



## Legislative Fiscal Bureau

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Joint Committee on Finance

Paper #828

### **Utility Tax on Wholesale Merchant Plants (Shared Revenue and Tax Relief -- Direct Aid Payments and General Fund Taxes -- Public Utility Taxes)**

[LFB 2001-03 Budget Summary: Page 604, #2 and Page 41, #1]

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#### **CURRENT LAW**

Under Chapter 76 of the statutes, light, heat and power companies (LHPs) and electric cooperatives are generally subject to a 3.19% gross revenues license fee on revenues from electricity sales. The license fee is imposed in lieu of local property taxes. However, except in the case of a qualified wholesale electric company (as defined below), if the company's property is located entirely within a single town, village or city, the property is assessed and taxed locally instead of under the license fee provisions.

An LHP is a business enterprise engaged in the following businesses: (a) generating and furnishing gas for lighting or fuel or both; (b) supplying water for domestic or public use or for power or manufacturing purposes; (c) generating, transforming, transmitting or furnishing electric current for light, heat or power; or (d) generating and furnishing steam or supplying hot water for heat, power or manufacturing purposes.

Beginning in 1996, the definition of an LHP was expanded to specifically include qualified wholesale electric companies (QWECs -- also referred to as independent power producers). A QWEC is a generation facility in Wisconsin that is operated for the sale of electricity to an entity that sells electricity directly to the public. In addition, to meet the definition of a QWEC, the company must have a minimum total power production capacity of 50 megawatts (MW) and must sell at least 95% of its net production of electricity to an entity that sells electricity directly to the public. Unlike other LHPs, the state license fee applies to a QWEC (rather than local property taxes) even if its property is located entirely within a single town, village or city.

## GOVERNOR

Modify the definition of an LHP to specifically include a wholesale merchant plant as defined under Chapter 196 (concerning the regulation of public utilities). Chapter 196 provides that a wholesale merchant plant means electric generating equipment and associated facilities in this state that do not provide retail service. A wholesale merchant plant may be owned by a person that is not a public utility or, with the approval of the Public Service Commission, by an affiliated interest of a public utility.

Under the bill, wherever there is a reference to taxation of a QWEC, a phrase would be added to indicate that the provision also applies to a wholesale merchant plant as defined under Chapter 196. As a result, all wholesale merchant plants would be subject to the gross revenues license fee. As under the current law treatment of QWECs, the state license fee (rather than the local property tax) would apply to a wholesale merchant plant even if the plant's property were located entirely within a single town, village or city.

Currently, the utility tax statutes do not specifically address taxation of wholesale merchant plants. However, a merchant plant with a minimum generating capacity of 50 MW meets the definition of a QWEC under Chapter 76. Therefore, the Department of Revenue (DOR) has determined that if a merchant plant meets the minimum generation capacity requirement for a QWEC of 50 MW, it is subject to the state license fee.

The administration has indicated that these provisions were intended to clarify that a wholesale merchant plant is taxed in the same manner as a QWEC. However, as written, the bill would impose the state license fee on all wholesale merchant plants, including those with a generating capacity of less than 50 MW. [Under current law, non-utility electric generators below the 50 MW generating capacity threshold are generally classified as commercial property and are subject to local property taxes.]

## MODIFICATION TO BILL

Make the following modifications to the bill: (a) change the definition of a QWEC under Chapter 76 to clarify that a QWEC includes a wholesale merchant plant, as defined under Chapter 196, as long as the merchant plant has a minimum total power production capacity of 50 MW; and (b) eliminate the additional references to a wholesale merchant plant under the utility tax and shared revenue provisions of the bill.

**Explanation:** According to DOR, there is an unknown number of small hydroelectric plants currently taxed locally that are below the 50 MW generating capacity threshold. As written, the bill would inadvertently remove such plants from local property tax rolls and subject them to state taxation. Such a change would also generate an aid payment for the plants under the utility component of the state shared revenue formula. The

modification would accomplish the administration's goal of clarifying the current law tax treatment of a wholesale merchant plant without imposing the state gross revenues license fee on generation facilities with a capacity of less than 50 MW.

The bill would add a reference to a wholesale merchant plant under the utility tax and shared revenue provisions whenever a provision applied to a QWEC. By defining a QWEC to include a wholesale merchant plant with a generating capacity of 50 MW or more, the modification would eliminate the necessity of specifying at each reference to a QWEC that the particular provision also applied to a wholesale merchant plan as defined under Chapter 196 with a generating capacity of 50 MW or more.

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