

2007 SENATE BILL 74

February 27, 2007 – Introduced by Senators KANAVAS, DARLING, S. FITZGERALD, KEDZIE, LEIBHAM and ROESSLER, cosponsored by Representatives KLEEFISCH, HAHN, VAN ROY, PRIDEMORE and GUNDERSON. Referred to Committee on Economic Development, Job Creation, Family Prosperity and Housing.

1 **AN ACT** *to amend* 71.05 (6) (a) 15., 71.21 (4), 71.26 (2) (a), 71.34 (1) (g), 71.45 (2)
2 (a) 10. and 77.92 (4); and *to create* 71.07 (5j), 71.10 (4) (gwd), 71.28 (5j), 71.30
3 (3) (eor), 71.47 (5j), 71.49 (1) (eor) and 560.207 of the statutes; **relating to:**
4 creating an income and franchise tax credit for eligible innovation projects and
5 project facilities.

Analysis by the Legislative Reference Bureau

Under this bill, a person may claim an income and franchise tax credit that is equal to 75 percent of the costs that the person paid in the taxable year related to creating and operating a project facility or to creating and maintaining an eligible innovation project. The amount that a claimant may claim in any taxable year may not exceed \$500,000, and the total amount of all claims in each year may not exceed \$10,000,000. Under the bill, a project facility is any facility located in this state that is operated for the purpose of creating and maintaining an eligible innovation project, if the operation of the facility is likely to create new jobs, or preserve existing jobs, in this state, as determined by the Department of Commerce. The bill defines an eligible innovation project as any real property, tangible personal property, or intangible property related to a new product or process that is based on new technology or the creative application of existing technology.

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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.** 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 (5j) 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 (5j) of the statutes is created to read:

8 71.07 **(5j)** INNOVATION PROJECTS AND FACILITIES CREDIT. (a) *Definitions.* In this
9 subsection:

10 1. “Blighted area” has the meaning given in s. 66.1331 (3) (a).

11 2. “Brownfield” means an industrial or commercial facility the expansion or
12 redevelopment of which is complicated by environmental contamination.

13 3. “Claimant” means a person who is certified to receive tax credits under s.
14 560.207 and who files a claim under this subsection.

15 4. “Eligible innovation project” means any real property, tangible personal
16 property, or intangible property related to a new product or process that is based on
17 new technology or the creative application of existing technology.

18 5. “Project facility” means any facility located in this state that is operated for
19 the purpose of creating and maintaining an eligible innovation project, if the
20 operation of the facility is likely to create new jobs, or preserve existing jobs, in this
21 state, as determined by the department of commerce.

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1 (b) *Filing claims.* Subject to the limitations provided under this subsection and
2 s. 560.207, for taxable years beginning after December 31, 2006, a claimant may
3 claim as a credit against the tax imposed under s. 71.02, up to the amount of the tax,
4 an amount that is equal to the following costs paid by the claimant in the taxable
5 year:

6 1. Except as provided in subd. 3., 75 percent of the costs of acquiring,
7 constructing, reconstructing, rehabilitating, renovating, enlarging, or improving a
8 project facility or eligible innovation project and 75 percent of the costs of all of the
9 following related to creating and operating a project facility or to creating and
10 maintaining an eligible innovation project:

11 a. Designs, plans, specifications, surveys, studies, estimates, and any similar
12 services or items that are necessary or incidental to determining the feasibility or
13 practicality of a project facility or eligible innovation project.

14 b. Site clearance and preparation.

15 c. Architectural, engineering, or legal services.

16 d. Marketing products.

17 2. The costs of equipping a project facility and the costs of all of the following
18 related to creating and operating a project facility or to creating and maintaining an
19 eligible innovation project:

20 a. Research and development.

21 b. Computer software or hardware.

22 c. Product testing and other quality control activities.

23 d. Perfecting products.

24 e. Creating and protecting intellectual property.

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1 3. If the project facility or eligible innovation project is a brownfield or located
2 in a blighted area, and if the brownfield or blighted area is not otherwise being
3 remediated with moneys received from the state, 100 percent of the costs described
4 in subd. 1.

5 (c) *Limitations.* 1. The maximum amount of the credit that a claimant may
6 claim under this subsection in a taxable year is \$500,000.

7 2. The maximum amount of the credits that may be awarded under this
8 subsection and ss. 71.28 (5j) and 71.47 (5j) in each year is \$10,000,000.

9 3. 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 interests.

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

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

20 71.10 (4) (gwd) Innovation projects and facilities credit under s. 71.07 (5j).

21 **SECTION 4.** 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 (5j) and passed through to partners shall be added to the partnership's income.

25 **SECTION 5.** 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 (5j) 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 6.** 71.28 (5j) of the statutes is created to read:

20 71.28 (5j) INNOVATION PROJECTS AND FACILITIES CREDIT. (a) *Definitions.* In this
21 subsection:

- 22 1. “Blighted area” has the meaning given in s. 66.1331 (3) (a).
- 23 2. “Brownfield” means an industrial or commercial facility the expansion or
24 redevelopment of which is complicated by environmental contamination.

SENATE BILL 74**SECTION 6**

1 3. “Claimant” means a person who is certified to receive tax credits under s.
2 560.206 and who files a claim under this subsection.

3 4. “Eligible innovation project” means any real property, tangible personal
4 property, or intangible property related to a new product or process that is based on
5 new technology or the creative application of existing technology.

6 5. “Project facility” means any facility located in this state that is operated for
7 the purpose of creating and maintaining an eligible innovation project, if the
8 operation of the facility is likely to create new jobs, or preserve existing jobs, in this
9 state, as determined by the department of commerce.

10 (b) *Filing claims.* Subject to the limitations provided under this subsection and
11 s. 560.207, for taxable years beginning after December 31, 2006, a claimant may
12 claim as a credit against the tax imposed under s. 71.23, up to the amount of the tax,
13 an amount that is equal to the following costs paid by the claimant in the taxable
14 year:

15 1. Except as provided in subd. 3., 75 percent of the costs of acquiring,
16 constructing, reconstructing, rehabilitating, renovating, enlarging, or improving a
17 project facility or eligible innovation project and 75 percent of the costs of all of the
18 following related to creating and operating a project facility or to creating and
19 maintaining an eligible innovation project:

20 a. Designs, plans, specifications, surveys, studies, estimates, and any similar
21 services or items that are necessary or incidental to determining the feasibility or
22 practicality of a project facility or eligible innovation project.

23 b. Site clearance and preparation.

24 c. Architectural, engineering, or legal services.

25 d. Marketing products.

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1 2. The costs of equipping a project facility and the costs of all of the following
2 related to creating and operating a project facility or to creating and maintaining an
3 eligible innovation project:

- 4 a. Research and development.
- 5 b. Computer software or hardware.
- 6 c. Product testing and other quality control activities.
- 7 d. Perfecting products.
- 8 e. Creating and protecting intellectual property.

9 3. If the project facility or eligible innovation project is a brownfield or located
10 in a blighted area, and if the brownfield or blighted area is not otherwise being
11 remediated with moneys received from the state, 100 percent of the costs described
12 in subd. 1.

13 (c) *Limitations.* 1. The maximum amount of the credit that a claimant may
14 claim under this subsection in a taxable year is \$500,000.

15 2. The maximum amount of the credits that may be awarded under this
16 subsection and ss. 71.07 (5j) and 71.47 (5j) in each year is \$10,000,000.

17 3. 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*. Subsection (4) (e) to (h), as it applies to the credit under
2 sub. (4), applies to the credit under this subsection.

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

4 71.30 **(3)** (eor) Innovation projects and facilities credit under s. 71.28 (5j).

5 **SECTION 8.** 71.34 (1) (g) of the statutes is amended to read:

6 71.34 **(1)** (g) An addition shall be made for credits computed by a tax-option
7 corporation under s. 71.28 (1dd), (1de), (1di), (1dj), (1dL), (1dm), (1ds), (1dx), (3), (3g),
8 (3n), (3t), (3w), (5b), (5e), (5f), (5g), ~~and (5h),~~ and (5j) and passed through to
9 shareholders.

10 **SECTION 9.** 71.45 (2) (a) 10. of the statutes is amended to read:

11 71.45 **(2)** (a) 10. By adding to federal taxable income the amount of credit
12 computed under s. 71.47 (1dd) to (1dx), (3n), (3w), (5b), (5e), (5f), (5g), ~~and (5h),~~ and
13 (5j) and not passed through by a partnership, limited liability company, or tax-option
14 corporation that has added that amount to the partnership's, limited liability
15 company's, or tax-option corporation's income under s. 71.21 (4) or 71.34 (1) (g) and
16 the amount of credit computed under s. 71.47 (1), (3), (3t), (4), and (5).

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

18 71.47 **(5j)** INNOVATION PROJECTS AND FACILITIES CREDIT. (a) *Definitions*. In this
19 subsection:

20 1. "Blighted area" has the meaning given in s. 66.1331 (3) (a).

21 2. "Brownfield" means an industrial or commercial facility the expansion or
22 redevelopment of which is complicated by environmental contamination.

23 3. "Claimant" means a person who is certified to receive tax credits under s.
24 560.206 and who files a claim under this subsection.

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1 4. “Eligible innovation project” means any real property, tangible personal
2 property, or intangible property related to a new product or process that is based on
3 new technology or the creative application of existing technology.

4 5. “Project facility” means any facility located in this state that is operated for
5 the purpose of creating and maintaining an eligible innovation project, if the
6 operation of the facility is likely to create new jobs, or preserve existing jobs, in this
7 state, as determined by the department of commerce.

8 (b) *Filing claims.* Subject to the limitations provided under this subsection and
9 s. 560.207, for taxable years beginning after December 31, 2006, a claimant may
10 claim as a credit against the tax imposed under s. 71.43, up to the amount of the tax,
11 an amount that is equal to the following costs paid by the claimant in the taxable
12 year:

13 1. Except as provided in subd. 3., 75 percent of the costs of acquiring,
14 constructing, reconstructing, rehabilitating, renovating, enlarging, or improving a
15 project facility or eligible innovation project and 75 percent of the costs of all of the
16 following related to creating and operating a project facility or to creating and
17 maintaining an eligible innovation project:

18 a. Designs, plans, specifications, surveys, studies, estimates, and any similar
19 services or items that are necessary or incidental to determining the feasibility or
20 practicality of a project facility or eligible innovation project.

21 b. Site clearance and preparation.

22 c. Architectural, engineering, or legal services.

23 d. Marketing products.

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1 2. The costs of equipping a project facility and the costs of all of the following
2 related to creating and operating a project facility or to creating and maintaining an
3 eligible innovation project:

- 4 a. Research and development.
- 5 b. Computer software or hardware.
- 6 c. Product testing and other quality control activities.
- 7 d. Perfecting products.
- 8 e. Creating and protecting intellectual property.

9 3. If the project facility or eligible innovation project is a brownfield or located
10 in a blighted area, and if the brownfield or blighted area is not otherwise being
11 remediated with moneys received from the state, 100 percent of the costs described
12 in subd. 1.

13 (c) *Limitations.* 1. The maximum amount of the credit that a claimant may
14 claim under this subsection in a taxable year is \$500,000.

15 2. The maximum amount of the credits that may be awarded under this
16 subsection and ss. 71.07 (5j) and 71.28 (5j) in each year is \$10,000,000.

17 3. 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 11.** 71.49 (1) (eor) of the statutes is created to read:

4 71.49 (1) (eor) Innovation projects and facilities credit under s. 71.47 (5j).

5 **SECTION 12.** 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 (5j); 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 13.** 560.207 of the statutes is created to read:

22 **560.207 Innovation projects and facilities program. (1) INNOVATION**
23 **PROJECTS AND FACILITIES TAX CREDITS.** The department shall implement a program to
24 certify businesses for purposes of ss. 71.07 (5j), 71.28 (5j), and 71.47 (5j). A business
25 desiring certification shall submit an application to the department in each taxable

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1 year for which the business desires certification. For the purpose of certifying
2 businesses under this subsection for taxable years beginning after December 31,
3 2006, and before January 1, 2009, the department shall give priority to businesses
4 that use biotechnology or nanotechnology. Unless otherwise provided under the
5 rules of the department, a business may be certified under this subsection, and may
6 maintain such certification, only if the business satisfies all of the following
7 conditions:

8 (a) It conducts business in this state.

9 (b) At least 51 percent of the employees employed by the business are employed
10 in this state.

11 (c) It is engaged in, or has committed to engage in, manufacturing, agriculture,
12 or processing or assembling products and conducting research and development or
13 developing a new product or business process.

14 (d) It is not engaged in real estate development, insurance, banking, lending,
15 lobbying, political consulting, professional services provided by attorneys,
16 accountants, business consultants, physicians, or health care consultants, wholesale
17 or retail trade, leisure, hospitality, transportation, or construction.

18 **(2) ADMINISTRATION.** (a) The department shall maintain a list of businesses
19 certified under sub. (1) and shall permit public access to the lists through the
20 department's Web site.

21 (b) The department of commerce shall notify the department of revenue of
22 every certification issued under sub. (1) and the date on which any such certification
23 is revoked or expires.

