

2007 SENATE BILL 556

March 4, 2008 – Introduced by Senators PLALE, KANAVAS, KAPANKE, DARLING, ROESSLER, SCHULTZ and HANSEN, cosponsored by Representatives STRACHOTA, ZEPNICK, MOLEPSKE, VOS, F. LASEE, SHERIDAN, BERCEAU, MOULTON, VAN ROY, SEIDEL and HAHN. Referred to Committee on Commerce, Utilities and Rail.

1 **AN ACT to amend** 71.07 (5f) (b) 1., 71.28 (5f) (b) 1. and 71.47 (5f) (b) 1.; and **to**
2 **create** 71.07 (5f) (e) and (f), 71.07 (5h) (e) and (f), 71.28 (5f) (e) and (f), 71.28 (5h)
3 (e) and (f), 71.47 (5f) (e) and (f), 71.47 (5h) (e) and (f) and 560.206 (5) of the
4 statutes; **relating to:** the transfer of, and the and residency requirements
5 under, the film production tax credits.

Analysis by the Legislative Reference Bureau

Under current law, a film production company may claim income and franchise tax credits for expenses related to film production services, including a percentage of the salary or wages paid to the company's employees in this state, and for capital investments made in this state by the film production company. This bill allows a film production company to transfer its film production tax credits to other taxpayers who may claim the credits against their state income and franchise tax liability.

Under current law, the amount of the credit that a film production company may claim for salary or wages is limited to the first \$25,000 paid to each of the company's employees who were residents of this state at the time that they were paid. Under the bill, for taxable years beginning after December 31, 2007, and before January 1, 2010, the company may claim credits for employees who are not residents of this state at the time that they were paid. However, for taxable years beginning after December 31, 2009, and before January 1, 2014, a film production company may claim credits for employees who are not residents of this state at the time that they were paid, only if the Department of Commerce (Commerce) certifies that at least 25

SENATE BILL 556

percent of the company's employees were residents of this state at the time that they were paid. For taxable years beginning on or after January 1, 2014, a film production company may claim credits for employees who are not residents of this state at the time that they were paid, only if Commerce certifies that at least 50 percent of the company's employees were residents of this state at the time that they were paid.

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.** 71.07 (5f) (b) 1. of the statutes is amended to read:

2 71.07 (5f) (b) 1. An amount equal to 25 percent of the salary or wages paid by
3 the claimant to the claimant's employees in the taxable year for services rendered in
4 this state to produce an accredited production and, subject to s. 560.206 (5), paid to
5 employees who were residents of this state at the time that they were paid.

6 **SECTION 2.** 71.07 (5f) (e) and (f) of the statutes are created to read:

7 71.07 (5f) (e) *Transfer of credits.* 1. Any person who is eligible to claim a credit
8 under this subsection, as approved by the department of commerce, may, instead of
9 claiming the credit, transfer the credit amount, in whole or in part, to another person
10 who is subject to the taxes imposed under s. 71.02, 71.23, or 71.43.

11 2. A person who transfers credit amounts under subd. 1. may make no more
12 than 3 such transfers in any calendar year, but a single transfer may involve one or
13 more transferees.

14 3. A person who intends to transfer credit amounts under subd. 1. shall submit
15 to the department of revenue an application that provides the transferor's tax credit
16 balance under this subsection before and after the requested transfer, all tax
17 identification numbers for the transferor and the transferee, the intended date of the
18 transfer, the amount transferred, and any other information required by the

SENATE BILL 556

1 department. The intended transferee of such credits shall submit to the department
2 of revenue an application that provides any information required by the department.
3 The person requesting to transfer the credits and the requesting transferee shall
4 each pay to the department of revenue a fee in an amount equal to 1 percent of the
5 credit amounts requested to be transferred or \$500, whichever is less. The person
6 requesting to transfer the credits shall pay to the department of commerce a fee in
7 an amount equal to 2 percent of the credit amounts requested to be transferred or
8 \$5,000, whichever is less. The department of revenue shall certify the transfer before
9 the transfer takes place. The department of revenue shall not issue a certification
10 to either party if either the transferor or transferee has not met all Wisconsin tax
11 return filing, withholding, and payment obligations. The transferor and transferee
12 shall, at the time that each of them file a Wisconsin income or franchise tax return
13 for the taxable year in which the transfer takes place, attach a copy of the
14 certification to the return and submit a copy of the certification to the department
15 of commerce. The transferee shall attach a copy of the certification to its Wisconsin
16 income or franchise tax return for each taxable year in which the transferee claims
17 the credit transferred pursuant to this subdivision.

18 4. The transfer of any credit amount under subd. 1. does not extend the time
19 in which the credit may be claimed and the carry-forward period for any credit
20 amount that is transferred begins with the first taxable year in which the transferor
21 is eligible to receive the credit on which the transfer is based.

22 5. A transferee shall have only such rights to claim the credit amounts that
23 were available to the transferor at the time of the transfer. To the extent that the
24 transferor was not eligible to claim the credit at the time of the transfer, the
25 department of revenue shall disallow the credit amount claimed by the transferee

SENATE BILL 556**SECTION 2**

1 or recapture the credit amount from the transferee and the transferee shall have no
2 recourse against the department of revenue or the department of commerce.

3 6. Any consideration paid for a transfer of credit amounts under subd. 1. shall
4 not be deducted from income, and any consideration received from the transfer shall
5 not be included as income. The transferor may not subtract any amount of credit
6 previously added back to income under s. 71.05 (6) (a) 15., 71.26 (2) (a), 71.45 (2) (a)
7 10., or 77.92 (4).

8 (f) *Reports.* Annually, no later than April 1, the department of revenue shall,
9 in consultation with the department of commerce, submit to the joint committee on
10 finance a report assessing the use of the credit under this subsection, including the
11 provisions allowing a claimant to transfer such credits to another person. The report
12 shall contain all of the following information, subject to s. 71.78:

13 1. The number of persons who obtained the credit in the previous fiscal year
14 without transferring such credit, regardless of whether the person was able to claim
15 the credit as an offset against Wisconsin income or franchise taxes.

16 2. The number of persons who received the credit in the previous fiscal year that
17 was transferred from another person, regardless of when the credits were originally
18 obtained by the transferor and regardless of whether the transferee was able to claim
19 the credit as an offset against Wisconsin income or franchise taxes.

20 3. The total amount of the credit that was claimed as an offset against the tax
21 liability of persons described in subd. 1. in the previous fiscal year.

22 4. The total amount of credit that was claimed as an offset against the tax
23 liability of persons described in subd. 2. in the previous fiscal year.

SENATE BILL 556

1 5. A description of any material noncompliance identified by the department
2 of revenue or the department of commerce regarding the claiming of the credit by
3 persons described in subds. 1. and 2.

4 **SECTION 3.** 71.07 (5h) (e) and (f) of the statutes are created to read:

5 71.07 (5h) (e) *Transfer of credits.* 1. Any person who is eligible to claim a credit
6 under this subsection, as approved by the department of commerce, may, instead of
7 claiming the credit, transfer the credit amount, in whole or in part, to another person
8 who is subject to the taxes imposed under s. 71.02, 71.23, or 71.43.

9 2. A person who transfers credit amounts under subd. 1. may make no more
10 than 3 such transfers in any calendar year, but a single transfer may involve one or
11 more transferees.

12 3. A person who intends to transfer credit amounts under subd. 1. shall submit
13 to the department of revenue an application that provides the transferor's tax credit
14 balance under this subsection before and after the requested transfer, all tax
15 identification numbers for the transferor and the transferee, the intended date of the
16 transfer, the amount transferred, and any other information required by the
17 department. The intended transferee of such credits shall submit to the department
18 of revenue an application that provides any information required by the department.
19 The person requesting to transfer the credits and the requesting transferee shall
20 each pay to the department of revenue a fee in an amount equal to 1 percent of the
21 credit amounts requested to be transferred or \$500, whichever is less. The person
22 requesting to transfer the credits shall pay to the department of commerce a fee in
23 an amount equal to 2 percent of the credit amounts requested to be transferred or
24 \$5,000, whichever is less. The department of revenue shall certify the transfer before
25 the transfer takes place. The department of revenue shall not issue a certification

SENATE BILL 556**SECTION 3**

1 to either party if either the transferor or transferee has not met all Wisconsin tax
2 return filing, withholding, and payment obligations. The transferor and transferee
3 shall, at the time that each of them file a Wisconsin income or franchise tax return
4 for the taxable year in which the transfer takes place, attach a copy of the
5 certification to the return and submit a copy of the certification to the department
6 of commerce. The transferee shall attach a copy of the certification to its Wisconsin
7 income or franchise tax return for each taxable year in which the transferee claims
8 the credit transferred pursuant to this subdivision.

9 4. The transfer of any credit amount under subd. 1. does not extend the time
10 in which the credit may be claimed and the carry-forward period for any credit
11 amount that is transferred begins with the first taxable year in which the transferor
12 is eligible to receive the credit on which the transfer is based.

13 5. A transferee shall have only such rights to claim the credit amounts that
14 were available to the transferor at the time of the transfer. To the extent that the
15 transferor was not eligible to claim the credit at the time of the transfer, the
16 department of revenue shall disallow the credit amount claimed by the transferee
17 or recapture the credit amount from the transferee and the transferee shall have no
18 recourse against the department of revenue or the department of commerce.

19 6. Any consideration paid for a transfer of credit amounts under subd. 1. shall
20 not be deducted from income, and any consideration received from the transfer shall
21 not be included as income. The transferor may not subtract any amount of credit
22 previously added back to income under s. 71.05 (6) (a) 15., 71.26 (2) (a), 71.45 (2) (a)
23 10., or 77.92 (4).

24 (f) *Reports.* Annually, no later than April 1, the department of revenue shall,
25 in consultation with the department of commerce, submit to the joint committee on

SENATE BILL 556

1 finance a report assessing the use of the credit under this subsection, including the
2 provisions allowing a claimant to transfer such credits to another person. The report
3 shall contain all of the following information, subject to s. 71.78:

4 1. The number of persons who obtained the credit in the previous fiscal year
5 without transferring such credit, regardless of whether the person was able to claim
6 the credit as an offset against Wisconsin income or franchise taxes.

7 2. The number of persons who received the credit in the previous fiscal year that
8 was transferred from another person, regardless of when the credits were originally
9 obtained by the transferor and regardless of whether the transferee was able to claim
10 the credit as an offset against Wisconsin income or franchise taxes.

11 3. The total amount of the credit that was claimed as an offset against the tax
12 liability of persons described in subd. 1. in the previous fiscal year.

13 4. The total amount of credit that was claimed as an offset against the tax
14 liability of persons described in subd. 2. in the previous fiscal year.

15 5. A description of any material noncompliance identified by the department
16 of revenue or the department of commerce regarding the claiming of the credit by
17 persons described in subds. 1. and 2.

18 **SECTION 4.** 71.28 (5f) (b) 1. of the statutes is amended to read:

19 71.28 (5f) (b) 1. An amount equal to 25 percent of the salary or wages paid by
20 the claimant to the claimant's employees in the taxable year for services rendered in
21 this state to produce an accredited production and, subject to s. 560.206 (5), paid to
22 employees who were residents of this state at the time that they were paid.

23 **SECTION 5.** 71.28 (5f) (e) and (f) of the statutes are created to read:

24 71.28 (5f) (e) *Transfer of credits.* 1. Any person who is eligible to claim a credit
25 under this subsection, as approved by the department of commerce, may, instead of

SENATE BILL 556**SECTION 5**

1 claiming the credit, transfer the credit amount, in whole or in part, to another person
2 who is subject to the taxes imposed under s. 71.02, 71.23, or 71.43.

3 2. A person who transfers credit amounts under subd. 1. may make no more
4 than 3 such transfers in any calendar year, but a single transfer may involve one or
5 more transferees.

6 3. A person who intends to transfer credit amounts under subd. 1. shall submit
7 to the department of revenue an application that provides the transferor's tax credit
8 balance under this subsection before and after the requested transfer, all tax
9 identification numbers for the transferor and the transferee, the intended date of the
10 transfer, the amount transferred, and any other information required by the
11 department. The intended transferee of such credits shall submit to the department
12 of revenue an application that provides any information required by the department.
13 The person requesting to transfer the credits and the requesting transferee shall
14 each pay to the department of revenue a fee in an amount equal to 1 percent of the
15 credit amounts requested to be transferred or \$500, whichever is less. The person
16 requesting to transfer the credits shall pay to the department of commerce a fee in
17 an amount equal to 2 percent of the credit amounts requested to be transferred or
18 \$5,000, whichever is less. The department of revenue shall certify the transfer before
19 the transfer takes place. The department of revenue shall not issue a certification
20 to either party if either the transferor or transferee has not met all Wisconsin tax
21 return filing, withholding, and payment obligations. The transferor and transferee
22 shall, at the time that each of them file a Wisconsin income or franchise tax return
23 for the taxable year in which the transfer takes place, attach a copy of the
24 certification to the return and submit a copy of the certification to the department
25 of commerce. The transferee shall attach a copy of the certification to its Wisconsin

SENATE BILL 556

1 income or franchise tax return for each taxable year in which the transferee claims
2 the credit transferred pursuant to this subdivision.

3 4. The transfer of any credit amount under subd. 1. does not extend the time
4 in which the credit may be claimed and the carry-forward period for any credit
5 amount that is transferred begins with the first taxable year in which the transferor
6 is eligible to receive the credit on which the transfer is based.

7 5. A transferee shall have only such rights to claim the credit amounts that
8 were available to the transferor at the time of the transfer. To the extent that the
9 transferor was not eligible to claim the credit at the time of the transfer, the
10 department of revenue shall disallow the credit amount claimed by the transferee
11 or recapture the credit amount from the transferee and the transferee shall have no
12 recourse against the department of revenue or the department of commerce.

13 6. Any consideration paid for a transfer of credit amounts under subd. 1. shall
14 not be deducted from income, and any consideration received from the transfer shall
15 not be included as income. The transferor may not subtract any amount of credit
16 previously added back to income under s. 71.05 (6) (a) 15., 71.26 (2) (a), 71.45 (2) (a)
17 10., or 77.92 (4).

18 (f) *Reports.* Annually, no later than April 1, the department of revenue shall,
19 in consultation with the department of commerce, submit to the joint committee on
20 finance a report assessing the use of the credit under this subsection, including the
21 provisions allowing a claimant to transfer such credits to another person. The report
22 shall contain all of the following information, subject to s. 71.78:

23 1. The number of persons who obtained the credit in the previous fiscal year
24 without transferring such credit, regardless of whether the person was able to claim
25 the credit as an offset against Wisconsin income or franchise taxes.

SENATE BILL 556**SECTION 5**

1 2. The number of persons who received the credit in the previous fiscal year that
2 was transferred from another person, regardless of when the credits were originally
3 obtained by the transferor and regardless of whether the transferee was able to claim
4 the credit as an offset against Wisconsin income or franchise taxes.

5 3. The total amount of the credit that was claimed as an offset against the tax
6 liability of persons described in subd. 1. in the previous fiscal year.

7 4. The total amount of credit that was claimed as an offset against the tax
8 liability of persons described in subd. 2. in the previous fiscal year.

9 5. A description of any material noncompliance identified by the department of
10 revenue or the department of commerce regarding the claiming of the credit by
11 persons described in subd. 1. and 2.

12 **SECTION 6.** 71.28 (5h) (e) and (f) of the statutes are created to read:

13 71.28 (5h) (e) *Transfer of credits.* 1. Any person who is eligible to claim a credit
14 under this subsection, as approved by the department of commerce, may, instead of
15 claiming the credit, transfer the credit amount, in whole or in part, to another person
16 who is subject to the taxes imposed under s. 71.02, 71.23, or 71.43.

17 2. A person who transfers credit amounts under subd. 1. may make no more
18 than 3 such transfers in any calendar year, but a single transfer may involve one or
19 more transferees.

20 3. A person who intends to transfer credit amounts under subd. 1. shall submit
21 to the department of revenue an application that provides the transferor's tax credit
22 balance under this subsection before and after the requested transfer, all tax
23 identification numbers for the transferor and the transferee, the intended date of the
24 transfer, the amount transferred, and any other information required by the
25 department. The intended transferee of such credits shall submit to the department

SENATE BILL 556

1 of revenue an application that provides any information required by the department.
2 The person requesting to transfer the credits and the requesting transferee shall
3 each pay to the department of revenue a fee in an amount equal to 1 percent of the
4 credit amounts requested to be transferred or \$500, whichever is less. The person
5 requesting to transfer the credits shall pay to the department of commerce a fee in
6 an amount equal to 2 percent of the credit amounts requested to be transferred or
7 \$5,000, whichever is less. The department of revenue shall certify the transfer before
8 the transfer takes place. The department of revenue shall not issue a certification
9 to either party if either the transferor or transferee has not met all Wisconsin tax
10 return filing, withholding, and payment obligations. The transferor and transferee
11 shall, at the time that each of them file a Wisconsin income or franchise tax return
12 for the taxable year in which the transfer takes place, attach a copy of the
13 certification to the return and submit a copy of the certification to the department
14 of commerce. The transferee shall attach a copy of the certification to its Wisconsin
15 income or franchise tax return for each taxable year in which the transferee claims
16 the credit transferred pursuant to this subdivision.

17 4. The transfer of any credit amount under subd. 1. does not extend the time
18 in which the credit may be claimed and the carry-forward period for any credit
19 amount that is transferred begins with the first taxable year in which the transferor
20 is eligible to receive the credit on which the transfer is based.

21 5. A transferee shall have only such rights to claim the credit amounts that
22 were available to the transferor at the time of the transfer. To the extent that the
23 transferor was not eligible to claim the credit at the time of the transfer, the
24 department of revenue shall disallow the credit amount claimed by the transferee

SENATE BILL 556**SECTION 6**

1 or recapture the credit amount from the transferee and the transferee shall have no
2 recourse against the department of revenue or the department of commerce.

3 6. Any consideration paid for a transfer of credit amounts under subd. 1. shall
4 not be deducted from income, and any consideration received from the transfer shall
5 not be included as income. The transferor may not subtract any amount of credit
6 previously added back to income under s. 71.05 (6) (a) 15., 71.26 (2) (a), 71.45 (2) (a)
7 10., or 77.92 (4).

8 (f) *Reports.* Annually, no later than April 1, the department of revenue shall,
9 in consultation with the department of commerce, submit to the joint committee on
10 finance a report assessing the use of the credit under this subsection, including the
11 provisions allowing a claimant to transfer such credits to another person. The report
12 shall contain all of the following information, subject to s. 71.78:

13 1. The number of persons who obtained the credit in the previous fiscal year
14 without transferring such credit, regardless of whether the person was able to claim
15 the credit as an offset against Wisconsin income or franchise taxes.

16 2. The number of persons who received the credit in the previous fiscal year that
17 was transferred from another person, regardless of when the credits were originally
18 obtained by the transferor and regardless of whether the transferee was able to claim
19 the credit as an offset against Wisconsin income or franchise taxes.

20 3. The total amount of the credit that was claimed as an offset against the tax
21 liability of persons described in subd. 1. in the previous fiscal year.

22 4. The total amount of credit that was claimed as an offset against the tax
23 liability of persons described in subd. 2. in the previous fiscal year.

SENATE BILL 556

1 5. A description of any material noncompliance identified by the department
2 of revenue or the department of commerce regarding the claiming of the credit by
3 persons described in subds. 1. and 2.

4 **SECTION 7.** 71.47 (5f) (b) 1. of the statutes is amended to read:

5 71.47 **(5f)** (b) 1. An amount equal to 25 percent of the salary or wages paid by
6 the claimant to the claimant's employees in the taxable year for services rendered in
7 this state to produce an accredited production and, subject to s. 560.206 (5), paid to
8 employees who were residents of this state at the time that they were paid.

9 **SECTION 8.** 71.47 (5f) (e) and (f) of the statutes are created to read:

10 71.47 **(5f)** (e) *Transfer of credits.* 1. Any person who is eligible to claim a credit
11 under this subsection, as approved by the department of commerce, may, instead of
12 claiming the credit, transfer the credit amount, in whole or in part, to another person
13 who is subject to the taxes imposed under s. 71.02, 71.23, or 71.43.

14 2. A person who transfers credit amounts under subd. 1. may make no more
15 than 3 such transfers in any calendar year, but a single transfer may involve one or
16 more transferees.

17 3. A person who intends to transfer credit amounts under subd. 1. shall submit
18 to the department of revenue an application that provides the transferor's tax credit
19 balance under this subsection before and after the requested transfer, all tax
20 identification numbers for the transferor and the transferee, the intended date of the
21 transfer, the amount transferred, and any other information required by the
22 department. The intended transferee of such credits shall submit to the department
23 of revenue an application that provides any information required by the department.
24 The person requesting to transfer the credits and the requesting transferee shall
25 each pay to the department of revenue a fee in an amount equal to 1 percent of the

SENATE BILL 556**SECTION 8**

1 credit amounts requested to be transferred or \$500, whichever is less. The person
2 requesting to transfer the credits shall pay to the department of commerce a fee in
3 an amount equal to 2 percent of the credit amounts requested to be transferred or
4 \$5,000, whichever is less. The department of revenue shall certify the transfer before
5 the transfer takes place. The department of revenue shall not issue a certification
6 to either party if either the transferor or transferee has not met all Wisconsin tax
7 return filing, withholding, and payment obligations. The transferor and transferee
8 shall, at the time that each of them file a Wisconsin income or franchise tax return
9 for the taxable year in which the transfer takes place, attach a copy of the
10 certification to the return and submit a copy of the certification to the department
11 of commerce. The transferee shall attach a copy of the certification to its Wisconsin
12 income or franchise tax return for each taxable year in which the transferee claims
13 the credit transferred pursuant to this subdivision.

14 4. The transfer of any credit amount under subd. 1. does not extend the time
15 in which the credit may be claimed and the carry-forward period for any credit
16 amount that is transferred begins with the first taxable year in which the transferor
17 is eligible to receive the credit on which the transfer is based.

18 5. A transferee shall have only such rights to claim the credit amounts that
19 were available to the transferor at the time of the transfer. To the extent that the
20 transferor was not eligible to claim the credit at the time of the transfer, the
21 department of revenue shall disallow the credit amount claimed by the transferee
22 or recapture the credit amount from the transferee and the transferee shall have no
23 recourse against the department of revenue or the department of commerce.

24 6. Any consideration paid for a transfer of credit amounts under subd. 1. shall
25 not be deducted from income, and any consideration received from the transfer shall

SENATE BILL 556

1 not be included as income. The transferor may not subtract any amount of credit
2 previously added back to income under s. 71.05 (6) (a) 15., 71.26 (2) (a), 71.45 (2) (a)
3 10., or 77.92 (4).

4 (f) *Reports.* Annually, no later than April 1, the department of revenue shall,
5 in consultation with the department of commerce, submit to the joint committee on
6 finance a report assessing the use of the credit under this subsection, including the
7 provisions allowing a claimant to transfer such credits to another person. The report
8 shall contain all of the following information, subject to s. 71.78:

9 1. The number of persons who obtained the credit in the previous fiscal year
10 without transferring such credit, regardless of whether the person was able to claim
11 the credit as an offset against Wisconsin income or franchise taxes.

12 2. The number of persons who received the credit in the previous fiscal year that
13 was transferred from another person, regardless of when the credits were originally
14 obtained by the transferor and regardless of whether the transferee was able to claim
15 the credit as an offset against Wisconsin income or franchise taxes.

16 3. The total amount of the credit that was claimed as an offset against the tax
17 liability of persons described in subd. 1. in the previous fiscal year.

18 4. The total amount of credit that was claimed as an offset against the tax
19 liability of persons described in subd. 2. in the previous fiscal year.

20 5. A description of any material noncompliance identified by the department
21 of revenue or the department of commerce regarding the claiming of the credit by
22 persons described in subds. 1. and 2.

23 **SECTION 9.** 71.47 (5h) (e) and (f) of the statutes are created to read:

24 71.47 (5h) (e) *Transfer of credits.* 1. Any person who is eligible to claim a credit
25 under this subsection, as approved by the department of commerce, may, instead of

SENATE BILL 556**SECTION 9**

1 claiming the credit, transfer the credit amount, in whole or in part, to another person
2 who is subject to the taxes imposed under s. 71.02, 71.23, or 71.43.

3 2. A person who transfers credit amounts under subd. 1. may make no more
4 than 3 such transfers in any calendar year, but a single transfer may involve one or
5 more transferees.

6 3. A person who intends to transfer credit amounts under subd. 1. shall submit
7 to the department of revenue an application that provides the transferor's tax credit
8 balance under this subsection before and after the requested transfer, all tax
9 identification numbers for the transferor and the transferee, the intended date of the
10 transfer, the amount transferred, and any other information required by the
11 department. The intended transferee of such credits shall submit to the department
12 of revenue an application that provides any information required by the department.
13 The person requesting to transfer the credits and the requesting transferee shall
14 each pay to the department of revenue a fee in an amount equal to 1 percent of the
15 credit amounts requested to be transferred or \$500, whichever is less. The person
16 requesting to transfer the credits shall pay to the department of commerce a fee in
17 an amount equal to 2 percent of the credit amounts requested to be transferred or
18 \$5,000, whichever is less. The department of revenue shall certify the transfer before
19 the transfer takes place. The department of revenue shall not issue a certification
20 to either party if either the transferor or transferee has not met all Wisconsin tax
21 return filing, withholding, and payment obligations. The transferor and transferee
22 shall, at the time that each of them file a Wisconsin income or franchise tax return
23 for the taxable year in which the transfer takes place, attach a copy of the
24 certification to the return and submit a copy of the certification to the department
25 of commerce. The transferee shall attach a copy of the certification to its Wisconsin

SENATE BILL 556

1 income or franchise tax return for each taxable year in which the transferee claims
2 the credit transferred pursuant to this subdivision.

3 4. The transfer of any credit amount under subd. 1. does not extend the time
4 in which the credit may be claimed and the carry-forward period for any credit
5 amount that is transferred begins with the first taxable year in which the transferor
6 is eligible to receive the credit on which the transfer is based.

7 5. A transferee shall have only such rights to claim the credit amounts that
8 were available to the transferor at the time of the transfer. To the extent that the
9 transferor was not eligible to claim the credit at the time of the transfer, the
10 department of revenue shall disallow the credit amount claimed by the transferee
11 or recapture the credit amount from the transferee and the transferee shall have no
12 recourse against the department of revenue or the department of commerce.

13 6. Any consideration paid for a transfer of credit amounts under subd. 1. shall
14 not be deducted from income, and any consideration received from the transfer shall
15 not be included as income. The transferor may not subtract any amount of credit
16 previously added back to income under s. 71.05 (6) (a) 15., 71.26 (2) (a), 71.45 (2) (a)
17 10., or 77.92 (4).

18 (f) *Reports.* Annually, no later than April 1, the department of revenue shall,
19 in consultation with the department of commerce, submit to the joint committee on
20 finance a report assessing the use of the credit under this subsection, including the
21 provisions allowing a claimant to transfer such credits to another person. The report
22 shall contain all of the following information, subject to s. 71.78:

23 1. The number of persons who obtained the credit in the previous fiscal year
24 without transferring such credit, regardless of whether the person was able to claim
25 the credit as an offset against Wisconsin income or franchise taxes.

SENATE BILL 556**SECTION 9**

1 2. The number of persons who received the credit in the previous fiscal year that
2 was transferred from another person, regardless of when the credits were originally
3 obtained by the transferor and regardless of whether the transferee was able to claim
4 the credit as an offset against Wisconsin income or franchise taxes.

5 3. The total amount of the credit that was claimed as an offset against the tax
6 liability of persons described in subd. 1. in the previous fiscal year.

7 4. The total amount of credit that was claimed as an offset against the tax
8 liability of persons described in subd. 2. in the previous fiscal year.

9 5. A description of any material noncompliance identified by the department
10 of revenue or the department of commerce regarding the claiming of the credit by
11 persons described in subds. 1. and 2.

12 **SECTION 10.** 560.206 (5) of the statutes is created to read:

13 560.206 (5) (a) Notwithstanding ss. 71.07 (5f) (b) 1., 71.28 (5f) (b) 1., and 71.47
14 (5f) (b) 1., for taxable years beginning after December 31, 2007, and before January
15 1, 2010, a person may claim the credits under ss. 71.07 (5f) (b) 1., 71.28 (5f) (b) 1., and
16 71.47 (5f) (b) 1. for employees who are not residents of this state at the time that they
17 were paid.

18 (b) Notwithstanding ss. 71.07 (5f) (b) 1., 71.28 (5f) (b) 1., and 71.47 (5f) (b) 1.,
19 for taxable years beginning after December 31, 2009, and before January 1, 2014, a
20 person may claim the credits under ss. 71.07 (5f) (b) 1., 71.28 (5f) (b) 1., and 71.47 (5f)
21 (b) 1. for employees who are not residents of this state at the time that they were paid,
22 if the department certifies that at least 25 percent of the person's employees related
23 to the production for which the person is receiving credits were residents of this state
24 at the time that they were paid.

SENATE BILL 556

1 (c) Notwithstanding ss. 71.07 (5f) (b) 1., 71.28 (5f) (b) 1., and 71.47 (5f) (b) 1.,
2 for taxable years beginning after December 31, 2013, a person may claim the credits
3 under ss. 71.07 (5f) (b) 1., 71.28 (5f) (b) 1., and 71.47 (5f) (b) 1. for employees who are
4 not residents of this state at the time that they were paid, if the department certifies
5 that at least 50 percent of the person's employees related to the production for which
6 the person is receiving credits were residents of this state at the time that they were
7 paid.

8

(END)