



State of Wisconsin  
2011 – 2012 LEGISLATURE



LRB-0932/1  
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## 2011 SENATE BILL 31

March 9, 2011 – Introduced by Senator DARLING, cosponsored by Representatives STRACHOTA, LEMAHIEU and SPANBAUER. Referred to Committee on Economic Development and Veterans and Military Affairs.

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

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### *Analysis by the Legislative Reference Bureau*

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

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

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

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

2           71.05 **(6)** (a) 15. The amount of the credits computed under s. 71.07 (2dd), (2de),  
3           (2di), (2dj), (2dL), (2dm), (2dr), (2ds), (2dx), (2dy), (3g), (3h), (3n), (3p), (3q), (3r),  
4           (3rm), (3rn), (3s), (3t), (3w), (5e), (5f), (5h), (5i), (5j), (5k), (5r), (5rm), (6n), and (8r) and  
5           not passed through by a partnership, limited liability company, or tax-option  
6           corporation that has added that amount to the partnership's, company's, or  
7           tax-option corporation's income under s. 71.21 (4) or 71.34 (1k) (g).

8           **SECTION 2.** 71.07 (6n) of the statutes is created to read:

9           71.07 **(6n)** GREEN DATA CENTER CREDIT. (a) *Definitions.* In this subsection:

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

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

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

17           (b) *Filing claims.* Subject to the limitations provided in this subsection and  
18           2011 Wisconsin Act .... (this act), section 13, for taxable years beginning after June  
19           30, 2011, and before July 1, 2013, a claimant may claim as a credit against the taxes  
20           imposed under s. 71.02, up to the amount of the taxes, the amount that the claimant

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1 paid in the taxable year for the following items that are used to construct and operate  
2 a green data center:

3 1. At least 2 of the following:

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

5 b. Sustainable landscaping.

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

7 2. At least 2 of the following:

8 a. Catalytic converters on back-up generators.

9 b. Photovoltaics.

10 c. Heat pumps.

11 d. Evaporative cooling.

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

14 a. Mercury.

15 b. Cadmium.

16 c. Lead.

17 d. Chromium VI.

18 e. Polybrominated biphenyls.

19 f. Polybrominated diphenyl ether.

20 (c) *Limitations.* 1. The maximum amount of all credits that may be claimed  
21 under this subsection and ss. 71.28 (6n) and 71.47 (6n) is \$2,000,000. No claimant  
22 may claim a credit under this subsection unless the claimant submits with the  
23 claimant's return a copy of the claimant's certification for credits under 2011  
24 Wisconsin Act .... (this act), section 13.

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

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

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

12           71.10 (4) (cr) Green data center credit under s. 71.07 (6n).

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

14           71.21 (4) Credits computed by a partnership under s. 71.07 (2dd), (2de), (2di),  
15 (2dj), (2dL), (2dm), (2ds), (2dx), (2dy), (3g), (3h), (3n), (3p), (3q), (3r), (3rm), (3rn), (3s),  
16 (3t), (3w), (5e), (5f), (5g), (5h), (5i), (5j), (5k), (5r), (5rm), (6n), and (8r) and passed  
17 through to partners shall be added to the partnership's income.

18           **SECTION 5.** 71.26 (2) (a) 4. of the statutes is amended to read:

19           71.26 (2) (a) 4. Plus the amount of the credit computed under s. 71.28 (1dd),  
20 (1de), (1di), (1dj), (1dL), (1dm), (1ds), (1dx), (1dy), (3g), (3h), (3n), (3p), (3q), (3r),  
21 (3rm), (3rn), (3t), (3w), (5e), (5f), (5g), (5h), (5i), (5j), (5k), (5r), (5rm), (6n), and (8r)  
22 and not passed through by a partnership, limited liability company, or tax–option  
23 corporation that has added that amount to the partnership's, limited liability  
24 company's, or tax–option corporation's income under s. 71.21 (4) or 71.34 (1k) (g).

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

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1           71.28 (6n) GREEN DATA CENTER CREDIT. (a) *Definitions.* In this subsection:

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

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

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

9           (b) *Filing claims.* Subject to the limitations provided in this subsection and  
10 2011 Wisconsin Act ... (this act), section 13, for taxable years beginning after June  
11 30, 2011, and before July 1, 2013, a claimant may claim as a credit against the taxes  
12 imposed under s. 71.23, up to the amount of the taxes, the amount that the claimant  
13 paid in the taxable year for the following items that are used to construct and operate  
14 a green data center:

15           1. At least 2 of the following:

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

17           b. Sustainable landscaping.

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

19           2. At least 2 of the following:

20           a. Catalytic converters on back-up generators.

21           b. Photovoltaics.

22           c. Heat pumps.

23           d. Evaporative cooling.

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

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- 1 a. Mercury.
- 2 b. Cadmium.
- 3 c. Lead.
- 4 d. Chromium VI.
- 5 e. Polybrominated biphenyls.
- 6 f. Polybrominated diphenyl ether.

7 (c) *Limitations.* 1. The maximum amount of all credits that may be claimed  
8 under this subsection and ss. 71.07 (6n) and 71.47 (6n) is \$2,000,000. No claimant  
9 may claim a credit under this subsection unless the claimant submits with the  
10 claimant's return a copy of the claimant's certification for credits under 2011  
11 Wisconsin Act .... (this act), section 13.

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

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

22 **SECTION 7.** 71.30 (3) (cr) of the statutes is created to read:  
23 71.30 (3) (cr) Green data center credit under s. 71.28 (6n).

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

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1           71.34 **(1k)** (g) An addition shall be made for credits computed by a tax–option  
2 corporation under s. 71.28 (1dd), (1de), (1di), (1dj), (1dL), (1dm), (1ds), (1dx), (1dy),  
3 (3), (3g), (3h), (3n), (3p), (3q), (3r), (3rm), (3rn), (3t), (3w), (5e), (5f), (5g), (5h), (5i), (5j),  
4 (5k), (5r), (5rm), (6n), and (8r) and passed through to shareholders.

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

6           71.45 **(2)** (a) 10. By adding to federal taxable income the amount of credit  
7 computed under s. 71.47 (1dd) to (1dy), (3g), (3h), (3n), (3p), (3q), (3r), (3rm), (3rn),  
8 (3w), (5e), (5f), (5g), (5h), (5i), (5j), (5k), (5r), (5rm), (6n), and (8r) 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 (1k) (g) and the amount  
12 of credit computed under s. 71.47 (1), (3), (3t), (4), (4m), and (5).

13           **SECTION 10.** 71.47 (6n) of the statutes is created to read:

14           71.47 **(6n)** GREEN DATA CENTER CREDIT. (a) *Definitions.* In this subsection:

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

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

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

22           (b) *Filing claims.* Subject to the limitations provided in this subsection and  
23 2011 Wisconsin Act .... (this act), section 13, for taxable years beginning after June  
24 30, 2011, and before July 1, 2013, a claimant may claim as a credit against the taxes  
25 imposed under s. 71.43, up to the amount of the taxes, the amount that the claimant

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1 paid in the taxable year for the following items that are used to construct and operate  
2 a green data center:

3 1. At least 2 of the following:

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

5 b. Sustainable landscaping.

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

7 2. At least 2 of the following:

8 a. Catalytic converters on back-up generators.

9 b. Photovoltaics.

10 c. Heat pumps.

11 d. Evaporative cooling.

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

14 a. Mercury.

15 b. Cadmium.

16 c. Lead.

17 d. Chromium VI.

18 e. Polybrominated biphenyls.

19 f. Polybrominated diphenyl ether.

20 (c) *Limitations.* 1. The maximum amount of all credits that may be claimed  
21 under this subsection and ss. 71.07 (6n) and 71.28 (6n) is \$2,000,000. No claimant  
22 may claim a credit under this subsection unless the claimant submits with the  
23 claimant's return a copy of the claimant's certification for credits under 2011  
24 Wisconsin Act .... (this act), section 13.



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

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

11           **SECTION 11.** 71.49 (1) (cr) of the statutes is created to read:

12           71.49 (1) (cr) Green data center credit under s. 71.47 (6n).

13           **SECTION 12.** 77.92 (4) of the statutes is amended to read:

14           77.92 (4) “Net business income,” with respect to a partnership, means taxable  
15 income as calculated under section 703 of the Internal Revenue Code; plus the items  
16 of income and gain under section 702 of the Internal Revenue Code, including taxable  
17 state and municipal bond interest and excluding nontaxable interest income or  
18 dividend income from federal government obligations; minus the items of loss and  
19 deduction under section 702 of the Internal Revenue Code, except items that are not  
20 deductible under s. 71.21; plus guaranteed payments to partners under section 707  
21 (c) of the Internal Revenue Code; plus the credits claimed under s. 71.07 (2dd), (2de),  
22 (2di), (2dj), (2dL), (2dm), (2dr), (2ds), (2dx), (2dy), (3g), (3h), (3n), (3p), (3q), (3r),  
23 (3rm), (3rn), (3s), (3t), (3w), (5e), (5f), (5g), (5h), (5i), (5j), (5k), (5r), (5rm), (6n), and  
24 (8r); and plus or minus, as appropriate, transitional adjustments, depreciation  
25 differences, and basis differences under s. 71.05 (13), (15), (16), (17), and (19); but

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1 excluding income, gain, loss, and deductions from farming. “Net business income,”  
2 with respect to a natural person, estate, or trust, means profit from a trade or  
3 business for federal income tax purposes and includes net income derived as an  
4 employee as defined in section 3121 (d) (3) of the Internal Revenue Code.

**SECTION 13. Nonstatutory provisions.****(1) GREEN DATA CENTER CREDIT PROGRAM.**

7 (a) Not later than 30 days after the effective date of this subsection, the  
8 department of commerce shall implement a program for certifying businesses as  
9 eligible for tax credits under sections 71.07 (6n), 71.28 (6n), and 71.47 (6n) of the  
10 statutes.

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

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

