

# State of Wisconsin



2009 Senate Bill 651

Date of enactment: **May 13, 2010**  
Date of publication\*: **May 26, 2010**

## 2009 WISCONSIN ACT 332

**AN ACT to amend** 20.143 (1) (c), 20.143 (1) (gm), 20.143 (1) (ie), 20.143 (1) (m), 20.143 (1) (n), 71.05 (6) (a) 15., 71.21 (4), 71.26 (2) (a) 4., 71.34 (1k) (g), 71.45 (2) (a) 10., 77.92 (4) and 196.374 (3) (a); and **to create** 16.54 (14), 20.143 (1) (hr), 20.143 (1) (mr), 71.07 (5rm), 71.10 (4) (ce), 71.28 (5rm), 71.30 (3) (ce), 71.47 (5rm), 71.49 (1) (ce), 196.374 (2) (a) 2. e., 196.374 (2) (a) 4. and 560.128 of the statutes; **relating to:** loans to manufacturing businesses for energy improvements, job creation, retooling, or clean energy production; the administration of energy utility programs; a water consumption tax credit; providing an exemption from emergency rule procedures; requiring the exercise of emergency rule-making procedures; and making appropriations.

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

**SECTION 1.** 16.54 (14) of the statutes is created to read:

16.54 (14) Subsections (1) to (8) do not apply to federal moneys made available to the state that could be utilized to assist manufacturing businesses in the state retool for, or expand, production of clean energy. Unless otherwise appropriated by law, and subject to any applicable restrictions under federal law, the governor shall deposit such federal moneys in the appropriation account under s. 20.143 (1) (mr).

**SECTION 2.** 20.143 (1) (c) of the statutes, as affected by 2009 Wisconsin Act 28, is amended to read:

20.143 (1) (c) *Wisconsin development fund; grants, loans, reimbursements, and assistance.* Biennially, the amounts in the schedule for grants under s. 560.145; for loans under s. 560.128; for grants and loans under s. 560.275 (2) and subch. V of ch. 560; for reimbursements under s. 560.167; for the costs specified in s. 560.607; for the loan under 1999 Wisconsin Act 9, section 9110 (4); and for the grants under 1995 Wisconsin Act 27, section

9116 (7gg), 1995 Wisconsin Act 119, section 2 (1), 1997 Wisconsin Act 27, section 9110 (6g), 2003 Wisconsin Act 33, section 9109 (1d) and (2q), 2007 Wisconsin Act 20, section 9108 (4u), (6c), (7c), (7f), (8c), (8i), (9i), and (10q), 2009 Wisconsin Act 2, section 9110 (2) and (3), and 2009 Wisconsin Act 28, section 9110 (17q).

**SECTION 3.** 20.143 (1) (gm) of the statutes, as affected by 2009 Wisconsin Act 28, is amended to read:

20.143 (1) (gm) *Administration of grants and loans.* All moneys received from origination fees under ss. 560.138 (7), 560.139 (4), 560.305 (2), and 560.68 (3), and from transfer fees under s. 560.205 (3) (e), for administering the programs under ss. 560.138, 560.139, and 560.304 and under subch. V of ch. 560 ~~and~~ for the costs of underwriting grants and loans awarded under ss. 560.138, 560.139, and 560.304 and under subch. V of ch. 560, and for loans under s. 560.128.

**SECTION 4.** 20.143 (1) (hr) of the statutes is created to read:

20.143 (1) (hr) *Loans to manufacturing businesses; repayments.* All moneys received from repayments of loans under s. 560.128, to be used for loans to manufacturing businesses under s. 560.128.

\* Section 991.11, WISCONSIN STATUTES 2007-08 : Effective date of acts. "Every act and every portion of an act enacted by the legislature over the governor's partial veto which does not expressly prescribe the time when it takes effect shall take effect on the day after its date of publication as designated" by the secretary of state [the date of publication may not be more than 10 working days after the date of enactment].

**SECTION 5.** 20.143 (1) (ie) of the statutes, as affected by 2009 Wisconsin Act 28, is amended to read:

20.143 (1) (ie) *Wisconsin development fund, repayments.* All moneys received in repayment of grants or loans under s. 560.085 (4) (b), 1985 stats., s. 560.10, 2005 stats., s. 560.147, 2005 stats., s. 560.16, 1995 stats., s. 560.165, 1993 stats., s. 560.275 (2), s. 560.62, 2005 stats., s. 560.63, 2005 stats., s. 560.66, 2005 stats., ss. 560.145, 560.157, and 560.45, subch. V of ch. 560, 1989 Wisconsin Act 336, section 3015 (1m), 1989 Wisconsin Act 336, section 3015 (2m), 1989 Wisconsin Act 336, section 3015 (3gx), 1997 Wisconsin Act 27, section 9110 (7f), 1997 Wisconsin Act 310, section 2 (2d), 1999 Wisconsin Act 9, section 9110 (4), and 2007 Wisconsin Act 20, section 9108 (5x), not appropriated under par. (gv) to be used for grants and loans under s. 560.275 (2), s. 560.45, and subch. V of ch. 560, for loans under s. 560.128, for the loan under 1999 Wisconsin Act 9, section 9110 (4), for the grant under 2001 Wisconsin Act 16, section 9110 (7g), for the grants under 2003 Wisconsin Act 33, section 9109 (1d) and (2q), for the study under 2009 Wisconsin Act 28, section 9110 (15u), and for reimbursements under s. 560.167.

**SECTION 6.** 20.143 (1) (m) of the statutes is amended to read:

20.143 (1) (m) *Federal aid, state operations.* All moneys received from the federal government as authorized by the governor under s. 16.54, for state operations and for loans under s. 560.128.

**SECTION 7.** 20.143 (1) (mr) of the statutes is created to read:

20.143 (1) (mr) *Loans to manufacturing businesses.* All moneys received from the federal government for assisting manufacturing businesses in retooling for, or expanding, production of clean energy and deposited by the governor under s. 16.54 (14), to be used for loans under s. 560.128.

**SECTION 8.** 20.143 (1) (n) of the statutes is amended to read:

20.143 (1) (n) *Federal aid, local assistance.* All moneys received from the federal government, as authorized by the governor under s. 16.54, for local assistance and for loans under s. 560.128.

**SECTION 8b.** 71.05 (6) (a) 15. of the statutes, as affected by 2009 Wisconsin Act 28, 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), (2dy), (3g), (3h), (3n), (3p), (3q), (3r), (3s), (3t), (3w), (5e), (5f), (5h), (5i), (5j), (5k), (5rm), and (8r) 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 (1k) (g).

**SECTION 8c.** 71.07 (5rm) of the statutes is created to read:

71.07 (5rm) **WATER CONSUMPTION CREDIT.** (a) *Definitions.* In this subsection:

1. "Ccf" means 100 cubic feet.

2. "Claimant" means a person who files a claim under this subsection, who is an industrial customer of a municipal water utility that is located in a federal renewal community zone in this state, and whose average annual water consumption from that utility for a 24-month period exceeds 1,000,000 Ccf.

(b) *Filing claims.* Subject to the limitations provided in this subsection, for taxable years beginning after December 31, 2009, and before January 1, 2020, a claimant may claim as a credit against the tax imposed under s. 71.02, up to the amount of the tax, the amount determined as follows, except that the maximum amount that a claimant may claim in a taxable year under this subsection is \$300,000:

1. Subtract the claimant's 2009 water usage costs from the claimant's water usage costs for the taxable year.

2. If the amount determined under subd. 1. is a positive number, multiply that amount by 0.50.

(c) *Limitations.* 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 8d.** 71.10 (4) (ce) of the statutes is created to read:

71.10 (4) (ce) Water consumption credit under s. 71.07 (5rm).

**SECTION 8e.** 71.21 (4) of the statutes, as affected by 2009 Wisconsin Act 28, is amended to read:

71.21 (4) Credits computed by a partnership under s. 71.07 (2dd), (2de), (2di), (2dj), (2dL), (2dm), (2ds), (2dx), (2dy), (3g), (3h), (3n), (3p), (3q), (3r), (3s), (3t), (3w), (5e), (5f), (5g), (5h), (5i), (5j), (5k), (5rm), and (8r) and passed through to partners shall be added to the partnership's income.

**SECTION 8f.** 71.26 (2) (a) 4. of the statutes, as affected by 2009 Wisconsin Act 28, is amended to read:

71.26 (2) (a) 4. Plus the amount of the credit computed under s. 71.28 (1dd), (1de), (1di), (1dj), (1dL), (1dm), (1ds), (1dx), (1dy), (3g), (3h), (3n), (3p), (3q), (3r), (3t), (3w), (5e), (5f), (5g), (5h), (5i), (5j), (5k), (5rm), and (8r) 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 (1k) (g).

**SECTION 8g.** 71.28 (5rm) of the statutes is created to read:

71.28 (5rm) WATER CONSUMPTION CREDIT. (a) *Definitions.* In this subsection:

1. "Ccf" means 100 cubic feet.
2. "Claimant" means a person who files a claim under this subsection, who is an industrial customer of a municipal water utility that is located in a federal renewal community zone in this state, and whose average annual water consumption from that utility for a 24-month period exceeds 1,000,000 Ccf.

(b) *Filing claims.* Subject to the limitations provided in this subsection, for taxable years beginning after December 31, 2009, and before January 1, 2020, a claimant may claim as a credit against the tax imposed under s. 71.23, up to the amount of the tax, the amount determined as follows, except that the maximum amount that a claimant may claim in a taxable year under this subsection is \$300,000:

1. Subtract the claimant's 2009 water usage costs from the claimant's water usage costs for the taxable year.
2. If the amount determined under subd. 1. is a positive number, multiply that amount by 0.50.

(c) *Limitations.* 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 8h.** 71.30 (3) (ce) of the statutes is created to read:

71.30 (3) (ce) Water consumption credit under s. 71.28 (5rm).

**SECTION 8i.** 71.34 (1k) (g) of the statutes, as affected by 2009 Wisconsin Act 28, is amended to read:

71.34 (1k) (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), (1dy), (3), (3g), (3h), (3n), (3p), (3q), (3r), (3t), (3w), (5e), (5f), (5g), (5h), (5i), (5j), (5k), (5rm), and (8r) and passed through to shareholders.

**SECTION 8j.** 71.45 (2) (a) 10. of the statutes, as affected by 2009 Wisconsin Act 28, 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 (1dy), (3g), (3h), (3n), (3p), (3q), (3r), (3w), (5e), (5f), (5g), (5h), (5i), (5j), (5k), (5rm), and (8r) 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 (1k) (g) and the amount of credit computed under s. 71.47 (1), (3), (3t), (4), (4m), and (5).

**SECTION 8k.** 71.47 (5rm) of the statutes is created to read:

71.47 (5rm) WATER CONSUMPTION CREDIT. (a) *Definitions.* In this subsection:

1. "Ccf" means 100 cubic feet.
2. "Claimant" means a person who files a claim under this subsection, who is an industrial customer of a municipal water utility that is located in a federal renewal community zone in this state, and whose average annual water consumption from that utility for a 24-month period exceeds 1,000,000 Ccf.

(b) *Filing claims.* Subject to the limitations provided in this subsection, for taxable years beginning after December 31, 2009, and before January 1, 2020, a claimant may claim as a credit against the tax imposed under s. 71.43, up to the amount of the tax, the amount determined as follows, except that the maximum amount that a claimant may claim in a taxable year under this subsection is \$300,000:

1. Subtract the claimant's 2009 water usage costs from the claimant's water usage costs for the taxable year.
2. If the amount determined under subd. 1. is a positive number, multiply that amount by 0.50.

(c) *Limitations.* 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 8L.** 71.49 (1) (ce) of the statutes is created to read:

71.49 (1) (ce) Water consumption credit under s. 71.47 (5rm).

**SECTION 8m.** 77.92 (4) of the statutes, as affected by 2009 Wisconsin Act 28, 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), (2dy), (3g), (3h), (3n), (3p), (3q), (3r), (3s), (3t), (3w), (5e), (5f), (5g), (5h), (5i), (5j), (5k), (5rm), and (8r); 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.

**SECTION 9.** 196.374 (2) (a) 2. e. of the statutes is created to read:

196.374 (2) (a) 2. e. Components to implement energy efficiency or renewable energy measures in facilities of manufacturing businesses in this state that are consistent with the objectives under s. 560.128 (1) (a).

**SECTION 10.** 196.374 (2) (a) 4. of the statutes is created to read:

196.374 (2) (a) 4. A person contracted to administer the programs under subd. 1. shall ensure coordination between the programs directed towards industrial and manufacturing customers under subd. 1. and the program under s. 560.128. Annually, a person contracted to administer the programs under subd. 1. shall submit a report to the commission and to the department of commerce regarding the programs directed towards industrial and manufacturing customers under subd. 1.

**SECTION 11.** 196.374 (3) (a) of the statutes is amended to read:

196.374 (3) (a) *In general.* The commission shall have oversight of programs under sub. (2). The commission shall maximize coordination of program delivery, including coordination between programs under subs. (2) (a) 1., (b) 1. and 2., and (c) and (7), ordered programs, low-income weatherization programs under s. 16.957, renewable resource programs under s. 196.378, and other energy efficiency or renewable resource programs. The commission shall cooperate with the department of natural resources to ensure coordination of energy efficiency and renewable resource programs with air quality programs and to maximize and document the air quality

improvement benefits that can be realized from energy efficiency and renewable resource programs. The commission shall cooperate with the department of commerce to ensure coordination of energy efficiency and renewable resource programs under sub. (2) (a) 2. e. with the loan program under s. 560.128 (1) (a).

**SECTION 12.** 560.128 of the statutes is created to read:

**560.128 Loans to manufacturing businesses.** (1)

From the appropriations under s. 20.143 (1) (c), (gm), (hr), (ie), (m), (mr), and (n), the department may make a loan to a manufacturing business in this state to do any of the following:

(a) Implement energy efficiency or renewable energy measures in their facilities to enhance their competitiveness.

(b) Retool existing facilities to manufacture products that support the green economy.

(c) Expand or establish domestic clean energy manufacturing operations.

(d) Create or retain jobs for workers engaged in activities under pars. (a) to (c).

(2) The department shall promulgate rules establishing eligibility criteria that do all of the following:

(a) Set clear job-creation or job-retention standards for loan recipients.

(b) Establish minimum energy savings that an eligible manufacturer must expect will result from the loan's utilization.

(c) Give priority to existing manufacturing businesses and idle manufacturing facilities.

(d) Ensure that loans under this section will be distributed to manufacturing businesses throughout the state.

(e) Require all work paid for with the proceeds of a loan under this section be performed by one of the following:

1. Employees who are paid an hourly wage that is not less than 150 percent of the federal minimum wage.

2. A contractor or subcontractor that agrees to pay all employees who perform work paid for with the proceeds of a loan under this section an hourly wage that is not less than 150 percent of the federal minimum wage.

**SECTION 13. Nonstatutory provisions.**

(1) Using the procedure under section 227.24 of the statutes, the department of commerce shall promulgate rules required under section 560.128 (2) of the statutes, as created by this act, for the period before the effective date of the permanent rules promulgated under that section, but not to exceed the period authorized under section 227.24 (1) (c) and (2) of the statutes. Notwithstanding section 227.24 (1) (a), (2) (b), 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 public peace, health, safety, or welfare and is not required

to provide a finding of an emergency for a rule promulgated under this subsection.

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