



2007 SENATE BILL 73

February 27, 2007 - Introduced by Senators KANAVAS, DARLING and LEIBHAM, cosponsored by Representatives STRACHOTA, HAHN, PETROWSKI, PRIDEMORE, KLEEFISCH and GUNDERSON. Referred to Committee on Campaign Finance Reform, Rural Issues and Information Technology.

1 **AN ACT to amend** 71.05 (6) (a) 15., 71.08 (1) (intro.), 71.21 (4), 71.26 (2) (a), 71.34
2 (1) (g), 71.45 (2) (a) 10. and 77.92 (4); and **to create** 71.07 (5i), 71.10 (4) (gab),
3 71.28 (5i), 71.30 (3) (dq), 71.47 (5i) and 71.49 (1) (dq) of the statutes; **relating**
4 **to:** creating an income and franchise tax credit for constructing and operating
5 a data center that is designed for maximum energy efficiency and minimum
6 environmental impact and providing an exemption from rule-making
7 procedures.

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.

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), (3g), (3n), (3s), (3t), (3w), (5b), (5d), and
4 (5e), (5f), and (5h), and (5i) and not passed through by a partnership, limited liability
5 company, or tax-option corporation that has added that amount to the partnership's,
6 company's, or tax-option corporation's income under s. 71.21 (4) or 71.34 (1) (g).

7 **SECTION 2.** 71.07 (5i) of the statutes is created to read:

8 71.07 **(5i)** GREEN DATA CENTER CREDIT. (a) *Definitions.* In this subsection:

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

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

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

16 (b) *Filing claims.* Subject to the limitations provided in this subsection and
17 2007 Wisconsin Act (this act), section 14, for taxable years beginning after June
18 30, 2007, and before July 1, 2009, a claimant may claim as a credit against the taxes
19 imposed under s. 71.02 or 71.08, up to the amount of the taxes, the amount that the
20 claimant paid in the taxable year for the following items that are used to construct
21 and operate a green data center:

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- 1 1. At least 2 of the following:
- 2 a. Low-emission building materials, including carpets and paints.
- 3 b. Sustainable landscaping.
- 4 c. An electronic waste recycling program, as defined by the department.
- 5 2. At least 2 of the following:
- 6 a. Catalytic converters on back-up generators.
- 7 b. Photovoltaics.
- 8 c. Heat pumps.
- 9 d. Evaporative cooling.
- 10 3. Equipment or equipment components that have a reduced amount, or none,
- 11 of at least 4 of the following:
- 12 a. Mercury.
- 13 b. Cadmium.
- 14 c. Lead.
- 15 d. Chromium VI.
- 16 e. Polybrominated biphenyls.
- 17 f. Polybrominated diphenyl ether.
- 18 (c) *Limitations.* 1. The maximum amount of all credits that may be claimed
- 19 under this subsection and ss. 71.28 (5i) and 71.47 (5i) is \$2,000,000. No claimant may
- 20 claim a credit under this subsection unless the claimant submits with the claimant's
- 21 return a copy of the claimant's certification for credits under 2007 Wisconsin Act ...
- 22 (this act), section 14.
- 23 2. Partnerships, limited liability companies, and tax-option corporations may
- 24 not claim the credit under this subsection, but the eligibility for, and the amount of,
- 25 the credit are based on their payment of amounts under par. (b). A partnership,

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1 limited liability company, or tax-option corporation shall compute the amount of
2 credit that each of its partners, members, or shareholders may claim and shall
3 provide that information to each of them. Partners, members of limited liability
4 companies, and shareholders of tax-option corporations may claim the credit in
5 proportion to their ownership interests.

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

8 **SECTION 3.** 71.08 (1) (intro.) of the statutes is amended to read:

9 71.08 (1) IMPOSITION. (intro.) If the tax imposed on a natural person, married
10 couple filing jointly, trust, or estate under s. 71.02, not considering the credits under
11 ss. 71.07 (1), (2dd), (2de), (2di), (2dj), (2dL), (2dr), (2ds), (2dx), (2fd), ~~(3e), (3e)~~, (3m),
12 (3n), (3s), (3t), (3w), (5b), (5d), (5e), (5f), (5i), (6), (6e), and (9e), 71.28 (1dd), (1de), (1di),
13 (1dj), (1dL), (1ds), (1dx), (1fd), (2m), (3), (3n), (3t), and (3w), and 71.47 (1dd), (1de),
14 (1di), (1dj), (1dL), (1ds), (1dx), (1fd), (2m), (3), (3n), (3t), and (3w), and subchs. VIII
15 and IX and payments to other states under s. 71.07 (7), is less than the tax under this
16 section, there is imposed on that natural person, married couple filing jointly, trust
17 or estate, instead of the tax under s. 71.02, an alternative minimum tax computed
18 as follows:

19 **SECTION 4.** 71.10 (4) (gab) of the statutes is created to read:

20 71.10 (4) (gab) Green data center credit under s. 71.07 (5i).

21 **SECTION 5.** 71.21 (4) of the statutes is amended to read:

22 71.21 (4) Credits computed by a partnership under s. 71.07 (2dd), (2de), (2di),
23 (2dj), (2dL), (2dm), (2ds), (2dx), (3g), (3n), (3s), (3t), (3w), (5b), (5e), (5f), (5g), ~~and (5h),~~
24 and (5i) and passed through to partners shall be added to the partnership's income.

25 **SECTION 6.** 71.26 (2) (a) of the statutes is amended to read:

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1 71.26 (2) (a) *Corporations in general.* The “net income” of a corporation means
2 the gross income as computed under the Internal Revenue Code as modified under
3 sub. (3) minus the amount of recapture under s. 71.28 (1di) plus the amount of credit
4 computed under s. 71.28 (1), (3), (4), and (5) minus, as provided under s. 71.28 (3) (c)
5 7., the amount of the credit under s. 71.28 (3) that the taxpayer added to income
6 under this paragraph at the time that the taxpayer first claimed the credit plus the
7 amount of the credit computed under s. 71.28 (1dd), (1de), (1di), (1dj), (1dL), (1dm),
8 (1ds), (1dx), (3g), (3n), (3t), (3w), (5b), (5e), (5f), (5g), ~~and (5h)~~, and (5i) 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 (1) (g) plus the amount
12 of losses from the sale or other disposition of assets the gain from which would be
13 wholly exempt income, as defined in sub. (3) (L), if the assets were sold or otherwise
14 disposed of at a gain and minus deductions, as computed under the Internal Revenue
15 Code as modified under sub. (3), plus or minus, as appropriate, an amount equal to
16 the difference between the federal basis and Wisconsin basis of any asset sold,
17 exchanged, abandoned, or otherwise disposed of in a taxable transaction during the
18 taxable year, except as provided in par. (b) and s. 71.45 (2) and (5).

19 **SECTION 7.** 71.28 (5i) of the statutes is created to read:

20 71.28 (5i) GREEN DATA CENTER CREDIT. (a) *Definitions.* In this subsection:

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

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

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

3 (b) *Filing claims.* Subject to the limitations provided in this subsection and
4 2007 Wisconsin Act (this act), section 14, for taxable years beginning after June
5 30, 2007, and before July 1, 2009, a claimant may claim as a credit against the taxes
6 imposed under s. 71.23, up to the amount of the taxes, the amount that the claimant
7 paid in the taxable year for the following items that are used to construct and operate
8 a green data center:

9 1. At least 2 of the following:

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

11 b. Sustainable landscaping.

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

13 2. At least 2 of the following:

14 a. Catalytic converters on back-up generators.

15 b. Photovoltaics.

16 c. Heat pumps.

17 d. Evaporative cooling.

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

20 a. Mercury.

21 b. Cadmium.

22 c. Lead.

23 d. Chromium VI.

24 e. Polybrominated biphenyls.

25 f. Polybrominated diphenyl ether.

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1 (c) *Limitations.* 1. The maximum amount of all credits that may be claimed
2 under this subsection and ss. 71.07 (5i) and 71.47 (5i) is \$2,000,000. No claimant may
3 claim a credit under this subsection unless the claimant submits with the claimant's
4 return a copy of the claimant's certification for credits under 2007 Wisconsin Act ...
5 (this act), section 14.

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

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

16 **SECTION 8.** 71.30 (3) (dq) of the statutes is created to read:

17 71.30 (3) (dq) Green data center credit under s. 71.28 (5i).

18 **SECTION 9.** 71.34 (1) (g) of the statutes is amended to read:

19 71.34 (1) (g) An addition shall be made for credits computed by a tax-option
20 corporation under s. 71.28 (1dd), (1de), (1di), (1dj), (1dL), (1dm), (1ds), (1dx), (3), (3g),
21 (3n), (3t), (3w), (5b), (5e), (5f), (5g), ~~and (5h)~~, and (5i) and passed through to
22 shareholders.

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

24 71.45 (2) (a) 10. By adding to federal taxable income the amount of credit
25 computed under s. 71.47 (1dd) to (1dx), (3n), (3w), (5b), (5e), (5f), (5g), ~~and (5h)~~, and

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1 (5i) and not passed through by a partnership, limited liability company, or tax-option
2 corporation that has added that amount to the partnership’s, limited liability
3 company’s, or tax-option corporation’s income under s. 71.21 (4) or 71.34 (1) (g) and
4 the amount of credit computed under s. 71.47 (1), (3), (3t), (4), and (5).

5 **SECTION 11.** 71.47 (5i) of the statutes is created to read:

6 71.47 **(5i)** GREEN DATA CENTER CREDIT. (a) *Definitions.* In this subsection:

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

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

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

14 (b) *Filing claims.* Subject to the limitations provided in this subsection and
15 2007 Wisconsin Act (this act), section 14, for taxable years beginning after June
16 30, 2007, and before July 1, 2009, a claimant may claim as a credit against the taxes
17 imposed under s. 71.43, up to the amount of the taxes, the amount that the claimant
18 paid in the taxable year for the following items that are used to construct and operate
19 a green data center:

20 1. At least 2 of the following:

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

22 b. Sustainable landscaping.

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

24 2. At least 2 of the following:

25 a. Catalytic converters on back-up generators.

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- 1 b. Photovoltaics.
- 2 c. Heat pumps.
- 3 d. Evaporative cooling.
- 4 3. Equipment or equipment components that have a reduced amount, or none,
- 5 of at least 4 of the following:
- 6 a. Mercury.
- 7 b. Cadmium.
- 8 c. Lead.
- 9 d. Chromium VI.
- 10 e. Polybrominated biphenyls.
- 11 f. Polybrominated diphenyl ether.
- 12 (c) *Limitations.* 1. The maximum amount of all credits that may be claimed
- 13 under this subsection and ss. 71.07 (5i) and 71.28 (5i) is \$2,000,000. No claimant may
- 14 claim a credit under this subsection unless the claimant submits with the claimant's
- 15 return a copy of the claimant's certification for credits under 2007 Wisconsin Act
- 16 (this act), section 14.
- 17 2. Partnerships, limited liability companies, and tax-option corporations may
- 18 not claim the credit under this subsection, but the eligibility for, and the amount of,
- 19 the credit are based on their payment of amounts under par. (b). A partnership,
- 20 limited liability company, or tax-option corporation shall compute the amount of
- 21 credit that each of its partners, members, or shareholders may claim and shall
- 22 provide that information to each of them. Partners, members of limited liability
- 23 companies, and shareholders of tax-option corporations may claim the credit in
- 24 proportion to their ownership interests.

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

3 **SECTION 12.** 71.49 (1) (dq) of the statutes is created to read:

4 71.49 (1) (dq) Green data center credit under s. 71.47 (5i).

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

6 77.92 (4) “Net business income,” with respect to a partnership, means taxable
7 income as calculated under section 703 of the Internal Revenue Code; plus the items
8 of income and gain under section 702 of the Internal Revenue Code, including taxable
9 state and municipal bond interest and excluding nontaxable interest income or
10 dividend income from federal government obligations; minus the items of loss and
11 deduction under section 702 of the Internal Revenue Code, except items that are not
12 deductible under s. 71.21; plus guaranteed payments to partners under section 707
13 (c) of the Internal Revenue Code; plus the credits claimed under s. 71.07 (2dd), (2de),
14 (2di), (2dj), (2dL), (2dm), (2dr), (2ds), (2dx), (3g), (3s), (3n), (3t), (3w), (5b), (5e), (5f),
15 (5g), and (5h), and (5i); and plus or minus, as appropriate, transitional adjustments,
16 depreciation differences, and basis differences under s. 71.05 (13), (15), (16), (17), and
17 (19); but excluding income, gain, loss, and deductions from farming. “Net business
18 income,” with respect to a natural person, estate, or trust, means profit from a trade
19 or business for federal income tax purposes and includes net income derived as an
20 employee as defined in section 3121 (d) (3) of the Internal Revenue Code.

21 **SECTION 14. Nonstatutory provisions.**

22 (1) GREEN DATA CENTER CREDIT PROGRAM.

23 (a) Not later than 30 days after the effective date of this subsection, the
24 department of commerce shall implement a program for certifying businesses as

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1 eligible for tax credits under sections 71.07 (5i), 71.28 (5i), and 71.47 (5i) of the
2 statutes.

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

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

18 (d) This subsection does not apply after June 30, 2008.

19

(END)