



2005 ASSEMBLY BILL 818

November 9, 2005 - Introduced by Representatives HONADEL, HAHN, ALBERS, GOTTLIEB, GRONEMUS, HINES, HUNDERTMARK, JENSEN, KERKMAN, KREIBICH, KREUSER, F. LASEE, LEMAHIEU, MCCORMICK, MONTGOMERY, NERISON, NISCHKE, OTT, PETROWSKI, SHERIDAN, STEINBRINK, TOWNS and VAN ROY, cosponsored by Senators PLALE, LEIBHAM, KANAVAS, BROWN, A. LASEE and WIRCH. Referred to Committee on Energy and Utilities.

1 **AN ACT** *to renumber and amend* 196.20 (7) (c); *to amend* 16.969 (2) (a), 70.05
2 (5) (a) 1m., 70.112 (4) (a), 76.28 (9), 76.29 (2), 79.04 (1) (intro.), 79.04 (1) (b) 1.,
3 79.04 (2) (a), 79.04 (2) (am) 1., 79.04 (6) (a) and 196.491 (3) (gm); and *to create*
4 70.112 (4) (am), 70.32 (2) (a) 8., 70.32 (2) (c) 2m., 70.995 (15), 76.28 (3) (e), 76.48
5 (3d), 79.04 (4m) and 196.20 (7) (c) 2. of the statutes; **relating to:** public utility
6 aid payments, imposing local general property taxes on production plant
7 general structures and substations, and creating a credit against license fees
8 imposed on light, heat, and power companies and electric cooperatives.

Analysis by the Legislative Reference Bureau

Under current law, beginning in 2005, each county and municipality in which a power production plant is located receives a state aid payment based on the net book value of the production plant, for production plants that, generally, began operation before January 1, 2004, or based on the production plant's megawatt capacity, for production plants that began operation after December 31, 2003. Under this bill, beginning in 2007, if in any year the payments to the municipality and county in which a production plant is located would be greater based on the production plant's name-plate capacity than on the depreciated net book value of the production plant, the municipality and county will receive payments based on the

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production plant's name-plate capacity beginning in that year and in each year thereafter.

Under current law, generally, the property of a light, heat, and power company, including general structures and substations, is exempt from the imposition of local general property taxes, if the company is subject to license fees. Under the bill, beginning with the property tax assessments as of January 1, 2007, a general structure that is owned or leased by a light, heat, and power company is subject to local general property taxes. In addition, beginning with the property tax assessments as of January 1, 2008, a substation of a light, heat, and power company, not including transmission substation property, is subject to local general property taxes. However, the property of a light, heat, and power company that is located within the municipality that operates the company is not subject to property taxes.

In addition, beginning with license fees that are due in 2008, a light, heat, and power company may claim as a credit against its license fee liability an amount equal to the amount of the property taxes that the company paid in the calendar year on general structures and substations. An electric cooperative may also claim a credit against its license fee liability in an amount equal to the amount of any payments in lieu of property taxes that the cooperative paid in the calendar year, not to exceed the amount of property taxes that the cooperative would have paid had its property been subject to property taxes. If the credit claimed by a light, heat, and power company or an electric cooperative exceeds the license fee liability of the company or cooperative, the state will not issue a refund check, but the company or cooperative may carry forward any remaining credit to the 15 following years.

Under current law, a person who is issued a certificate of public convenience and necessity for a high-voltage transmission line must pay the Department of Administration an annual impact fee equal to 0.3 percent of the cost of the high-voltage transmission line. Under the bill, the annual impact fee is equal to 0.3 percent of the net book value of the high-voltage transmission line.

Under the bill, if the Public Service Commission receives a mitigation payment agreement before June 10, 2003, and does not determine that the agreement is unreasonable before November 11, 2003, mitigation payments in accordance with the terms of the agreement are recoverable in rates.

Finally, the bill requires the Department of Revenue to convene a study group, no later than December 31, 2005, to assess the feasibility and desirability of imposing local general property taxes on all distribution property of electric cooperatives, municipal utilities, and light, heat, and power companies.

For further information see the *state and local* 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:

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1 16.969 (2) (a) An annual impact fee in an amount equal to ~~0.3%~~ 0.3 percent of
2 the ~~cost~~ net book value of the high-voltage transmission line, as determined by the
3 commission under s. 196.491 (3) (gm).

4 **SECTION 2.** 70.05 (5) (a) 1m. of the statutes is amended to read:

5 70.05 (5) (a) 1m. “Class of property” means residential under s. 70.32 (2) (a) 1.;
6 commercial under s. 70.32 (2) (a) 2.; public utility general structures and substations
7 under s. 70.32 (2) (a) 8.; personal property; or the sum of undeveloped under s. 70.32
8 (2) (a) 5., agricultural forest under s. 70.32 (2) (a) 5m.; productive forest land under
9 s. 70.32 (2) (a) 6. and other under s. 70.32 (2) (a) 7.

10 **SECTION 3.** 70.112 (4) (a) of the statutes is amended to read:

11 70.112 (4) (a) ~~All~~ Except as provided in par. (am), all special property assessed
12 under ss. 76.01 to 76.26 and property of any light, heat, and power company taxed
13 under s. 76.28, car line company, and electric cooperative association that is used and
14 useful in the operation of the business of such company or association. ~~If~~ Except as
15 provided in par. (am) 1., if a general structure for which an exemption is sought under
16 this section is used and useful in part in the operation of any public utility assessed
17 under ss. 76.01 to 76.26 or of the business of any light, heat, and power company
18 taxed under s. 76.28, car line company, or electric cooperative association and in part
19 for nonoperating purposes of the public utility or company or association, that
20 general structure shall be assessed for taxation under this chapter at the percentage
21 of its full market value that fairly measures and represents the extent of its use for
22 nonoperating purposes. Nothing provided in this paragraph shall exclude any real
23 estate or any property which is separately accounted for under s. 196.59 from special
24 assessments for local improvements under s. 66.0705.

25 **SECTION 4.** 70.112 (4) (am) of the statutes is created to read:

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1 70.112 (4) (am) 1. Except as provided in subd. 3., beginning with the property
2 tax assessments as of January 1, 2007, a general structure owned or leased by a light,
3 heat, and power company taxed under s. 76.28 or 76.29 is subject to general property
4 taxes and, beginning with distributions in 2008, shall not be included in the
5 calculation of payments under s. 79.04 (1) and (2).

6 2. Except as provided in subd. 3., beginning with the property tax assessments
7 as of January 1, 2008, a substation of a light, heat, and power company taxed under
8 s. 76.28 or 76.29 is subject to general property taxes and, beginning with
9 distributions in 2009, shall not be included in the calculation of payments under s.
10 79.04 (1) and (2), except that this subdivision does not apply to transmission
11 substation property.

12 3. This paragraph does not apply to the property of a light, heat, and power
13 company that is located within the boundaries of the municipality that operates the
14 company and for which payments are made under s. 66.0811 (2).

15 4. Property subject to taxation under this paragraph shall be assessed by the
16 department of revenue, as provided under s. 70.995.

17 **SECTION 5.** 70.32 (2) (a) 8. of the statutes is created to read:

18 70.32 (2) (a) 8. Public utility general structures and substations.

19 **SECTION 6.** 70.32 (2) (c) 2m. of the statutes is created to read:

20 70.32 (2) (c) 2m. “Public utility general structures and substations” means
21 property described under s. 70.112 (4) (am).

22 **SECTION 7.** 70.995 (15) of the statutes is created to read:

23 70.995 (15) (a) For the property tax assessments as of January 1, 2007, the
24 treatment of manufacturing property under subs. (4) to (14) extends to property
25 described under s. 70.112 (4) (am) 1.

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1 (b) For the property tax assessments as of January 1, 2008, the treatment of
2 manufacturing property under subs. (4) to (14) extends to property described under
3 s. 70.112 (4) (am) 2.

4 **SECTION 8.** 76.28 (3) (e) of the statutes is created to read:

5 76.28 (3) (e) Beginning with the fees due in calendar year 2008, a light, heat,
6 and power company may claim as a credit against the fees imposed under sub. (2) and
7 s. 76.29 (2) an amount equal to the amount of property taxes imposed under ch. 70
8 on general structures and substations that the light, heat, and power company paid
9 in the then current calendar year. If a credit computed under this paragraph is not
10 entirely offset against the license fees otherwise due for the then current calendar
11 year, the unused balance may be carried forward and credited against license fees
12 otherwise due for the following 15 calender years to the extent not offset by the
13 license fees otherwise due in all intervening years between the year in which the
14 property taxes were paid and the year in which the carry-forward credit is claimed.

15 **SECTION 9.** 76.28 (9) of the statutes is amended to read:

16 76.28 (9) PROPERTY SUBJECT TO LOCAL TAX. ~~The~~ Except as provided in s. 70.112
17 (4) (am) the license fees imposed by this section upon the gross revenues of light, heat
18 and power companies as defined in sub. (1) (e) shall be in lieu of all other taxes on
19 all property used and useful in the operation of the business of such companies in this
20 state, except that the same shall be subject to special assessments for local
21 improvements. If a general structure is used and useful in part in the operation of
22 the business of those companies in this state and in part for nonoperating purposes,
23 the license fees imposed by this section are in place of the percentage of all other taxes
24 on the property that fairly measures and represents the extent of the use and
25 usefulness in the operation of the business of those companies in this state, and the

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1 balance is subject to local assessment and taxation, except that the entire general
2 structure is subject to special assessments for local improvements. Property under
3 s. 76.025 (2) shall not be taxed under this section, but shall be subject to local
4 assessment and taxation.

5 **SECTION 10.** 76.29 (2) of the statutes is amended to read:

6 76.29 (2) IMPOSITION. ~~There~~ Subject to the credits under ss. 76.28 (3) (e) and
7 76.48 (3d), there is imposed on every light, heat, and power company and electric
8 cooperative that owns an electric utility plant, an annual license fee to be assessed
9 by the department on or before May 1, 2005, and every May 1 thereafter, ending with
10 the assessment on May 1, 2010, measured by the gross revenues of the preceding tax
11 period in an amount equal to the apportionment factor multiplied by gross revenues
12 multiplied by ~~1.59%~~ 1.59 percent. The fee shall become delinquent if not paid when
13 due and when delinquent shall be subject to interest at the rate of ~~1.5%~~ 1.5 percent
14 per month until paid. Gross revenues earned by a light, heat, and power company
15 after December 31, 2009, are subject to the license fee imposed under s. 76.28 (2).
16 Gross revenues earned by an electric cooperative after December 31, 2009, are
17 subject to the license fee imposed under s. 76.48 (1r).

18 **SECTION 11.** 76.48 (3d) of the statutes is created to read:

19 76.48 (3d) (a) Beginning with the fees due in calendar year 2008, an electric
20 cooperative may claim as a credit against the fees imposed under sub. (1r) and s.
21 76.29 (2) an amount equal to the amount of any payments in lieu of property taxes
22 that the electric cooperative paid in the then current calendar year, not to exceed the
23 amount of property taxes that the cooperative would have paid in that year had the
24 cooperative's property been subject to taxation under ch. 70. If a credit computed
25 under this paragraph is not entirely offset against the license fees otherwise due for

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1 the then current calendar year, the unused balance may be carried forward and
2 credited against license fees otherwise due for the following 15 calendar years to the
3 extent not offset by the license fees otherwise due in all intervening years between
4 the year in which the payments were paid and the year in which the carry-forward
5 credit is claimed.

6 (b) Beginning with distributions in 2008, a general structure owned or leased
7 by an electric cooperative for which a payment in lieu of property taxes is made in
8 the year of the distribution shall not be included in the calculation of payments under
9 s. 79.04 (1) and (2). Beginning with distributions in 2009, a substation of an electric
10 cooperative, other than a transmission substation, for which a payment in lieu of
11 property taxes is made in the year of the distribution shall not be included in the
12 calculation of payments under s. 79.04 (1) and (2).

13 **SECTION 12.** 79.04 (1) (intro.) of the statutes is amended to read:

14 79.04 (1) (intro.) Annually, except for production plants that begin operation
15 after December 31, 2003, or begin operation as a repowered production plant after
16 December 31, 2003, and except as provided in sub. (4m) and under s. 70.112 (4) (am),
17 the department of administration, upon certification by the department of revenue,
18 shall distribute to a municipality having within its boundaries a production plant,
19 general structure, or substation, used by a light, heat, or power company assessed
20 under s. 76.28 (2) or 76.29 (2), except property described in s. 66.0813 unless the
21 production plant or substation is owned or operated by a local governmental unit
22 located outside of the municipality, or by an electric cooperative assessed under ss.
23 76.07 and 76.48, respectively, or by a municipal electric company under s. 66.0825
24 the amount determined as follows:

25 **SECTION 13.** 79.04 (1) (b) 1. of the statutes is amended to read:

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1 79.04 (1) (b) 1. Beginning with the distribution under this subsection in 1991,
2 and ending with the distribution under this subsection in 2006, the amount
3 determined under par. (a) to value property used by a light, heat or power company
4 in a municipality may not be less than the amount determined to value the property
5 for the distribution to the municipality under this subsection in 1990, subject to
6 subds. 2., 3. and 4.

7 **SECTION 14.** 79.04 (2) (a) of the statutes is amended to read:

8 79.04 (2) (a) Annually, except for production plants that begin operation after
9 December 31, 2003, or begin operation as a repowered production plant after
10 December 31, 2003, and except as provided in sub. (4m) and under s. 70.112 (4) (am),
11 the department of administration, upon certification by the department of revenue,
12 shall distribute from the shared revenue account or, for the distribution in 2003, from
13 the appropriation under s. 20.835 (1) (t) to any county having within its boundaries
14 a production plant, general structure, or substation, used by a light, heat or power
15 company assessed under s. 76.28 (2) or 76.29 (2), except property described in s.
16 66.0813 unless the production plant or substation is owned or operated by a local
17 governmental unit that is located outside of the municipality in which the production
18 plant or substation is located, or by an electric cooperative assessed under ss. 76.07
19 and 76.48, respectively, or by a municipal electric company under s. 66.0825 an
20 amount determined by multiplying by 6 mills in the case of property in a town and
21 by 3 mills in the case of property in a city or village the first \$125,000,000 of the
22 amount shown in the account, plus leased property, of each public utility except
23 qualified wholesale electric companies, as defined in s. 76.28 (1) (gm), on December
24 31 of the preceding year for “production plant, exclusive of land,” “general
25 structures,” and “substations,” in the case of light, heat and power companies,

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1 electric cooperatives or municipal electric companies, for all property within the
2 municipality in accordance with the system of accounts established by the public
3 service commission or rural electrification administration, less depreciation thereon
4 as determined by the department of revenue and less the value of treatment plant
5 and pollution abatement equipment, as defined under s. 70.11 (21) (a), as determined
6 by the department of revenue plus an amount from the shared revenue account or,
7 for the distribution in 2003, from the appropriation under s. 20.835 (1) (t) determined
8 by multiplying by 6 mills in the case of property in a town, and 3 mills in the case of
9 property in a city or village, of the total original cost of production plant, general
10 structures, and substations less depreciation, land and approved waste treatment
11 facilities of each qualified wholesale electric company, as defined in s. 76.28 (1) (gm),
12 as reported to the department of revenue of all property within the municipality. The
13 total of amounts, as depreciated, from the accounts of all public utilities for the same
14 production plant is also limited to not more than \$125,000,000. The amount
15 distributable to a county under this subsection and sub. (6) in any year shall not
16 exceed \$100 times the population of the county.

17 **SECTION 15.** 79.04 (2) (am) 1. of the statutes is amended to read:

18 79.04 (2) (am) 1. Beginning with the distribution under this subsection in 1991,
19 and ending with the distribution under this subsection in 2006, the amount
20 determined under par. (a) to value property used by a light, heat or power company
21 in a county may not be less than the amount determined to value the property for the
22 distribution to the county under this subsection in 1990, subject to subds. 2. and 3.

23 **SECTION 16.** 79.04 (4m) of the statutes is created to read:

24 79.04 (4m) Beginning with distributions in 2007, for production plants
25 described under subs. (1) and (2), if in any year the payments to the municipality and

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1 county in which the production plant is located would be greater under subs. (6) and
2 (7) (c) 1. based on the production plant's name-plate capacity than under sub. (1) or
3 (2) based on the depreciated net book value of the production plant, the municipality
4 and county shall receive payments under subs. (6) and (7) (c) 1., rather than under
5 sub. (1) or (2), beginning in that year and in each year thereafter.

6 **SECTION 17.** 79.04 (6) (a) of the statutes is amended to read:

7 79.04 (6) (a) Annually, beginning in 2005, for production plants that begin
8 operation after December 31, 2003, or begin operation as a repowered production
9 plant after December 31, 2003, except as provided in sub. (4m), the department of
10 administration, upon certification by the department of revenue, shall distribute
11 payments from the public utility account, as determined under par. (b), to each
12 municipality and county in which a production plant is located, if the production
13 plant has a name-plate capacity of at least one megawatt and is used by a light, heat,
14 or power company assessed under s. 76.28 (2) or 76.29 (2), except property described
15 in s. 66.0813, unless the production plant is owned or operated by a local
16 governmental unit located outside of the municipality; by a qualified wholesale
17 electric company, as defined in s. 76.28 (1) (gm); by a wholesale merchant plant, as
18 defined in s. 196.491 (1) (w); by an electric cooperative assessed under ss. 76.07 and
19 76.48, respectively; or by a municipal electric company under s. 66.0825.

20 **SECTION 18.** 196.20 (7) (c) of the statutes is renumbered 196.20 (7) (c) 1. and
21 amended to read:

22 196.20 (7) (c) 1. The Except as provided in subd. 2., the commission shall only
23 approve a mitigation payment agreement that is received by the commission before
24 June 10, 2003, and, if the commission finds the agreement to be reasonable, shall not
25 subsequently modify the agreement.

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1 **SECTION 19.** 196.20 (7) (c) 2. of the statutes is created to read:

2 196.20 **(7)** (c) 2. If the commission receives a mitigation payment agreement
3 before June 10, 2003, and does not determine that the agreement is unreasonable
4 before November 11, 2003, mitigation payments in accordance with the terms of the
5 agreement shall be recoverable in rates, notwithstanding any subsequent
6 limitations imposed by the commission on the mitigation payments.

7 **SECTION 20.** 196.491 (3) (gm) of the statutes is amended to read:

8 196.491 **(3)** (gm) The commission may not approve an application filed after
9 October 29, 1999, under this subsection for a certificate of public convenience and
10 necessity for a high-voltage transmission line that is designed for operation at a
11 nominal voltage of 345 kilovolts or more unless the approval includes the condition
12 that the applicant shall pay the fees specified in sub. (3g) (a). If the commission has
13 approved an application under this subsection for a certificate of public convenience
14 and necessity for a high-voltage transmission line that is designed for operation at
15 a nominal voltage of 345 kilovolts or more that was filed after April 1, 1999, and
16 before October 29, 1999, the commission shall require the applicant to pay the fees
17 specified in sub. (3g) (a). For any application subject to this paragraph, the
18 commission shall determine the cost net book value of the high-voltage transmission
19 line, identify the counties, towns, villages and cities through which the high-voltage
20 transmission line is routed and allocate the amount of investment associated with
21 the high-voltage transmission line to each such county, town, village and city.

22 **SECTION 21. Nonstatutory provisions.**

23 (1) DEPARTMENT OF REVENUE STUDY; UTILITY LICENSE FEES. No later than
24 December 31, 2005, the department of revenue shall convene a study group to assess
25 the feasibility and desirability of imposing local general property taxes or their

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1 equivalent on all distribution property of electric cooperatives, municipal utilities,
2 and light, heat, and power companies. The study group shall include residents of
3 communities that host public utility property; representatives of electric
4 cooperatives, municipal utilities, and light, heat, and power companies; members of
5 the public who have expertise in the taxation of power plant and transmission line
6 siting; and any other individuals who the department of revenue believes to have
7 expertise related to the study. No later than May 1, 2006, the study group shall
8 report its findings and recommendations to the legislature under section 13.172 (2)
9 of the statutes.

10 **SECTION 22. Initial applicability.**

11 (1) The treatment of section 196.20 (7) (c) 2. of the statutes applies retroactively
12 to agreements received before June 10, 2003, and to determinations made before the
13 effective date of this subsection.

14 (END)