



State of Wisconsin
2011 - 2012 LEGISLATURE



LRB-1027/1
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2011 ASSEMBLY BILL 61

March 28, 2011 - Introduced by Representatives STRACHOTA, LEMAHIEU and SPANBAUER, cosponsored by Senator DARLING. Referred to Committee on Jobs, Economy and Small Business.

1 **AN ACT to amend** 71.05 (6) (a) 15., 71.21 (4), 71.26 (2) (a) 4., 71.34 (1k) (g), 71.45
2 (2) (a) 10. and 77.92 (4); and **to create** 71.07 (6n), 71.10 (4) (cr), 71.28 (6n), 71.30
3 (3) (cr), 71.47 (6n) and 71.49 (1) (cr) of the statutes; **relating to:** creating an
4 income and franchise tax credit for constructing and operating a data center
5 that is designed for maximum energy efficiency and minimum environmental
6 impact and providing an exemption from rule-making 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), (2dy), (3g), (3h), (3n), (3p), (3q), (3r),
4 (3rm), (3rn), (3s), (3t), (3w), (5e), (5f), (5h), (5i), (5j), (5k), (5r), (5rm), (6n), and (8r) and
5 not passed through by a partnership, limited liability company, or tax-option
6 corporation that has added that amount to the partnership's, company's, or
7 tax-option corporation's income under s. 71.21 (4) or 71.34 (1k) (g).

8 **SECTION 2.** 71.07 (6n) of the statutes is created to read:

9 71.07 (6n) GREEN DATA CENTER CREDIT. (a) *Definitions.* In this subsection:

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

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

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

17 (b) *Filing claims.* Subject to the limitations provided in this subsection and
18 2011 Wisconsin Act (this act), section 13, for taxable years beginning after June
19 30, 2011, and before July 1, 2013, a claimant may claim as a credit against the taxes
20 imposed under s. 71.02, up to the amount of the taxes, the amount that the claimant

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1 paid in the taxable year for the following items that are used to construct and operate
2 a green data center:

3 1. At least 2 of the following:

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

5 b. Sustainable landscaping.

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

7 2. At least 2 of the following:

8 a. Catalytic converters on back-up generators.

9 b. Photovoltaics.

10 c. Heat pumps.

11 d. Evaporative cooling.

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

14 a. Mercury.

15 b. Cadmium.

16 c. Lead.

17 d. Chromium VI.

18 e. Polybrominated biphenyls.

19 f. Polybrominated diphenyl ether.

20 (c) *Limitations.* 1. The maximum amount of all credits that may be claimed
21 under this subsection and ss. 71.28 (6n) and 71.47 (6n) is \$2,000,000. No claimant
22 may claim a credit under this subsection unless the claimant submits with the
23 claimant's return a copy of the claimant's certification for credits under 2011
24 Wisconsin Act (this act), section 13.

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

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

11 **SECTION 3.** 71.10 (4) (cr) of the statutes is created to read:

12 71.10 (4) (cr) Green data center credit under s. 71.07 (6n).

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

14 71.21 (4) Credits computed by a partnership under s. 71.07 (2dd), (2de), (2di),
15 (2dj), (2dL), (2dm), (2ds), (2dx), (2dy), (3g), (3h), (3n), (3p), (3q), (3r), (3rm), (3rn), (3s),
16 (3t), (3w), (5e), (5f), (5g), (5h), (5i), (5j), (5k), (5r), (5rm), (6n), and (8r) and passed
17 through to partners shall be added to the partnership's income.

18 **SECTION 5.** 71.26 (2) (a) 4. of the statutes is amended to read:

19 71.26 (2) (a) 4. Plus the amount of the credit computed under s. 71.28 (1dd),
20 (1de), (1di), (1dj), (1dL), (1dm), (1ds), (1dx), (1dy), (3g), (3h), (3n), (3p), (3q), (3r),
21 (3rm), (3rn), (3t), (3w), (5e), (5f), (5g), (5h), (5i), (5j), (5k), (5r), (5rm), (6n), and (8r)
22 and not passed through by a partnership, limited liability company, or tax-option
23 corporation that has added that amount to the partnership's, limited liability
24 company's, or tax-option corporation's income under s. 71.21 (4) or 71.34 (1k) (g).

25 **SECTION 6.** 71.28 (6n) of the statutes is created to read:

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1 71.28 **(6n)** GREEN DATA CENTER CREDIT. (a) *Definitions*. In this subsection:

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

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

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

9 (b) *Filing claims*. Subject to the limitations provided in this subsection and
10 2011 Wisconsin Act ... (this act), section 13, for taxable years beginning after June
11 30, 2011, and before July 1, 2013, a claimant may claim as a credit against the taxes
12 imposed under s. 71.23, up to the amount of the taxes, the amount that the claimant
13 paid in the taxable year for the following items that are used to construct and operate
14 a green data center:

15 1. At least 2 of the following:

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

17 b. Sustainable landscaping.

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

19 2. At least 2 of the following:

20 a. Catalytic converters on back-up generators.

21 b. Photovoltaics.

22 c. Heat pumps.

23 d. Evaporative cooling.

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

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- 1 a. Mercury.
- 2 b. Cadmium.
- 3 c. Lead.
- 4 d. Chromium VI.
- 5 e. Polybrominated biphenyls.
- 6 f. Polybrominated diphenyl ether.

7 (c) *Limitations.* 1. The maximum amount of all credits that may be claimed
8 under this subsection and ss. 71.07 (6n) and 71.47 (6n) is \$2,000,000. No claimant
9 may claim a credit under this subsection unless the claimant submits with the
10 claimant's return a copy of the claimant's certification for credits under 2011
11 Wisconsin Act (this act), section 13.

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

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

22 **SECTION 7.** 71.30 (3) (cr) of the statutes is created to read:

23 71.30 (3) (cr) Green data center credit under s. 71.28 (6n).

24 **SECTION 8.** 71.34 (1k) (g) of the statutes is amended to read:

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1 71.34 **(1k)** (g) An addition shall be made for credits computed by a tax-option
2 corporation under s. 71.28 (1dd), (1de), (1di), (1dj), (1dL), (1dm), (1ds), (1dx), (1dy),
3 (3), (3g), (3h), (3n), (3p), (3q), (3r), (3rm), (3rn), (3t), (3w), (5e), (5f), (5g), (5h), (5i), (5j),
4 (5k), (5r), (5rm), (6n), and (8r) and passed through to shareholders.

5 **SECTION 9.** 71.45 (2) (a) 10. of the statutes is amended to read:

6 71.45 **(2)** (a) 10. By adding to federal taxable income the amount of credit
7 computed under s. 71.47 (1dd) to (1dy), (3g), (3h), (3n), (3p), (3q), (3r), (3rm), (3rn),
8 (3w), (5e), (5f), (5g), (5h), (5i), (5j), (5k), (5r), (5rm), (6n), and (8r) 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 (1k) (g) and the amount
12 of credit computed under s. 71.47 (1), (3), (3t), (4), (4m), and (5).

13 **SECTION 10.** 71.47 (6n) of the statutes is created to read:

14 71.47 **(6n)** GREEN DATA CENTER CREDIT. (a) *Definitions.* In this subsection:

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

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

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

22 (b) *Filing claims.* Subject to the limitations provided in this subsection and
23 2011 Wisconsin Act (this act), section 13, for taxable years beginning after June
24 30, 2011, and before July 1, 2013, a claimant may claim as a credit against the taxes
25 imposed under s. 71.43, up to the amount of the taxes, the amount that the claimant

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1 paid in the taxable year for the following items that are used to construct and operate
2 a green data center:

3 1. At least 2 of the following:

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

5 b. Sustainable landscaping.

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

7 2. At least 2 of the following:

8 a. Catalytic converters on back-up generators.

9 b. Photovoltaics.

10 c. Heat pumps.

11 d. Evaporative cooling.

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

14 a. Mercury.

15 b. Cadmium.

16 c. Lead.

17 d. Chromium VI.

18 e. Polybrominated biphenyls.

19 f. Polybrominated diphenyl ether.

20 (c) *Limitations.* 1. The maximum amount of all credits that may be claimed
21 under this subsection and ss. 71.07 (6n) and 71.28 (6n) is \$2,000,000. No claimant
22 may claim a credit under this subsection unless the claimant submits with the
23 claimant's return a copy of the claimant's certification for credits under 2011
24 Wisconsin Act (this act), section 13.

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

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

11 **SECTION 11.** 71.49 (1) (cr) of the statutes is created to read:

12 71.49 (1) (cr) Green data center credit under s. 71.47 (6n).

13 **SECTION 12.** 77.92 (4) of the statutes is amended to read:

14 77.92 (4) “Net business income,” with respect to a partnership, means taxable
15 income as calculated under section 703 of the Internal Revenue Code; plus the items
16 of income and gain under section 702 of the Internal Revenue Code, including taxable
17 state and municipal bond interest and excluding nontaxable interest income or
18 dividend income from federal government obligations; minus the items of loss and
19 deduction under section 702 of the Internal Revenue Code, except items that are not
20 deductible under s. 71.21; plus guaranteed payments to partners under section 707
21 (c) of the Internal Revenue Code; plus the credits claimed under s. 71.07 (2dd), (2de),
22 (2di), (2dj), (2dL), (2dm), (2dr), (2ds), (2dx), (2dy), (3g), (3h), (3n), (3p), (3q), (3r),
23 (3rm), (3rn), (3s), (3t), (3w), (5e), (5f), (5g), (5h), (5i), (5j), (5k), (5r), (5rm), (6n), and
24 (8r); and plus or minus, as appropriate, transitional adjustments, depreciation
25 differences, and basis differences under s. 71.05 (13), (15), (16), (17), and (19); but

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1 excluding income, gain, loss, and deductions from farming. "Net business income,"
2 with respect to a natural person, estate, or trust, means profit from a trade or
3 business for federal income tax purposes and includes net income derived as an
4 employee as defined in section 3121 (d) (3) of the Internal Revenue Code.

SECTION 13. Nonstatutory provisions.**(1) GREEN DATA CENTER CREDIT PROGRAM.**

7 (a) Not later than 30 days after the effective date of this subsection, the
8 department of commerce shall implement a program for certifying businesses as
9 eligible for tax credits under sections 71.07 (6n), 71.28 (6n), and 71.47 (6n) of the
10 statutes.

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

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

