



## Legislative Fiscal Bureau

One East Main, Suite 301 • Madison, WI 53703 • (608) 266-3847 • Fax: (608) 267-6873  
Email: [fiscal.bureau@legis.wisconsin.gov](mailto:fiscal.bureau@legis.wisconsin.gov) • Website: <http://legis.wisconsin.gov/lfb>

---

June, 2021

Joint Committee on Finance

Paper #322

### **Sales Tax Exemption for Energy Systems and Prairie or Wetland Planning Services (General Fund Taxes -- Sales and Use Taxes)**

[LFB 2021-23 Budget Summary: Page 217, #3, and Page 219, #5]

---

#### **CURRENT LAW**

Current law provides an exemption from the state sales and use tax for a product that has as its power source wind energy, direct radiant energy received from the sun, or gas generated from anaerobic digestion of animal manure and other agricultural waste, if the product produces at least 200 watts of alternating current or 600 British thermal units per day. The exemption also applies to the sale of electricity or energy produced by these products, but does not apply to an uninterruptible power source that is designed primarily for computers. In its 2021-23 Summary of Tax Exemption Devices publication, the Department of Revenue (DOR) estimates that this exemption resulted in \$106,000 in foregone sales and use tax revenue in 2019-20.

Additionally, under current law, all services are exempt from the state sales and use tax unless specifically made taxable by statute. State law specifies that the sale of landscaping and lawn maintenance services is taxable, including: (a) landscape planning and counseling; (b) lawn and garden services, such as planting, mowing, spraying, and fertilizing; and (c) shrub and tree services.

#### **DISCUSSION POINTS**

1. The following sections describe various sales tax exemptions and modifications proposed by the Governor under Assembly Bill 68/Senate Bill 111 (AB 68/SB 111), which include: (a) providing an exemption for products used to store certain types of renewable energy; (b) modifying the language of the current law exemption for energy systems; and (c) providing an exemption for planning and counseling services related to prairie, wetland, or savanna restoration.

2. The administration indicates that these exemptions are consistent with the policy recommendations of the Governor's Task Force on Climate Change, which include: (a) developing electricity storage and microgrids for critical infrastructure; (b) supporting community solar to provide greater access to renewable energy; (c) reducing carbon emissions from the power sector; and (d) focusing on wetland restoration.

3. The Biden Administration has recently announced a new goal for the United States to achieve a 50% to 52% reduction from 2005 levels in economy-wide net greenhouse gas pollution by 2030. Further, the United States has set a goal to reach 100% carbon pollution-free electricity by 2035, and to achieve net-zero greenhouse gas emissions by no later than 2050. During President Biden's Leaders Summit on Climate, the President set forth several goals to address the climate crisis, including transforming energy systems and implementing nature-based solutions, such as habitat conservation efforts. The sales tax exemptions under AB 68/SB 111 are consistent with these goals.

4. It is generally recommended that states impose a sales and use tax on a broad base at a low rate, with limited exemptions. Exemptions narrow the tax base (which puts a greater burden on the purchasers of goods remaining taxable), impede economic efficiency, create inequities between types of businesses, and complicate administration of, and compliance with, the tax. Exemptions can impede economic efficiency by indirectly favoring certain types of distribution channels, methods of business operation, or forms of business organization.

5. On the other hand, sales tax exemptions can be used to encourage purchases of desired goods and services. Therefore, proposed exemptions for energy storage and for landscape planning services for wetland, prairie, and savanna restoration could help encourage consumers to purchase goods and services that promote environmental sustainability.

6. The exemption related to landscaping services would favor landscaping businesses that provide certain restoration planning services over landscaping businesses that provide other types of planning services. However, since the intent of providing this exemption is to address climate change concerns, the Committee could consider whether it wants to favor certain businesses over others in this way.

7. The following sections discuss each proposed exemption in more depth.

## **Energy Storage**

8. DOR interprets the applicability of the current law sales tax exemption for renewable energy systems in its administrative rules, such that the following products qualify for the exemption: (a) wind turbine generators, including blade assembly and tower; (b) gas-powered electric generators; (c) gas-fueled furnaces, space heaters, and water heaters; (d) photovoltaic cells, modules, and arrays, including tracking equipment that maintains optimal orientation to the sun; (e) solar thermal collectors; (f) inverters used to transform direct current produced by an item listed above into alternating current, including property used to convey the direct current from the product to the inverter; and (g) hardware required for installation of the above mentioned items. For the purposes of "b" and "c", "gas" means a fuel that is comprised primarily of methane and exists in a gaseous state at normal room temperature and pressure.

9. The following products enumerated by rule do not qualify for an exemption under current law: (1) tangible personal property that consumes electricity or heat produced by qualified products (i.e. a refrigerator); (2) a foundation for an item that produces electricity or heat energy from certain renewable energy sources; (3) property necessary to convey, transfer, or alter electricity or heat generated from qualified products that produce electricity or heat energy, except as provided in "f" above; and (4) tangible personal property used to store electricity or heat produced by qualified energy-producing products. For example, batteries used to store electricity produced by a wind turbine generator, or a tank that stores hot water heated by a solar collector, are not exempt from the sales tax because they are not products that have a power source that is wind energy or direct radiant energy received from the sun.

10. The administration indicates that DOR has received requests to interpret existing language pertaining to the current sales tax exemption to include items "3" and "4" in point 10. In response, the Governor recommends expanding the current law exemption from the state sales and use tax to include tangible personal property used to store, or facilitate the storage of, electrical or heat energy produced by a solar, wind, or biogas renewable energy system, beginning on the first day of the third month beginning after publication of the bill. The administration indicates that the intent of this exemption is to encourage greater use of renewable energy, and estimates that the proposed exemption would decrease state tax revenues by \$3,800,000 in 2021-22 and \$4,400,000 in 2022-23 and annually thereafter.

11. AB 68/SB 111 would modify current law so that the exemption would apply to solar, wind, and waste energy systems that produce usable electrical or heat energy, rather than solely to products whose power source is solar, wind, or waste energy. Tax exempt sales of solar power systems, wind energy systems, and waste energy systems would include tangible personal property sold with the systems that is used primarily to store, or facilitate the storage of, electrical or heat energy produced by the systems.

12. The current law exemption, as amended by this proposal, would apply to products producing power from renewable energy sources, as well as products used to store that energy, such as batteries, and products used to facilitate the storage of that energy, such as electrical wire necessary to transfer electricity to a battery storage system. However, it should be noted that such products would only be exempt if sold with a qualified energy-producing product. Batteries or electrical wire sold individually at a retail store would still be subject to the state's sales and use tax.

13. Providing sales tax incentives for purchases related to renewable energy production and use is common across states. These incentives can include sales tax exemptions, credits, abatements, holidays, and reimbursements. According to the Solar Energy Industries Association, an advocacy group for renewable solar energy, 25 states provide some sort of sales tax exemption for solar energy, and several states also provide certain wind and biogas exemptions. Another common tax exemption for solar energy, a property tax exemption, is provided by 36 states.

14. One rationale for providing tax benefits for renewable energy sources is to alleviate the challenges associated with a switch from traditional (fossil fuel) to renewable energy sources. Some examples of these challenges include: (a) higher upfront costs; (b) intermittency of renewable energy resource availability; (c) storage capabilities; and (d) geographic limitations. Technology required to

produce renewable energy is often expensive compared to traditional energy generators. As mentioned, a sales tax exemption exists under current law for products used to produce solar, wind, or biogas renewable energy. This exemption likely exists, in part, to help reduce the overall cost of these products, and therefore increase consumer demand. However, due to intermittency, energy storage is needed to ensure uninterrupted power for the user. Therefore, it could be argued that, without an incentive to purchase both energy producing products and energy storage, individuals may not be willing to shift away from traditional energy sources. On the other hand, some may argue that a state sales tax exemption of 5% does not reduce the cost of these products enough to encourage individuals to shift to renewable energy.

15. Wisconsin already provides several sales tax exemptions for fuel and electricity from a number of energy sources. These include, but are not limited to: (a) electricity and natural gas sold for residential purposes from November through April; (b) coal, fuel oil, propane, steam, biomass, peat fuel cubes produced from solid waste, and wood sold for residential fuel for use in a person's permanent, principal residence; (c) electricity and fuel sold for farm use; (d) electricity and fuel consumed in manufacturing; and (e) wood residue used as fuel in a business activity. Given this range of exemptions for various types and uses of energy, it could be argued that providing a sales tax exemption for renewable energy storage to enable reliable renewable energy use would generally allow for consistent sales tax treatment among other exempt types of energy.

16. In addition, AB 68/SB 111 would make the following modifications to clarify the existing sales tax exemption under current law: (a) specify that, to qualify for the exemption, energy systems must continuously, rather than per day, produce at least 200 watts of alternating current or 600 British thermal units; (b) clarify that tax exempt energy produced by the systems includes electrical and heat energy; and (c) specify that the production of electrical or heat energy must come directly from sun, wind, or gas generated from anaerobic digestion of animal manure or other agricultural waste. These modifications would codify DOR's current administration of the exemption and are not expected to have a measurable impact on state revenues.

17. If the Committee would like to provide an incentive for individuals to produce and utilize renewable energy, and it believes that a sales tax exemption on energy storage would accomplish this goal, it could expand the current law exemption for renewable energy systems to include products used to store, or facilitate the storage of, that energy. Additionally, the Committee could make the modifications to clarify the existing sales tax exemption (Alternative A1).

18. However, if the Committee decides not to expand this exemption to include items used to store renewable energy, it may wish to still make the modifications to the language of the current law exemption for energy systems (Alternative A2). Finally, if the Committee decides not to provide an additional incentive for the use of renewable energy systems, or wishes to address this issue in a different way, it could take no action on the proposed sales tax exemption (Alternative A3).

## **Planning Services**

19. According to the Wisconsin Department of Natural Resources (DNR), wetlands provide numerous benefits to the environment and the surrounding community, including: (a) providing fish and wildlife habitats; (b) aiding in flood prevention by storing floodwaters; (c) maintaining surface

water flow during dry periods; (d) providing shoreline erosion control; (e) protecting and improving water quality; and (f) providing opportunities for recreation and aesthetic appreciation.

20. Like wetlands, prairies and savannas also provide habitats for many animals, including birds, butterflies, insects, reptiles, and other wildlife. Many species depend on these ecosystems for their survival. Additionally, the roots found in prairie plants serve multiple purposes, such as: (a) providing rich, fertile soil as a result of natural decay; (b) creating a pathway for water to enter the soil to recharge ground water tables; (c) acting as a water filtration system, which improves water quality; and (d) storing carbon. Prairies can also store rain to reduce erosion and runoff.

21. According to DNR, much of Wisconsin's historical wetland, prairie, and savanna acreage has been lost over time. Today, only 53% (5.3 million) of the state's original 10 million acres of wetlands remain. Of the 2.1 million acres of prairie land that existed 150 years ago, less than 10,000 acres (less than 0.5%) remain today. Finally, less than 0.01% (less than 500 acres) of the estimated 5.5 million acres of oak savanna historically found in Wisconsin remain. DNR notes that oak savanna and tallgrass prairie are the most threatened plant communities in the Midwest, and among the most threatened in the world.

22. The Governor recommends providing a sales and use tax exemption for landscape planning and counseling services that pertain to the restoration, reclamation, or revitalization of prairie, savanna, or wetlands, if such services are provided under a separate and optional fee distinct and identifiable from other taxable services, beginning on the first day of the third month beginning after publication of the bill. Tangible personal property transferred to the customer in conjunction with qualified planning and counseling services would also be exempt from the sales tax. However, the purchase price of such tangible personal property purchased by the seller of qualified landscape planning and counseling services would be subject to tax. The administration estimates that this exemption would reduce state tax revenues by \$200,000 in 2021-22 and \$300,000 in 2022-23 and annually thereafter.

AB 68/SB 111 specifies that taxable landscaping and lawn maintenance services would not include planning and counseling services if the planning and counseling services were provided for a separate and optional fee from any other services and the services were for the restoration, reclamation, or revitalization of prairie, savanna, or wetlands to improve: (a) biodiversity; (b) the quality of land, soils, or water; or (c) other ecosystem functions. The bill would specify that the sale of landscaping and lawn maintenance services, including lawn and garden services such as planting, mowing, spraying, and fertilizing, shrub and tree services, and other planning and counseling services, would remain taxable.

The proposal recommends defining a "separate and optional fee" as a fee charged to receive a distinct and identifiable product if either of the following would apply; (a) the fee is in addition to fees that the seller charges for other distinct and identifiable products sold to the same buyer, the fee is separately set forth on the invoice given by the seller to the buyer, and the seller does not require the buyer to pay the fee if the buyer chooses not to receive the additional distinct and identifiable product for which the fee applies; or (b) the seller charges a single amount for multiple distinct and identifiable products and offers the buyer the option of paying a lower amount if the buyer chooses not to receive one or more of the distinct and identifiable products. The separate and optional fee

would have to be a single amount the seller charges for the multiple distinct and identifiable products, less the reduced amount the seller charges to the buyer because the buyer chooses not to receive one or more of the products.

23. The administration indicates that the intent of this proposal is to encourage private landowners and businesses to engage in the restoration of prairies, savannas, and wetlands. However, the Committee could consider whether a sales tax exemption for these services is enough to alter consumer behavior. Since planning and counseling services for certain restoration efforts would be an added expense for the purchasers of landscaping services, an argument could be made that anyone who desires to utilize these services would do so regardless of whether a sales tax is imposed or not. On the other hand, for individuals who have considered such services but are concerned about the price, a sales tax exemption could be enough to encourage these individuals to utilize planning services for restoration efforts.

24. Additionally, while the proposal would provide a sales tax exemption for the sale of landscape planning and counseling services related to wetland, prairie, and savanna restoration, some services providing for the work to restore these ecosystems would still be subject to the sales tax, provided that the work falls under landscape and lawn maintenance services. These services include planting, mowing, spraying, and fertilizing, as well as shrub and tree services. Therefore, it could be argued that the proposed exemption does not do enough to encourage restoration of these lands, as purchasers would still have to pay sales tax on some of the services related to actual restoration.

25. It is possible that the specification that qualified planning and counseling services must be stated on the bill as a separate and optional fee to qualify for the exemption may place some administrative burden on landscaping companies. Businesses that already provide these services, but include them as one price with all other services provided, would have to alter their billing systems to ensure they qualify for the exemption.

26. The Committee could chose to provide an exemption for qualified planning and counseling services (Alternative B1). On the other hand, the Committee might decide that current state programs related to land restoration and conservation, described below, are sufficient to address climate concerns, and therefore take no action on this proposal (Alternative B3).

27. A number of state incentives already exist in Wisconsin related to the conservation of land and natural resources. Most notably, DNR provides grants through both the land acquisition and the property development and local assistance subprograms of the Warren Knowles-Gaylord Nelson Stewardship program to nonprofit conservation organizations (NCOs). Funds received as grants under the land acquisition subprogram are used to acquire land for a variety of purposes, such as habitat areas, natural areas, streambank protection, trails, and wild lakes. Additionally, under the property development and local assistance subprogram, grants may be given to NCOs for property development and wetland and habitat restoration on land owned by DNR, acquisition of urban green space, acquisition of local parks and urban rivers areas, and for the purchase of development rights (easements) for conservation purposes. NCO grants are allocated \$7 million each year under the stewardship program, although lesser amounts are usually committed to grants. Local assistance grants are allocated \$6 million, and grants for property development on DNR owned land are allocated \$250,000 each year.

28. Likewise, property held by NCOs is exempt from property taxation under the following conditions: (a) the property is used for conservation of natural resources or indigenous heritage; (b) the property is open to public access; and (c) neither the property owner nor any member of an organization that owns the property receives any profit from the property. Because NCOs are nonprofit organizations, their purchases are generally exempt from sales tax.

29. Additionally, state law generally requires a person to obtain a wetland permit from DNR before conducting any activity that results in a discharge of dredged material or fill material into nonfederal wetlands (non-navigable, isolated, intrastate waters). Certain exceptions apply to permitting requirements for small parcels related to agricultural use or found in urban areas. Wetland permitting requirements generally require applicants to demonstrate that there are no feasible alternative development options that would otherwise produce a lesser impact on wetlands. As a condition of permit approval by DNR, a permittee is typically required to conduct wetland mitigation that offsets any unavoidable negative impact on wetlands by creating, conserving, or restoring wetlands nearby the project site, usually within the same watershed. In Wisconsin, wetland mitigation may be undertaken through: (a) a permittee-led project to create, conserve, or restore a wetland; (b) purchasing credits from a wetland mitigation bank, which is a local organization within the same watershed area that conducts mitigation projects to generate mitigation credits; or (c) participating in the Wisconsin Wetland Conservation Trust (WWCT) in-lieu fee program. The WWCT has had average annual revenues of about \$3.5 million since 2014-15, although revenues have been significantly lower in the 2019-21 biennium.

30. The Committee could consider whether these existing programs are enough to address concerns related to the loss of prairie, savanna, and wetland acreage in Wisconsin. Some could argue that these programs (and similar programs) are better suited to address these concerns than a sales tax exemption, as programs do more to address the financial cost of engaging in conservation activities. On the other hand, the stewardship grant programs and property tax exemptions for NCOs are more broadly defined than the proposed sales tax exemption, which focuses specifically on wetland, prairie, and savanna restoration. If the Committee believes that it is important to provide additional incentives for restoring these types of ecosystems, the proposed sales tax exemption could provide an avenue to do so.

31. In place of a sales tax exemption, the Committee could decide to create a GPR appropriation under DNR to support conservation grants. Given the available funding for wetlands restoration and relatively fewer options existing for prairie and oak savanna restoration, the Committee could establish a program for DNR to award grants to NCOs or local governments for restoration activities for prairies and savannas (Alternative B2).

## **ALTERNATIVES**

### **A. Energy Storage**

1. Expand the current law exemption from the state sales and use tax to include tangible personal property used to store, or facilitate the storage of, electrical or heat energy produced by a solar, wind, or biogas renewable energy system (described in greater detail in discussion points #11

and #12). Estimate a reduction in state sales tax revenues of \$3,800,000 in 2021-22 and \$4,400,000 in 2022-23 and annually thereafter. Additionally, make the following modifications to the exemption for energy systems under current law: (a) specify that, to qualify for the exemption, energy systems must continuously, rather than per day, produce at least 200 watts of alternating current or 600 British thermal units; (b) clarify that tax exempt energy produced by the systems includes electrical and heat energy; and (c) specify that the production of electrical or heat energy must come directly from sun, wind, or gas generated from anaerobic digestion of animal manure or other agricultural waste. Specify that these provisions take effect on the first day of the third month beginning after publication of the bill.

ALT A1	Change to Base
GPR-Tax	- \$8,200,000

2. Make the following modifications to the exemption for energy systems under current law: (a) specify that, to qualify for the exemption, energy systems must continuously, rather than per day, produce at least 200 watts of alternating current or 600 British thermal units; (b) clarify that tax exempt energy produced by the systems includes electrical and heat energy; and (c) specify that the production of electrical or heat energy must come directly from sun, wind, or gas generated from anaerobic digestion of animal manure or other agricultural waste. Specify that this provision takes effect on the first day of the third month beginning after publication of the bill.

3. Take no action.

**B. Planning Services**

1. Provide a sales and use tax exemption for landscape planning and counseling services that pertain to the restoration, reclamation, or revitalization of prairie, savanna, or wetlands, if such services are provided under a separate and optional fee distinct and identifiable from other taxable services (described in greater detail in discussion point #22). Specify that the seller, not the purchaser, of qualified planning and counseling services is required to pay sales tax on the purchase price of tangible personal property transferred to the customer in conjunction with qualified planning and counseling services. Specify that this provision takes effect on the first day of the third month beginning after publication of the bill. Estimate a reduction in state sales tax revenues of \$200,000 in 2021-22 and \$300,000 in 2022-23 and annually thereafter.

ALT B1	Change to Base
GPR-Tax	- \$500,000



2. Provide \$200,000 GPR in 2021-22 and \$300,000 GPR in 2022-23 to DNR in an annual appropriation to support existing conservation of prairies and savannas.

<b>ALT B2</b>	<b>Change to Base</b>
GPR	\$500,000

3. Take no action.

Prepared by: Sydney Emmerich, Rory Tikalsky, and Eric Hepler