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

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.
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:

**SECTION 1.** 71.05 (6) (a) 15. of the statutes, as affected by 2007 Wisconsin Act 20, is amended to read:

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

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

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

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

2. “Green data center” means 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.

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

(b) **Filing claims.** Subject to the limitations provided in this subsection and 2007 Wisconsin Act .... (this act), section 13, for taxable years beginning after June 30, 2008, and before July 1, 2010, a claimant may claim as a credit against the taxes imposed under s. 71.02, up to the amount of the taxes, the amount that the claimant
paid in the taxable year for the following items that are used to construct and operate
a green data center:

1. At least 2 of the following:
   a. Low-emission building materials, including carpets and paints.
   b. Sustainable landscaping.
   c. An electronic waste recycling program, as defined by the department.

2. At least 2 of the following:
   a. Catalytic converters on back-up generators.
   b. Photovoltaics.
   c. Heat pumps.
   d. Evaporative cooling.

3. Equipment or equipment components that have a reduced amount, or none,
   of at least 4 of the following:
   a. Mercury.
   b. Cadmium.
   c. Lead.
   d. Chromium VI.
   e. Polybrominated biphenyls.
   f. Polybrominated diphenyl ether.

(c) Limitations. 1. The maximum amount of all credits that may be claimed
under this subsection and ss. 71.28 (5m) and 71.47 (5m) is $2,000,000. No claimant
may claim a credit under this subsection unless the claimant submits with the
claimant’s return a copy of the claimant’s certification for credits under 2007
Wisconsin Act .... (this act), section 13.
2. Partnerships, limited liability companies, and tax–option corporations may not claim the credit under this subsection, but the eligibility for, and the amount of, the credit are based on their payment of amounts under par. (b). A partnership, limited liability company, or tax–option corporation shall compute the amount of credit that each of its partners, members, or shareholders may claim and shall provide that information to each of them. Partners, members of limited liability companies, and shareholders of tax–option corporations may claim the credit in proportion to their ownership interests.

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

SECTION 3. 71.10 (4) (er) of the statutes is created to read:

71.10 (4) (er) Green data center credit under s. 71.07 (5m).

SECTION 4. 71.21 (4) of the statutes, as affected by 2007 Wisconsin Act 20, is amended to read:

71.21 (4) Credits computed by a partnership under s. 71.07 (2dd), (2de), (2di), (2dj), (2dL), (2dm), (2ds), (2dx), (3g), (3h), (3n), (3p), (3s), (3t), (3w), (5e), (5f), (5g), (5h), (5i), (5j), and (5k), and (5m) and passed through to partners shall be added to the partnership’s income.

SECTION 5. 71.26 (2) (a) of the statutes, as affected by 2007 Wisconsin Act 20, is amended to read:

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

SECTION 6. 71.28 (5m) of the statutes is created to read:

71.28 (5m) GREEN DATA CENTER CREDIT. (a) Definitions. In this subsection:

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

2. “Green data center” means 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.

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

(b) Filing claims. Subject to the limitations provided in this subsection and
2007 Wisconsin Act .... (this act), section 13, for taxable years beginning after June
30, 2008, and before July 1, 2010, a claimant may claim as a credit against the taxes
imposed under s. 71.23, up to the amount of the taxes, the amount that the claimant paid in the taxable year for the following items that are used to construct and operate a green data center:

1. At least 2 of the following:
   a. Low-emission building materials, including carpets and paints.
   b. Sustainable landscaping.
   c. An electronic waste recycling program, as defined by the department.

2. At least 2 of the following:
   a. Catalytic converters on back-up generators.
   b. Photovoltaics.
   c. Heat pumps.
   d. Evaporative cooling.

3. Equipment or equipment components that have a reduced amount, or none, of at least 4 of the following:
   a. Mercury.
   b. Cadmium.
   c. Lead.
   d. Chromium VI.
   e. Polybrominated biphenyls.
   f. Polybrominated diphenyl ether.

   (c) Limitations. 1. The maximum amount of all credits that may be claimed under this subsection and ss. 71.07 (5m) and 71.47 (5m) is $2,000,000. No claimant may claim a credit under this subsection unless the claimant submits with the claimant’s return a copy of the claimant’s certification for credits under 2007 Wisconsin Act .... (this act), section 13.
2. Partnerships, limited liability companies, and tax-option corporations may not claim the credit under this subsection, but the eligibility for, and the amount of, the credit are based on their payment of amounts under par. (b). A partnership, limited liability company, or tax-option corporation shall compute the amount of credit that each of its partners, members, or shareholders may claim and shall provide that information to each of them. Partners, members of limited liability companies, and shareholders of tax-option corporations may claim the credit in proportion to their ownership interests.

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

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

71.30 (3) (er) Green data center credit under s. 71.28 (5m).

SECTION 8. 71.34 (1) (g) of the statutes, as affected by 2007 Wisconsin Act 20, is amended to read:

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

SECTION 9. 71.45 (2) (a) 10. of the statutes, as affected by 2007 Wisconsin Act 20, is amended to read:

71.45 (2) (a) 10. By adding to federal taxable income the amount of credit computed under s. 71.47 (1dd) to (1dx), (3h), (3n), (3p), (3w), (5e), (5f), (5g), (5h), (5i), (5j), and (5k), and (5m) and not passed through by a partnership, limited liability company, or tax-option corporation that has added that amount to the partnership’s, limited liability company’s, or tax-option corporation’s income under s. 71.21 (4) or
71.34 (1) (g) and the amount of credit computed under s. 71.47 (1), (3), (3t), (4), and (5).

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

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

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

2. “Green data center” means 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.

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

(b) *Filing claims.* Subject to the limitations provided in this subsection and 2007 Wisconsin Act .... (this act), section 13, for taxable years beginning after June 30, 2008, and before July 1, 2010, a claimant may claim as a credit against the taxes imposed under s. 71.43, up to the amount of the taxes, the amount that the claimant paid in the taxable year for the following items that are used to construct and operate a green data center:

1. At least 2 of the following:
   a. Low-emission building materials, including carpets and paints.
   b. Sustainable landscaping.
   c. An electronic waste recycling program, as defined by the department.

2. At least 2 of the following:
   a. Catalytic converters on back-up generators.
   b. Photovoltaics.
   c. Heat pumps.
d. Evaporative cooling.

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

   a. Mercury.
   b. Cadmium.
   c. Lead.
   d. Chromium VI.
   e. Polybrominated biphenyls.
   f. Polybrominated diphenyl ether.

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

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

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

SECTION 11. 71.49 (1) (er) of the statutes is created to read:
71.49 (1) (er) Green data center credit under s. 71.47 (5m).

SECTION 12. 77.92 (4) of the statutes, as affected by 2007 Wisconsin Act 20, is amended to read:

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


(1) GREEN DATA CENTER CREDIT PROGRAM.

(a) Not later than 30 days after the effective date of this subsection, the department of commerce shall implement a program for certifying businesses as eligible for tax credits under sections 71.07 (5m), 71.28 (5m), and 71.47 (5m) of the statutes.
(b) If the department of commerce certifies a business as eligible under paragraph (a), the department shall determine the maximum amount of tax credits the business may claim. The total amount of tax credits allocated to all eligible businesses may not exceed $2,000,000.

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

(d) This subsection does not apply after June 30, 2009.

(END)