisconsin Act .... (this act), section 14, for taxable years beginning after June  
18          30, 2007, and before July 1, 2009, a claimant may claim as a credit against the taxes  
19          imposed under s. 71.02 or 71.08, up to the amount of the taxes, the amount that the  
20          claimant paid in the taxable year for the following items that are used to construct  
21          and operate a green data center:

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- 1           1. At least 2 of the following:
- 2           a. Low-emission building materials, including carpets and paints.
- 3           b. Sustainable landscaping.
- 4           c. An electronic waste recycling program, as defined by the department.
- 5           2. At least 2 of the following:
- 6           a. Catalytic converters on back-up generators.
- 7           b. Photovoltaics.
- 8           c. Heat pumps.
- 9           d. Evaporative cooling.
- 10          3. Equipment or equipment components that have a reduced amount, or none,
- 11 of at least 4 of the following:
- 12          a. Mercury.
- 13          b. Cadmium.
- 14          c. Lead.
- 15          d. Chromium VI.
- 16          e. Polybrominated biphenyls.
- 17          f. Polybrominated diphenyl ether.
- 18          (c) *Limitations.* 1. The maximum amount of all credits that may be claimed
- 19 under this subsection and ss. 71.28 (5i) and 71.47 (5i) is \$2,000,000. No claimant may
- 20 claim a credit under this subsection unless the claimant submits with the claimant's
- 21 return a copy of the claimant's certification for credits under 2007 Wisconsin Act ...
- 22 (this act), section 14.
- 23          2. Partnerships, limited liability companies, and tax-option corporations may
- 24 not claim the credit under this subsection, but the eligibility for, and the amount of,
- 25 the credit are based on their payment of amounts under par. (b). A partnership,

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

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

8 **SECTION 3.** 71.08 (1) (intro.) of the statutes is amended to read:

9 71.08 (1) IMPOSITION. (intro.) If the tax imposed on a natural person, married  
10 couple filing jointly, trust, or estate under s. 71.02, not considering the credits under  
11 ss. 71.07 (1), (2dd), (2de), (2di), (2dj), (2dL), (2dr), (2ds), (2dx), (2fd), ~~(3e), (3e)~~, (3m),  
12 (3n), (3s), (3t), (3w), (5b), (5d), (5e), (5f), (5i), (6), (6e), and (9e), 71.28 (1dd), (1de), (1di),  
13 (1dj), (1dL), (1ds), (1dx), (1fd), (2m), (3), (3n), (3t), and (3w), and 71.47 (1dd), (1de),  
14 (1di), (1dj), (1dL), (1ds), (1dx), (1fd), (2m), (3), (3n), (3t), and (3w), and subchs. VIII  
15 and IX and payments to other states under s. 71.07 (7), is less than the tax under this  
16 section, there is imposed on that natural person, married couple filing jointly, trust  
17 or estate, instead of the tax under s. 71.02, an alternative minimum tax computed  
18 as follows:

19 **SECTION 4.** 71.10 (4) (gab) of the statutes is created to read:

20 71.10 (4) (gab) Green data center credit under s. 71.07 (5i).

21 **SECTION 5.** 71.21 (4) of the statutes is amended to read:

22 71.21 (4) Credits computed by a partnership under s. 71.07 (2dd), (2de), (2di),  
23 (2dj), (2dL), (2dm), (2ds), (2dx), (3g), (3n), (3s), (3t), (3w), (5b), (5e), (5f), (5g), ~~and (5h)~~,  
24 and (5i) and passed through to partners shall be added to the partnership's income.

25 **SECTION 6.** 71.26 (2) (a) of the statutes is amended to read:

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1           71.26 (2) (a) *Corporations in general.* The “net income” of a corporation means  
2           the gross income as computed under the Internal Revenue Code as modified under  
3           sub. (3) minus the amount of recapture under s. 71.28 (1di) plus the amount of credit  
4           computed under s. 71.28 (1), (3), (4), and (5) minus, as provided under s. 71.28 (3) (c)  
5           7., the amount of the credit under s. 71.28 (3) that the taxpayer added to income  
6           under this paragraph at the time that the taxpayer first claimed the credit plus the  
7           amount of the credit computed under s. 71.28 (1dd), (1de), (1di), (1dj), (1dL), (1dm),  
8           (1ds), (1dx), (3g), (3n), (3t), (3w), (5b), (5e), (5f), (5g), ~~and (5h)~~, and (5i) and not passed  
9           through by a partnership, limited liability company, or tax-option corporation that  
10          has added that amount to the partnership’s, limited liability company’s, or  
11          tax-option corporation’s income under s. 71.21 (4) or 71.34 (1) (g) plus the amount  
12          of losses from the sale or other disposition of assets the gain from which would be  
13          wholly exempt income, as defined in sub. (3) (L), if the assets were sold or otherwise  
14          disposed of at a gain and minus deductions, as computed under the Internal Revenue  
15          Code as modified under sub. (3), plus or minus, as appropriate, an amount equal to  
16          the difference between the federal basis and Wisconsin basis of any asset sold,  
17          exchanged, abandoned, or otherwise disposed of in a taxable transaction during the  
18          taxable year, except as provided in par. (b) and s. 71.45 (2) and (5).

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

20           71.28 (5i) GREEN DATA CENTER CREDIT. (a) *Definitions.* In this subsection:

21           1. “Claimant” means a person who files a claim under this subsection.

22           2. “Green data center” means a repository for the storage, management, and  
23          dissemination of data, if the mechanical, lighting, electrical, and computer systems  
24          of the real property in which the repository is located are designed for maximum  
25          energy efficiency and minimum environmental impact.

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1           3. “Reduced amount” means an amount that is at least 25 percent less than the  
2 maximum amount allowed under federal law.

3           (b) *Filing claims.* Subject to the limitations provided in this subsection and  
4 2007 Wisconsin Act .... (this act), section 14, for taxable years beginning after June  
5 30, 2007, and before July 1, 2009, a claimant may claim as a credit against the taxes  
6 imposed under s. 71.23, up to the amount of the taxes, the amount that the claimant  
7 paid in the taxable year for the following items that are used to construct and operate  
8 a green data center:

9           1. At least 2 of the following:

10           a. Low-emission building materials, including carpets and paints.

11           b. Sustainable landscaping.

12           c. An electronic waste recycling program, as defined by the department.

13           2. At least 2 of the following:

14           a. Catalytic converters on back-up generators.

15           b. Photovoltaics.

16           c. Heat pumps.

17           d. Evaporative cooling.

18           3. Equipment or equipment components that have a reduced amount, or none,  
19 of at least 4 of the following:

20           a. Mercury.

21           b. Cadmium.

22           c. Lead.

23           d. Chromium VI.

24           e. Polybrominated biphenyls.

25           f. Polybrominated diphenyl ether.

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1           (c) *Limitations.* 1. The maximum amount of all credits that may be claimed  
2           under this subsection and ss. 71.07 (5i) and 71.47 (5i) is \$2,000,000. No claimant may  
3           claim a credit under this subsection unless the claimant submits with the claimant's  
4           return a copy of the claimant's certification for credits under 2007 Wisconsin Act ...  
5           (this act), section 14.

6           2. 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 interests.

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

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

17          71.30 (3) (dq) Green data center credit under s. 71.28 (5i).

18          **SECTION 9.** 71.34 (1) (g) of the statutes is amended to read:

19          71.34 (1) (g) An addition shall be made for credits computed by a tax-option  
20          corporation under s. 71.28 (1dd), (1de), (1di), (1dj), (1dL), (1dm), (1ds), (1dx), (3), (3g),  
21          (3n), (3t), (3w), (5b), (5e), (5f), (5g), ~~and (5h), and (5i)~~ and passed through to  
22          shareholders.

23          **SECTION 10.** 71.45 (2) (a) 10. of the statutes is amended to read:

24          71.45 (2) (a) 10. By adding to federal taxable income the amount of credit  
25          computed under s. 71.47 (1dd) to (1dx), (3n), (3w), (5b), (5e), (5f), (5g), ~~and (5h), and~~

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1     (5i) and not passed through by a partnership, limited liability company, or tax-option  
2     corporation that has added that amount to the partnership's, limited liability  
3     company's, or tax-option corporation's income under s. 71.21 (4) or 71.34 (1) (g) and  
4     the amount of credit computed under s. 71.47 (1), (3), (3t), (4), and (5).

5             **SECTION 11.** 71.47 (5i) of the statutes is created to read:

6             71.47 **(5i)** GREEN DATA CENTER CREDIT. (a) *Definitions.* In this subsection:

7                 1. "Claimant" means a person who files a claim under this subsection.

8                 2. "Green data center" means a repository for the storage, management, and  
9     dissemination of data, if the mechanical, lighting, electrical, and computer systems  
10    of the real property in which the repository is located are designed for maximum  
11    energy efficiency and minimum environmental impact.

12             3. "Reduced amount" means an amount that is at least 25 percent less than the  
13    maximum amount allowed under federal law.

14             (b) *Filing claims.* Subject to the limitations provided in this subsection and  
15    2007 Wisconsin Act .... (this act), section 14, for taxable years beginning after June  
16    30, 2007, and before July 1, 2009, a claimant may claim as a credit against the taxes  
17    imposed under s. 71.43, up to the amount of the taxes, the amount that the claimant  
18    paid in the taxable year for the following items that are used to construct and operate  
19    a green data center:

20                 1. At least 2 of the following:

21                     a. Low-emission building materials, including carpets and paints.

22                     b. Sustainable landscaping.

23                     c. An electronic waste recycling program, as defined by the department.

24                 2. At least 2 of the following:

25                     a. Catalytic converters on back-up generators.



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1           b. Photovoltaics.

2           c. Heat pumps.

3           d. Evaporative cooling.

4           3. Equipment or equipment components that have a reduced amount, or none,  
5 of at least 4 of the following:

6           a. Mercury.

7           b. Cadmium.

8           c. Lead.

9           d. Chromium VI.

10          e. Polybrominated biphenyls.

11          f. Polybrominated diphenyl ether.

12          (c) *Limitations.* 1. The maximum amount of all credits that may be claimed  
13 under this subsection and ss. 71.07 (5i) and 71.28 (5i) is \$2,000,000. No claimant may  
14 claim a credit under this subsection unless the claimant submits with the claimant's  
15 return a copy of the claimant's certification for credits under 2007 Wisconsin Act ....  
16 (this act), section 14.

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

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

3 **SECTION 12.** 71.49 (1) (dq) of the statutes is created to read:

4 71.49 (1) (dq) Green data center credit under s. 71.47 (5i).

5 **SECTION 13.** 77.92 (4) of the statutes is amended to read:

6 77.92 (4) “Net business income,” with respect to a partnership, means taxable  
7 income as calculated under section 703 of the Internal Revenue Code; plus the items  
8 of income and gain under section 702 of the Internal Revenue Code, including taxable  
9 state and municipal bond interest and excluding nontaxable interest income or  
10 dividend income from federal government obligations; minus the items of loss and  
11 deduction under section 702 of the Internal Revenue Code, except items that are not  
12 deductible under s. 71.21; plus guaranteed payments to partners under section 707  
13 (c) of the Internal Revenue Code; plus the credits claimed under s. 71.07 (2dd), (2de),  
14 (2di), (2dj), (2dL), (2dm), (2dr), (2ds), (2dx), (3g), (3s), (3n), (3t), (3w), (5b), (5e), (5f),  
15 (5g), and (5h), and (5i); and plus or minus, as appropriate, transitional adjustments,  
16 depreciation differences, and basis differences under s. 71.05 (13), (15), (16), (17), and  
17 (19); but excluding income, gain, loss, and deductions from farming. “Net business  
18 income,” with respect to a natural person, estate, or trust, means profit from a trade  
19 or business for federal income tax purposes and includes net income derived as an  
20 employee as defined in section 3121 (d) (3) of the Internal Revenue Code.

21 **SECTION 14. Nonstatutory provisions.**

22 (1) GREEN DATA CENTER CREDIT PROGRAM.

23 (a) Not later than 30 days after the effective date of this subsection, the  
24 department of commerce shall implement a program for certifying businesses as

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1 eligible for tax credits under sections 71.07 (5i), 71.28 (5i), and 71.47 (5i) of the  
2 statutes.

3 (b) If the department of commerce certifies a business as eligible under  
4 paragraph (a), the department shall determine the maximum amount of tax credits  
5 the business may claim. The total amount of tax credits allocated to all eligible  
6 businesses may not exceed \$2,000,000.

7 (c) Notwithstanding section 227.24 of the statutes, the department of  
8 commerce may promulgate emergency rules necessary to administer this subsection.  
9 Notwithstanding section 227.24 (1) (c) and (2) of the statutes, emergency rules  
10 promulgated under this subsection remain in effect until the effective date of  
11 permanent rules promulgated under this subsection, or the first day of the 13th  
12 month after the effective date of this subsection, whichever is sooner.  
13 Notwithstanding section 227.24 (1) (a) and (3) of the statutes, the department of  
14 commerce is not required to provide evidence that promulgating a rule under this  
15 subsection as an emergency rule is necessary for the preservation of the public peace,  
16 health, safety, or welfare and is not required to provide a finding of emergency for a  
17 rule promulgated under this subsection.

18 (d) This subsection does not apply after June 30, 2008.

19 (END)