



State of Wisconsin
2003 - 2004 LEGISLATURE

LRBs0349/1
JK:kmg:ch

**ASSEMBLY SUBSTITUTE AMENDMENT 1,
TO 2003 ASSEMBLY BILL 774**

February 16, 2004 - Offered by Representatives JENSEN, ZIEGELBAUER and
GOTTLIEB.

1 **AN ACT to amend** 16.969 (2) (a), 70.112 (4) (a), 76.28 (9), 76.29 (2), 79.04 (1)
2 (intro.), 79.04 (1) (b) 1., 79.04 (2) (a), 79.04 (2) (am) 1., 79.04 (6) (a) and 196.491
3 (3) (gm); and **to create** 70.112 (4) (am), 70.995 (2) (zm), 76.28 (3) (e), 76.48 (3d)
4 and 79.04 (4m) of the statutes; **relating to:** public utility aid payments,
5 imposing local general property taxes on production plant general structures
6 and substations, and creating a credit against license fees imposed on light,
7 heat, and power companies and electric cooperatives.

Analysis by the Legislative Reference Bureau

Under current law, beginning in 2005, each county and municipality in which a power production plant is located receives a state aid payment based on the net book value of the production plant, for production plants that, generally, began operation before January 1, 2004, or based on the production plant's megawatt capacity, for production plants that began operation after December 31, 2003. Under this substitute amendment, beginning in 2005, if in any year the payments to the municipality and county in which a production plant is located would be greater based on the production plant's name-plate capacity than on the depreciated net book value of the production plant, the municipality and county will receive

payments based on the production plant's name-plate capacity beginning in that year and in each year thereafter.

Under current law, generally, the property of a light, heat, and power company, including general structures and substations, is exempt from the imposition of local general property taxes, if the company is subject to license fees. Under the substitute amendment, beginning with the property tax assessments as of January 1, 2005, a general structure that is owned or leased by a light, heat, and power company is subject to local general property taxes. In addition, beginning with the property tax assessments as of January 1, 2006, a substation of a light, heat, and power company, not including transmission substation property, is subject to local general property taxes. However, the property of a light, heat, and power company that is located within the municipality that operates the company is not subject to property taxes.

In addition, beginning with license fees that are due in 2006, a light, heat, and power company may claim as a credit against its license fee liability an amount equal to the amount of the property taxes that the company paid in the calendar year on general structures and substations. An electric cooperative may also claim a credit against its license fee liability in an amount equal to the amount of any payments in lieu of property taxes that the cooperative paid in the calendar year, not to exceed the amount of property taxes that the cooperative would have paid had its property been subject to property taxes. If the credit claimed by a light, heat, and power company or an electric cooperative exceeds the license fee liability of the company or cooperative, the state will not issue a refund check, but the company or cooperative may carry forward any remaining credit to the 15 following years.

This substitute amendment, in contrast to the bill, retains the provision under current law that allows state aid payments, based on a production plant's net book value, that are paid to a municipality and county in which an ash disposal facility is located to include an amount that is equal to twice the net book value of the ash disposal facility.

Under current law, a person who is issued a certificate of public convenience and necessity for a high-voltage transmission line must pay the Department of Administration an annual impact fee equal to 0.3 percent of the cost of the high-voltage transmission line. Under the substitute amendment, the annual impact fee is equal to 0.3 percent of the net book value of the high-voltage transmission line.

Finally, the substitute amendment requires the Department of Revenue to submit a proposal to the legislature, no later than December 31, 2004, regarding imposing local general property taxes on all property of electric cooperatives and light, heat, and power companies beginning with the property tax assessments as of January 1, 2007.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

1 **SECTION 1.** 16.969 (2) (a) of the statutes is amended to read:

1 16.969 (2) (a) An annual impact fee in an amount equal to 0.3% of the cost net
2 book value of the high-voltage transmission line, as determined by the commission
3 under s. 196.491 (3) (gm).

4 **SECTION 2.** 70.112 (4) (a) of the statutes is amended to read:

5 70.112 (4) (a) ~~All~~ Except as provided in par. (am), all special property assessed
6 under ss. 76.01 to 76.26 and property of any light, heat, and power company taxed
7 under s. 76.28, car line company, and electric cooperative association that is used and
8 useful in the operation of the business of such company or association. ~~If~~ Except as
9 provided in par. (am) 1., if a general structure for which an exemption is sought under
10 this section is used and useful in part in the operation of any public utility assessed
11 under ss. 76.01 to 76.26 or of the business of any light, heat, and power company
12 taxed under s. 76.28, car line company, or electric cooperative association and in part
13 for nonoperating purposes of the public utility or company or association, that
14 general structure shall be assessed for taxation under this chapter at the percentage
15 of its full market value that fairly measures and represents the extent of its use for
16 nonoperating purposes. Nothing provided in this paragraph shall exclude any real
17 estate or any property which is separately accounted for under s. 196.59 from special
18 assessments for local improvements under s. 66.0705.

19 **SECTION 3.** 70.112 (4) (am) of the statutes is created to read:

20 70.112 (4) (am) 1. Except as provided in subd. 3., beginning with the property
21 tax assessments as of January 1, 2005, a general structure owned or leased by a light,
22 heat, and power company taxed under s. 76.28 or 76.29 is subject to general property
23 taxes and, beginning with distributions in 2005, shall not be included in the
24 calculation of payments under s. 79.04 (1) and (2).

1 2. Except as provided in subd. 3., beginning with the property tax assessments
2 as of January 1, 2006, a substation of a light, heat, and power company taxed under
3 s. 76.28 or 76.29 is subject to general property taxes and, beginning with
4 distributions in 2006, shall not be included in the calculation of payments under s.
5 79.04 (1) and (2), except that this subdivision does not apply to transmission
6 substation property.

7 3. This paragraph does not apply to the property of a light, heat, and power
8 company that is located within the boundaries of the municipality that operates the
9 company and for which payments are made under s. 66.0811 (2).

10 4. Property subject to taxation under this paragraph shall be assessed by the
11 department of revenue, as provided under s. 70.995.

12 **SECTION 4.** 70.995 (2) (zm) of the statutes is created to read:

13 70.995 (2) (zm) Property described under s. 70.112 (4) (am).

14 **SECTION 5.** 76.28 (3) (e) of the statutes is created to read:

15 76.28 (3) (e) Beginning with the fees due in calendar year 2006, a light, heat,
16 and power company may claim as a credit against the fees imposed under sub. (2) and
17 s. 76.29 (2) an amount equal to the amount of property taxes imposed under ch. 70
18 on general structures and substations that the light, heat, and power company paid
19 in the then current calendar year. If a credit computed under this paragraph is not
20 entirely offset against the license fees otherwise due for the then current calendar
21 year, the unused balance may be carried forward and credited against license fees
22 otherwise due for the following 15 calendar years to the extent not offset by the
23 license fees otherwise due in all intervening years between the year in which the
24 property taxes were paid and the year in which the carry-forward credit is claimed.

25 **SECTION 6.** 76.28 (9) of the statutes is amended to read:

1 76.28 (9) PROPERTY SUBJECT TO LOCAL TAX. The Except as provided in s. 70.112
2 (4) (am) the license fees imposed by this section upon the gross revenues of light, heat
3 and power companies as defined in sub. (1) (e) shall be in lieu of all other taxes on
4 all property used and useful in the operation of the business of such companies in this
5 state, except that the same shall be subject to special assessments for local
6 improvements. If a general structure is used and useful in part in the operation of
7 the business of those companies in this state and in part for nonoperating purposes,
8 the license fees imposed by this section are in place of the percentage of all other taxes
9 on the property that fairly measures and represents the extent of the use and
10 usefulness in the operation of the business of those companies in this state, and the
11 balance is subject to local assessment and taxation, except that the entire general
12 structure is subject to special assessments for local improvements. Property under
13 s. 76.025 (2) shall not be taxed under this section, but shall be subject to local
14 assessment and taxation.

15 **SECTION 7.** 76.29 (2) of the statutes is amended to read:

16 76.29 (2) IMPOSITION. There Subject to the credits under ss. 76.28 (3) (e) and
17 76.48 (3d), there is imposed on every light, heat, and power company and electric
18 cooperative that owns an electric utility plant, an annual license fee to be assessed
19 by the department on or before May 1, 2005, and every May 1 thereafter, ending with
20 the assessment on May 1, 2010, measured by the gross revenues of the preceding tax
21 period in an amount equal to the apportionment factor multiplied by gross revenues
22 multiplied by 1.59%. The fee shall become delinquent if not paid when due and when
23 delinquent shall be subject to interest at the rate of 1.5% per month until paid. Gross
24 revenues earned by a light, heat, and power company after December 31, 2009, are
25 subject to the license fee imposed under s. 76.28 (2). Gross revenues earned by an

1 electric cooperative after December 31, 2009, are subject to the license fee imposed
2 under s. 76.48 (1r).

3 **SECTION 8.** 76.48 (3d) of the statutes is created to read:

4 76.48 (3d) Beginning with the fees due in calendar year 2006, an electric
5 cooperative may claim as a credit against the fees imposed under sub. (1r) and s.
6 76.29 (2) an amount equal to the amount of any payments in lieu of property taxes
7 that the electric cooperative paid in the then current calendar year, not to exceed the
8 amount of property taxes that the cooperative would have paid in that year had the
9 cooperative's property been subject to taxation under ch. 70. If a credit computed
10 under this paragraph is not entirely offset against the license fees otherwise due for
11 the then current calendar year, the unused balance may be carried forward and
12 credited against license fees otherwise due for the following 15 calendar years to the
13 extent not offset by the license fees otherwise due in all intervening years between
14 the year in which the payments were paid and the year in which the carry-forward
15 credit is claimed.

16 **SECTION 9.** 79.04 (1) (intro.) of the statutes, as affected by 2003 Wisconsin Act
17 31, is amended to read:

18 79.04 (1) (intro.) Annually, except for production plants that begin operation
19 after December 31, 2003, or begin operation as a repowered production plant after
20 December 31, 2003, and except as provided in sub. (4m) and under s. 70.112 (4) (am),
21 the department of administration, upon certification by the department of revenue,
22 shall distribute to a municipality having within its boundaries a production plant,
23 general structure, or substation, used by a light, heat, or power company assessed
24 under s. 76.28 (2) or 76.29 (2), except property described in s. 66.0813 unless the
25 production plant or substation is owned or operated by a local governmental unit

1 located outside of the municipality, or by an electric cooperative assessed under ss.
2 76.07 and 76.48, respectively, or by a municipal electric company under s. 66.0825
3 the amount determined as follows:

4 **SECTION 10.** 79.04 (1) (b) 1. of the statutes is amended to read:

5 79.04 (1) (b) 1. Beginning with the distribution under this subsection in 1991,
6 and ending with the distribution under this subsection in 2004, the amount
7 determined under par. (a) to value property used by a light, heat or power company
8 in a municipality may not be less than the amount determined to value the property
9 for the distribution to the municipality under this subsection in 1990, subject to
10 subs. 2., 3. and 4.

11 **SECTION 11.** 79.04 (2) (a) of the statutes, as affected by 2003 Wisconsin Acts 31
12 and 33, is amended to read:

13 79.04 (2) (a) Annually, except for production plants that begin operation after
14 December 31, 2003, or begin operation as a repowered production plant after
15 December 31, 2003, and except as provided in sub. (4m) and under s. 70.112 (4) (am),
16 the department of administration, upon certification by the department of revenue,
17 shall distribute from the shared revenue account or, for the distribution in 2003, from
18 the appropriation under s. 20.835 (1) (t) to any county having within its boundaries
19 a production plant, general structure, or substation, used by a light, heat or power
20 company assessed under s. 76.28 (2) or 76.29 (2), except property described in s.
21 66.0813 unless the production plant or substation is owned or operated by a local
22 governmental unit that is located outside of the municipality in which the production
23 plant or substation is located, or by an electric cooperative assessed under ss. 76.07
24 and 76.48, respectively, or by a municipal electric company under s. 66.0825 an
25 amount determined by multiplying by 6 mills in the case of property in a town and

1 by 3 mills in the case of property in a city or village the first \$125,000,000 of the
2 amount shown in the account, plus leased property, of each public utility except
3 qualified wholesale electric companies, as defined in s. 76.28 (1) (gm), on December
4 31 of the preceding year for “production plant, exclusive of land,” “general
5 structures,” and “substations,” in the case of light, heat and power companies,
6 electric cooperatives or municipal electric companies, for all property within the
7 municipality in accordance with the system of accounts established by the public
8 service commission or rural electrification administration, less depreciation thereon
9 as determined by the department of revenue and less the value of treatment plant
10 and pollution abatement equipment, as defined under s. 70.11 (21) (a), as determined
11 by the department of revenue plus an amount from the shared revenue account or,
12 for the distribution in 2003, from the appropriation under s. 20.835 (1) (t) determined
13 by multiplying by 6 mills in the case of property in a town, and 3 mills in the case of
14 property in a city or village, of the total original cost of production plant, general
15 structures, and substations less depreciation, land and approved waste treatment
16 facilities of each qualified wholesale electric company, as defined in s. 76.28 (1) (gm),
17 as reported to the department of revenue of all property within the municipality. The
18 total of amounts, as depreciated, from the accounts of all public utilities for the same
19 production plant is also limited to not more than \$125,000,000. The amount
20 distributable to a county under this subsection and sub. (6) in any year shall not
21 exceed \$100 times the population of the county.

22 **SECTION 12.** 79.04 (2) (am) 1. of the statutes is amended to read:

23 79.04 (2) (am) 1. Beginning with the distribution under this subsection in 1991,
24 and ending with the distribution under this subsection in 2004, the amount
25 determined under par. (a) to value property used by a light, heat or power company

1 in a county may not be less than the amount determined to value the property for the
2 distribution to the county under this subsection in 1990, subject to subds. 2. and 3.

3 **SECTION 13.** 79.04 (4m) of the statutes is created to read:

4 79.04 (4m) Beginning with distributions in 2005, for production plants
5 described under subs. (1) and (2), if in any year the payments to the municipality and
6 county in which the production plant is located would be greater under subs. (6) and
7 (7) based on the production plant's name-plate capacity than under sub. (1) or (2)
8 based on the depreciated net book value of the production plant, the municipality and
9 county shall receive payments under subs. (6) and (7), rather than under sub. (1) or
10 (2), beginning in that year and in each year thereafter.

11 **SECTION 14.** 79.04 (6) (a) of the statutes, as created by 2003 Wisconsin Act 31,
12 is amended to read:

13 79.04 (6) (a) Annually, beginning in 2005, for production plants that begin
14 operation after December 31, 2003, or begin operation as a repowered production
15 plant after December 31, 2003, except as provided in sub. (4m), the department of
16 administration, upon certification by the department of revenue, shall distribute
17 payments from the public utility account, as determined under par. (b), to each
18 municipality and county in which a production plant is located, if the production
19 plant has a name-plate capacity of at least one megawatt and is used by a light, heat,
20 or power company assessed under s. 76.28 (2) or 76.29 (2), except property described
21 in s. 66.0813, unless the production plant is owned or operated by a local
22 governmental unit located outside of the municipality; by a qualified wholesale
23 electric company, as defined in s. 76.28 (1) (gm); by a wholesale merchant plant, as
24 defined in s. 196.491 (1) (w); by an electric cooperative assessed under ss. 76.07 and
25 76.48, respectively; or by a municipal electric company under s. 66.0825.

1 **SECTION 15.** 196.491 (3) (gm) of the statutes, as affected by 2003 Wisconsin Act
2 89, is amended to read:

3 196.491 **(3)** (gm) The commission may not approve an application filed after
4 October 29, 1999, under this subsection for a certificate of public convenience and
5 necessity for a high-voltage transmission line that is designed for operation at a
6 nominal voltage of 345 kilovolts or more unless the approval includes the condition
7 that the applicant shall pay the fees specified in sub. (3g) (a). If the commission has
8 approved an application under this subsection for a certificate of public convenience
9 and necessity for a high-voltage transmission line that is designed for operation at
10 a nominal voltage of 345 kilovolts or more that was filed after April 1, 1999, and
11 before October 29, 1999, the commission shall require the applicant to pay the fees
12 specified in sub. (3g) (a). For any application subject to this paragraph, the
13 commission shall determine the cost net book value of the high-voltage transmission
14 line, identify the counties, towns, villages and cities through which the high-voltage
15 transmission line is routed and allocate the amount of investment associated with
16 the high-voltage transmission line to each such county, town, village and city.

17 **SECTION 16. Nonstatutory provisions.**

18 (1) PROPOSAL TO IMPOSE GENERAL LOCAL PROPERTY TAXES ON UTILITY PROPERTY. No
19 later than December 31, 2004, the department of revenue shall submit a proposal to
20 the legislature under section 13.172 (2) of the statutes regarding imposing local
21 general property taxes under chapter 70 of the statutes on the property of electric
22 cooperatives and light, heat, and power companies beginning with the property tax
23 assessments as of January 1, 2007. The proposal shall include distribution and

1 transmission property and property included in the production plant account that
2 does not directly generate electricity.

3 (END)