



Legislative Fiscal Bureau

One East Main, Suite 301 • Madison, WI 53703 • (608) 266-3847 • Fax: (608) 267-6873

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TO: Members
Joint Committee on Finance

FROM: Bob Lang, Director

SUBJECT: Assembly Bill 245 and Senate Bill 115: State Taxation of Certain Light, Heat, and Power Companies and the Payment of State Aid on Their Property

Assembly Bill 245 and Senate Bill 115 are identical and would modify the state tax on light, heat, and power companies and state aid provisions related to their property. AB 245 was introduced on March 18, 2005, and referred to the Assembly Committee on Rural Affairs and Renewable Energy. On April 21, the Committee held a public hearing on the bill. An amendment to the bill (Assembly Amendment 1) has been offered and adopted by the Committee. On April 27, the Committee voted to recommend the bill, as amended, for passage by a vote of 8 to 0, and the bill was referred to the Joint Committee on Finance.

SB 115 was introduced on March 15, 2005, and referred to the Senate Committee on Energy, Utilities, and Information Technology. On October 6, the Committee held a public hearing on the bill. An amendment to the bill (Senate Amendment 1) has been offered by Senator Lasee and adopted by the Committee. On November 3, the Committee voted to recommend the bill, as amended, for passage by a vote of 5 to 0. On November 11, the bill was withdrawn from the Committee on Senate Organization and was referred to the Joint Committee on Finance.

CURRENT LAW

Under current law, light, heat, and power companies are subject to state taxation under a gross revenues-based license fee authorized under Chapter 76 of the statutes. The license fee is in lieu of local property taxes, although counties and municipalities receive state aid if they contain certain types of light, heat, and power company property. Light, heat, and power companies are defined to include persons, associations, companies, corporations, municipal public utilities, transmission companies, and qualified wholesale electric companies that provide electric, natural

gas, and related services. State law defines qualified electric wholesale company to include two types of companies. One type of company [enumerated under s. 76.28(1)(gm)1] generates and sells power to a public utility or other entity that resells electricity directly to the public. To qualify, a company must sell at least 95% of its net electricity production and have electric generating facilities with a capacity of at least 50 megawatts. The second type of company [enumerated under s. 76.28(1)(gm)2] is a wholesale merchant plant with at least 50 megawatts of power production capacity. State law defines merchant plants as electric generating equipment and related facilities that do not provide retail service and that are owned and operated either by a person that is not a public utility or by an affiliated interest of a public utility. Affiliated interest denotes some element of common ownership between the entity owning the merchant plant and a public utility.

SUMMARY OF BILLS

The bills would modify the definition of qualified wholesale electric company as it pertains to merchant plants. The bills would lower the megawatt threshold to 25 megawatts if the merchant plant is a wind farm located in more than one municipality or county. The bills would apply retroactively to state aid payments made in July, 2005, as well as to all future state aid payments. The lower megawatt threshold would not apply to qualified wholesale electric companies that are not merchant plants and would not apply to merchant plants with megawatt capacities between 25 and 49 megawatts if the merchant plant is located in a single municipality.

Assembly Amendment 1 and Senate Amendment 1 would change the bills' initial applicability, as it relates to state aid payments, from 2005 to 2006. In addition, the amendments would provide an effective date of January 1, 2006.

FISCAL EFFECT

The Department of Revenue's fiscal estimates for the bills indicate that the bills could increase state revenues and costs through higher light, heat, and power company license fee collections and state utility shared revenue payments. However, the Department notes that it "does not have information to permit a reasonable estimate of" these increases. Nonetheless, the Public Service Commission has some information on existing and proposed wind farms that permits limited observations.

Currently, five wind farms operate in Wisconsin, according to the Public Service Commission. All have capacities under 50 megawatts, but four of the wind farms are owned and operated by investor-owned light, heat, and power companies. Consequently, the revenues from the sale of electricity generated by these four facilities are subject to the state's gross revenues-based license fee, and the generating facilities result in state aid payments for the counties and municipalities where they are located. The fifth facility is Badger Windpower LLC, which is owned by ESI Energy, LLC and is located in Iowa County. The facility is comprised of 20, 1.5 megawatt

wind turbines with a total generating capacity of 30 megawatts. Iowa County officials indicate that Badger Windpower is located in a single municipality, the Town of Eden. Because the bills would change the tax and aid treatment of only wind farms that are located in more than one county or municipality, the bills would have no impact relative to any existing facilities.

The Public Service Commission monitors proposed electric generating facilities, including wind power projects. The Commission reports that 15 wind power projects are currently either in the construction or planning stages. Of those projects, three have capacities below 25 megawatts, and the remaining 12 have capacities above 50 megawatts. Of the facilities with planned capacities over 50 megawatts, four would be located in two or more municipalities or counties:

<u>Name of Project</u>	<u>Developer</u>	<u>Capacity in Megawatts</u>	<u>Location (Town, County)</u>
Forward Wind	Invenergy	200	Byron, Fond du Lac Leroy, Dodge Lomira, Dodge Oakfield, Fond du Lac
Cedar Ridge	Midwest Wind	98	Eden, Fond du Lac Empire, Fond du Lac
Twin Creeks	Navitas	98	Mishicot, Manitowoc Two Creeks, Manitowoc
Friesland	Midwest Renewable	60	Randolph, Columbia Scott, Columbia

An official at the Public Service Commission indicates that these projects, as well as existing wind farms in multiple municipalities, are regarded as individual production plants. However, on at least one occasion, a developer has maintained that a single wind farm comprises more than one production plant, which implies a lower megawatt rating for each plant. With regard to the proposed projects, this interpretation appears irrelevant from a state taxation and state aid perspective due to the existence of s. 76.28(1)(gm)1. Under that provision, a state tax liability occurs and a state aid payment is due so long as a company's facilities have a total power production capacity of at least 50 megawatts, as would be the case for each of the wind farms listed in the preceding table. Consequently, the bills would have no impact relative to any of the planned wind farms listed in the preceding table.

Prepared by: Rick Olin