



WISCONSIN LEGISLATIVE COUNCIL AMENDMENT MEMO

2003 Assembly Bill 774

**Assembly Substitute
Amendment 1, as Amended by
Assembly Amendments 1, 2, and 3**

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Assembly Bill 774 relates to public utility shared revenue payments, the imposition of local general property taxes on electric utilities' general structures and substations, the creation of a credit against license fees imposed on electric utilities and cooperatives and the high-voltage transmission line annual impact fee.

Assembly Substitute Amendment 1

General Property Tax

Under current law, the property of an electric utility, qualified wholesale electric company, and wholesale merchant plant (collectively, a light, heat, and power company) and an electric cooperative that is "used and useful" in the operation of the business is exempt from the general property tax. Assembly Substitute Amendment 1 creates two exceptions to this exemption:

- Beginning with property tax assessments on January 1, 2005, a general structure owned or leased by a light, heat, and power company subject to the gross receipts license fee is subject to general property taxes.
- Beginning with property tax assessments on January 1, 2006, a substation of a light, heat, and power company subject to the gross receipts tax is subject to general property taxes. This treatment of substations does not apply to transmission substation property of these entities.

Neither of these exemptions apply to a general structure or substation of a municipal electric utility if the property is located within the boundaries of the municipality and payments in lieu of taxes are made on the property. General structures and substations subject to general property tax under these provisions are assessed by the Department of Revenue (DOR).

Gross Receipts License Fee

Current law imposes upon light, heat, and power companies and electric cooperatives a license fee based upon the specified gross revenues of the entity. The substitute amendment specifies that, beginning with the license fees due in calendar year 2006, a light, heat, and power company may claim as a credit against the license fees imposed on it the amount of property taxes imposed on the general structures and substations paid by the company in the then current calendar year. Starting at the same time, an electric cooperative may claim as a credit against its license fees an amount equal to the amount of any payments in lieu of property taxes paid in the then current calendar year. The amount of the credit that may be claimed by an electric cooperative may not exceed the amount of property taxes that the cooperative would have paid in that year had the cooperative's property been subject to the general property tax.

Under the substitute amendment, if a light, heat, and power company's or cooperative's credit is not entirely offset against the license fees that the company or cooperative owes for the current calendar year, the unused balance may be carried forward in credit against license fees for the following 15 calendar years. This carry-forward credit may be claimed only to the extent that is not offset by the license fees otherwise due in that 15-year period.

Utility Shared Revenue Payments

Under current law, the state makes utility shared revenue payments to municipalities and counties. With the enactment of 2003 Wisconsin Act 31, these payments are based on different aid formulas, based upon the type of utility property in the municipality or county. For existing power plants and new or existing general structures and substations, the payment is generally based upon a specified mill rate times the net book value of the property. For new or repowered power plants that begin operation after December 31, 2003, the base and incentive payments are based upon the capacity of the plant.

The substitute amendment makes the following changes to the utility shared revenue payments:

- Removes general structures and substations from the calculation of utility shared revenue payments at the time that general structures and substations become subject to general property taxes.
- Beginning with distributions in 2005 for existing power plants, if in any year the payments to the municipality and county in which the plant is located would be greater under the capacity-based formula than under the net book value-based formula, then the municipality and county shall receive payments under the capacity-based formula beginning in that year and in each year thereafter and not the net book value-based formula. This provision has been termed the "hold harmless clause" by some parties interested in the development of the bill.
- Sunsets after distributions in 2004 the current law that specifies in the net book value formula for payments based on the property used by a light, heat, and power company that the amount of the net book value, for purposes of calculating these payments, shall be no less than the value used to calculate the payments in 1991.

High-Voltage Transmission Line Annual Impact Fees

Currently, the owner of a 345 kV or larger high-voltage transmission line must pay to the Department of Administration (DOA) an annual impact fee equal to 0.3% of the cost of the line, as determined by the Public Service Commission (PSC). The DOA distributes the revenues from this fee to municipalities in proportion to the amount of investment in the line that is allocated by the PSC to each municipality.

The substitute amendment changes the basis for the computation of this annual fee to be an amount equal to 0.3% of the net book value of the line.

Department of Revenue Study

The substitute amendment directs the DOR to submit by December 31, 2004, a proposal to the Legislature regarding the imposition of local general property taxes on the property of light, heat, and power company and electric cooperatives beginning with property tax assessments as of January 1, 2007. The proposal must include distribution and transmission property and property included in a company's or cooperative's "production plant" (i.e., power plant) account that does not directly generate electricity.

Amendments 1, 2, and 3 to Assembly Substitute Amendment 1

Assembly Amendment 1

Under 2003 Wisconsin Act 89, an electric utility may not, in general, recover in its rates the cost of "mitigation payments" paid by the utility to a local unit of government. The PSC shall only approve a mitigation payment agreement that is received by the commission before June 10, 2003 and, if the PSC finds the agreement to be reasonable, the PSC shall not subsequently modify the agreement.

Assembly Amendment 1 creates an exception to current law. The amendment specifies that if the PSC receives a mitigation payment agreement before June 10, 2003, and does not determine that the agreement is unreasonable before November 7, 2003, that an electric utility may recover in its rates mitigation payments made in accordance with the terms of the agreement, notwithstanding any subsequent limitations imposed by the PSC on the mitigation payments.

Assembly Amendment 2

Assembly Amendment 2 delays by one year the implementation of each of the changes in the property taxation of utility property, utility license fees, and utility shared revenue payments created by the substitute amendment.

The amendment also modifies the hold harmless clause in the substitute amendment for the utility shared revenue payments for an existing power plant. Under the amendment, in determining which formula will be used to compute these payments and the amount of a payment under the capacity-based formula, the capacity-based formula shall be based upon the sum of the amounts for the base payments and incentive payments for alternative energy resources (thus excluding from these calculations the capacity-based incentive payments for a power plant that is a baseload power plant, is

located on or adjacent to an existing or decommissioned power plant or a brownfield, or is a cogeneration plant).

Assembly Amendment 3

Assembly Amendment 3 replaces the directive in the substitute amendment to the DOR to submit a proposal to the Legislature regarding the imposition of general property taxes on property of light, heat, and power companies and electric cooperatives with a directive to the DOR to conduct a study. In particular, under the amendment, the department must convene a study group by December 31, 2004 to assess the feasibility and desirability of imposing local general property taxes or their equivalent on all distribution property of these companies and cooperatives. This study group must include representatives from communities that host power plants, electric utilities, municipal utilities, investor-owned electric utilities, members of the public who have expertise in the taxation of power plant and transmission line siting, and any other individuals who the department believes to have expertise related to the study. The study group must report its findings and recommendations to the Legislature by May 1, 2005.

Legislative History

Representatives Jensen, Ziegelbauer, and Gottlieb introduced Assembly Substitute Amendment 1 on February 16, 2004. On February 17, 2004, the Assembly Committee on Energy and Utilities took the following actions: introduced Assembly Amendment 1 to Assembly Substitute Amendment 1; recommended adoption of Assembly Amendment 1 to Assembly Substitute Amendment 1 on a vote of Ayes, 7; Noes, 5; recommended adoption of Assembly Substitute Amendment 1 on a vote of Ayes, 12; Noes, 0; and recommended passage of Assembly Bill 774, as amended, on a vote of Ayes, 11; Noes, 1.

On March 8, 2004, the Joint Committee on Finance introduced Assembly Amendments 2 and 3 to Assembly Substitute Amendment 1, and recommended adoption of the following amendments to Assembly Substitute Amendment 1 on the specified votes: Assembly Amendment 1, Ayes, 11; Noes, 5; Assembly Amendment 2, Ayes, 16; Noes, 0; and Assembly Amendment 3, Ayes, 16; Noes, 0. On March 8, 2004, the Joint Committee on Finance recommended adoption of Assembly Substitute Amendment 1 and passage of Assembly Bill 774, as amended, on separate votes of Ayes, 15; Noes, 1.

On March 10, 2004, the Assembly adopted Assembly Amendments 1, 2, and 3 to Assembly Substitute Amendment 1, and Assembly Substitute Amendment 1 on separate voice votes, and passed Assembly Bill 774, as amended, on a vote of Ayes, 88; Noes, 11.

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