

2003 Assembly Bill 378

Date of enactment: **July 15, 2003**
Date of publication*: **July 29, 2003**

2003 WISCONSIN ACT 31

(Vetoed in Part)

AN ACT *to renumber* 79.005 (1); *to amend* 20.835 (1) (d), 79.005 (3), 79.04 (1) (intro.), 79.04 (1) (a), 79.04 (1) (b) 2., 79.04 (1) (c) 1., 79.04 (1) (c) 3., 79.04 (2) (a), 79.04 (2) (am) 2. and 79.04 (4); and *to create* 20.835 (1) (dm), 79.005 (1b), 79.005 (1d), 79.005 (1f), 79.005 (1g), 79.005 (2m), 79.005 (4), 79.01 (2m), 79.04 (3m), 79.04 (5), 79.04 (6), 79.04 (7) and 196.20 (7) of the statutes; **relating to:** payments to local governments for public utilities and making an appropriation.

**Vetoed
In Part**

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

SECTION 1. 20.835 (1) (d) of the statutes is amended to read:

20.835 (1) (d) *Shared revenue account.* A sum sufficient to meet the requirements of the shared revenue account established under s. 79.01 (2) to provide for the distributions from the shared revenue account to counties, towns, villages and cities under ss. 79.03, 79.04 (1) to (4) and 79.06.

SECTION 2. 20.835 (1) (dm) of the statutes is created to read:

20.835 (1) (dm) *Public utility distribution account.* Beginning in 2005, a sum sufficient to make the payments under s. 79.04 (5), (6), and (7).

SECTION 3. 79.005 (1) of the statutes is renumbered 79.005 (1m).

SECTION 4. 79.005 (1b) of the statutes is created to read:

79.005 (1b) “Alternative energy resource” means a renewable resource, as defined in s. 196.378 (1) (h); gar-

bage, as defined in s. 289.01 (9); or nonvegetation-based industrial, commercial, or household waste.

SECTION 5. 79.005 (1d) of the statutes is created to read:

79.005 (1d) “Baseload electric generating facility” means an electric generating facility that has a capacity factor that is greater than 60%, as determined by the public service commission.

SECTION 6. 79.005 (1f) of the statutes is created to read:

79.005 (1f) “Capacity factor” means the anticipated actual annual output of an electric generating facility expressed as a percentage of the facility’s potential output. For purposes of this subchapter, the public service commission may review the capacity factor of an electric generating facility at any time.

SECTION 6m. 79.005 (1g) of the statutes is created to read:

79.005 (1g) “Cogeneration production plant” means an electric generating facility that produces electricity and another form of thermal energy, including heat or steam, that is used for industrial, commercial, heating, or cooling purposes.

* Section 991.11, WISCONSIN STATUTES 2001-02 : Effective date of acts. “Every act and every portion of an act enacted by the legislature over the governor’s partial veto which does not expressly prescribe the time when it takes effect shall take effect on the day after its date of publication as designated” by the secretary of state [the date of publication may not be more than 10 working days after the date of enactment].

SECTION 7. 79.005 (2m) of the statutes is created to read:

79.005 (2m) "Power generation unit" means a complete set of electric generating equipment, as defined in s. 196.52 (9) (a) 1., that, collectively, is sufficient to generate electric power.

SECTION 8. 79.005 (3) of the statutes is amended to read:

79.005 (3) "Production plant" ~~also includes~~ does not include substations and general structures.

SECTION 9. 79.005 (4) of the statutes is created to read:

79.005 (4) "Repowered" means any of the following:

(a) Replacing the boiler on an existing fossil fuel steam unit with a combustion turbine and heat recovery steam generator and reusing the steam turbine and heat rejection system.

(b) Adding a heat recovery steam generator to a simple cycle combustion turbine.

(c) Demolishing or abandoning an existing power generation unit and replacing it with a new power generation unit at the same site.

(d) Replacing steam generating equipment at a combustion-based renewable facility, as defined in s. 196.378 (1) (g), to increase efficiency or capacity, if the facility remains a combustion-based renewable facility, as defined in s. 196.378 (1) (g), after replacing the equipment.

SECTION 10. 79.01 (2m) of the statutes is created to read:

79.01 (2m) There is established an account in the general fund entitled the "Public Utility Distribution Account," referred to in this chapter as the "public utility account." There shall be appropriated to the public utility account the sums specified in s. 79.04 (5), (6), and (7).

SECTION 11. 79.04 (1) (intro.) of the statutes is amended to read:

79.04 (1) (intro.) Annually, except for production plants that begin operation after December 31, 2003, or begin operation as a repowered production plant after December 31, 2003, the department of administration, upon certification by the department of revenue, shall distribute to a municipality having within its boundaries a production plant ~~or a~~ general structure, ~~including production plants and general structures under construction or substation,~~ used by a light, heat, or power company assessed under s. 76.28 (2) or 76.29 (2), except property described in s. 66.0813 unless the production plant or substation is owned or operated by a local governmental unit located outside of the municipality, or by an electric cooperative assessed under ss. 76.07 and 76.48, respectively, or by a municipal electric company under s. 66.0825 the amount determined as follows:

SECTION 12. 79.04 (1) (a) of the statutes is amended to read:

79.04 (1) (a) An amount from the shared revenue account determined by multiplying by 3 mills in the case of a town, and 6 mills in the case of a city or village, the first \$125,000,000 of the amount shown in the account, plus leased property, of each public utility except qualified wholesale electric companies, as defined in s. 76.28 (1) (gm), on December 31 of the preceding year for ~~either "production plant, exclusive of land" and,~~ "general structures," or "work in progress" for production plants ~~and general structures under construction,~~ and "substations," in the case of light, heat and power companies, electric cooperatives or municipal electric companies, for all property within a municipality in accordance with the system of accounts established by the public service commission or rural electrification administration, less depreciation thereon as determined by the department of revenue and less the value of treatment plant and pollution abatement equipment, as defined under s. 70.11 (21) (a), as determined by the department of revenue plus an amount from the shared revenue account determined by multiplying by 3 mills in the case of a town, and 6 mills in the case of a city or village, of the first \$125,000,000 of the total original cost of production plant, general structures, ~~and work in progress~~ substations less depreciation, land and approved waste treatment facilities of each qualified wholesale electric company, as defined in s. 76.28 (1) (gm), as reported to the department of revenue of all property within the municipality. The total of amounts, as depreciated, from the accounts of all public utilities for the same production plant is also limited to not more than \$125,000,000. The amount distributable to a municipality under this subsection and sub. (6) in any year shall not exceed \$300 times the population of the municipality.

SECTION 13. 79.04 (1) (b) 2. of the statutes is amended to read:

79.04 (1) (b) 2. When a light, heat or power company no longer uses property described under par. (a) as production plant, substation, or general structure in a municipality, the amount established under subd. 1. shall be reduced by the proportion that the property that is no longer used bears to the total value of all property described in par. (a) in the municipality. The proportion shall be determined according to the proportional value of the property when the light, heat or power company stops using the property.

SECTION 14. 79.04 (1) (c) 1. of the statutes is amended to read:

79.04 (1) (c) 1. The payment for any municipality in which a production plant is located, which the public service commission certifies to the department of revenue will produce a nominal rated capacity of 200 megawatts or more, shall be no less than \$75,000 annually, except that the amount distributable to a municipality in any year shall not exceed the per capita limit specified in par. (a).

Payments under this paragraph may be extended to decommissioned production plants as provided in subd. 3.

SECTION 15. 79.04 (1) (c) 3. of the statutes is amended to read:

79.04 (1) (c) 3. If a production plant with a nominal rated capacity of 200 megawatts or more is decommissioned or becomes nonutility property, the \$75,000 minimum guaranteed payment under subd. 1. shall continue but diminish by \$7,500 annually, except that the minimum guaranteed payment under this subdivision shall cease in the year following the first year in which the property becomes taxable by the taxation district. In this subdivision, "nonutility property" has the meaning set forth in the uniform system of accounts established by the public service commission. This subdivision does not apply after the distributions in 2004.

SECTION 16. 79.04 (2) (a) of the statutes is amended to read:

79.04 (2) (a) Annually, except for production plants that begin operation after December 31, 2003, or begin operation as a repowered production plant after December 31, 2003, the department of administration, upon certification by the department of revenue, shall distribute from the shared revenue account to any county having within its boundaries a production plant ~~or a~~ general structure, ~~including production plants and general structures under construction or~~ substation, used by a light, heat or power company assessed under s. 76.28 (2) or 76.29 (2), except property described in s. 66.0813 unless the production plant or substation is owned or operated by a local governmental unit that is located outside of the municipality in which the production plant or substation is located, or by an electric cooperative assessed under ss. 76.07 and 76.48, respectively, or by a municipal electric company under s. 66.0825 an amount determined by multiplying by 6 mills in the case of property in a town and by 3 mills in the case of property in a city or village the first \$125,000,000 of the amount shown in the account, plus leased property, of each public utility except qualified wholesale electric companies, as defined in s. 76.28 (1) (gm), on December 31 of the preceding year for either "production plant, exclusive of land" and, "general structures", or "work in progress" ~~for production plants and general structures under construction," and "substations,"~~ in the case of light, heat and power companies, electric cooperatives or municipal electric companies, for all property within the municipality in accordance with the system of accounts established by the public service commission or rural electrification administration, less depreciation thereon as determined by the department of revenue and less the value of treatment plant and pollution abatement equipment, as defined under s. 70.11 (21) (a), as determined by the department of revenue plus an amount from the shared revenue account determined by multiplying by 6

mills in the case of property in a town, and 3 mills in the case of property in a city or village, of the total original cost of production plant, general structures, and ~~work-in-progress substations~~ less depreciation, land and approved waste treatment facilities of each qualified wholesale electric company, as defined in s. 76.28 (1) (gm), as reported to the department of revenue of all property within the municipality. The total of amounts, as depreciated, from the accounts of all public utilities for the same production plant is also limited to not more than \$125,000,000. The amount distributable to a county under this subsection and sub. (6) in any year shall not exceed \$100 times the population of the county.

SECTION 17. 79.04 (2) (am) 2. of the statutes is amended to read:

79.04 (2) (am) 2. When a light, heat or power company no longer uses property described under par. (a) as production plant, substation, or general structure in a county, the amount established under subd. 1. shall be reduced by the proportion that the property that is no longer used bears to the total value of all property described in par. (a) in the county. The proportion shall be determined according to the proportional value of the property when the light, heat or power company stops using the property.

SECTION 18. 79.04 (3m) of the statutes is created to read:

79.04 (3m) For purposes of determining the amount of the payments under subs. (1) and (2), the payments for a municipality and county in which an ash disposal facility that is owned and operated by an electric cooperative is operating prior to the effective date of this subsection ... [revisor inserts date], shall be calculated to include an amount that is equal to the net book value of the ash disposal facility multiplied by 2.

SECTION 19. 79.04 (4) of the statutes is amended to read:

79.04 (4) (a) Annually, in addition to the ~~amount~~ amounts distributed under ~~sub. (1) subs. (1), (5), (6), and (7),~~ the department of administration shall distribute \$50,000 to a municipality if spent nuclear fuel is stored within the municipality on December 31 of the preceding year. If a spent nuclear fuel storage facility is located within one mile of a municipality, that municipality shall receive \$10,000 annually and the municipality where that storage facility is located shall receive \$40,000 annually.

(b) Annually, in addition to the ~~amount~~ amounts distributed under ~~sub. (2) subs. (2), (5), (6), and (7),~~ the department of administration shall distribute \$50,000 to a county if spent nuclear fuel is stored within the county on December 31 of the preceding year. If a spent nuclear fuel storage facility is located at a production plant located in more than one county, the payment shall be apportioned according to the formula under sub. (1) (c) 2., except that the formula, as it applies to municipalities in that subdivision, applies to counties in this paragraph.

The payment under this paragraph may not be less than \$10,000 annually.

SECTION 20. 79.04 (5) of the statutes is created to read:

79.04 (5) (a) Beginning with the distributions in 2005, if property that was exempt from the property tax under s. 70.112 (4) and that was used to generate power by a light, heat, or power company, except property under s. 66.0813, unless the production plant is owned or operated by a local governmental unit located outside of the municipality, or by an electric cooperative, or by a municipal electric company under s. 66.0825, is decommissioned, the municipality shall be paid, from the public utility account, an amount calculated by subtracting an amount equal to the property taxes paid for that property during the current year to the municipality for its general operations from the following percentages of the payment that the municipality received under this section during the last year that the property was exempt from the property tax:

1. In the first year that the property is taxable, 100%.
2. In the 2nd year that the property is taxable, 80%.
3. In the 3rd year that the property is taxable, 60%.
4. In the 4th year that the property is taxable, 40%.
5. In the 5th year that the property is taxable, 20%.

(b) Beginning with the distributions in 2005, if property that was exempt from the property tax under s. 70.112 (4) and that was used to generate power by a light, heat, or power company, except property under s. 66.0813, unless the production plant is owned or operated by a local governmental unit located outside of the municipality, or by an electric cooperative, or by a municipal electric company under s. 66.0825, is decommissioned, the county shall be paid, from the public utility account, an amount calculated by subtracting an amount equal to the property taxes paid for that property during the current year to the county for its general operations from the following percentages of the payment the county received under this section during the last year that the property was exempt from the property tax:

1. In the first year that the property is taxable, 100%.
2. In the 2nd year that the property is taxable, 80%.
3. In the 3rd year that the property is taxable, 60%.
4. In the 4th year that the property is taxable, 40%.
5. In the 5th year that the property is taxable, 20%.

SECTION 21. 79.04 (6) of the statutes is created to read:

79.04 (6) (a) Annually, beginning in 2005, for production plants that begin operation after December 31, 2003, or begin operation as a repowered production plant after December 31, 2003, the department of administration, upon certification by the department of revenue, shall distribute payments from the public utility account, as determined under par. (b), to each municipality and county in which a production plant is located, if the production plant has a name-plate capacity of at least one

megawatt and is used by a light, heat, or power company assessed under s. 76.28 (2) or 76.29 (2), except property described in s. 66.0813, unless the production plant is owned or operated by a local governmental unit located outside of the municipality; by a qualified wholesale electric company, as defined in s. 76.28 (1) (gm); by a wholesale merchant plant, as defined in s. 196.491 (1) (w); by an electric cooperative assessed under ss. 76.07 and 76.48, respectively; or by a municipal electric company under s. 66.0825.

(b) Subject to pars. (c) and (d), each municipality entitled to a payment under par. (a) and each county in which such a municipality is located shall receive a payment equal to a portion of an amount that is equal to the number of megawatts that represents the production plant's name-plate capacity, multiplied by \$2,000.

(c) 1. If the production plant is located in a city or village, the city or village receives a payment equal to two-thirds of the amount determined under par. (b) and the county in which the city or village is located receives a payment equal to one-third of the amount determined under par. (b). If the production plant is located in a town, the town receives a payment equal to one-third of the amount determined under par. (b), and the county in which the town is located receives a payment equal to two-thirds of the amount determined under par. (b). If a municipality is located in more than one county, the county in which the production plant is located shall receive the county portion of the payment.

2. For the purpose of determining the amount of the payment under par. (b), if a production plant is located in more than one municipality, the payment amount under par. (b) shall be divided among the municipalities in which the plant is located based on the net book value of that portion of the plant located in each municipality as of December 31, 2004, or as of the date on which the plant is operational, whichever is later.

(d) The total amount distributable to a municipality under this subsection and sub. (1) in any fiscal year shall not exceed an amount equal to the municipality's population multiplied by \$300, and the total amount distributable to a county under this subsection and sub. (2) in any year shall not exceed an amount equal to the county's population multiplied by \$100.

SECTION 22. 79.04 (7) of the statutes is created to read:

79.04 (7) (a) Beginning with payments in 2005, if a production plant, as described in sub. (6) (a), other than a nuclear-powered production plant, is built on the site of, or on a site adjacent to, an existing or decommissioned production plant; or is built on a site purchased by a public utility before January 1, 1980, that was identified in an advance plan as a proposed site for a production plant; or is built on, or on a site adjacent to, brownfields, as defined in s. 560.13 (1) (a), after December 31, 2003, and has a name-plate capacity of at least one megawatt, each

municipality and county in which such a production plant is located shall receive annually from the public utility account a payment in an amount that is equal to the number of megawatts that represents the production plant's name-plate capacity, multiplied by \$600.

(b) 1. Beginning with payments in 2005, if a production plant, as described in sub. (6) (a), that is a baseload electric generating facility is built after December 31, 2003, and has a name-plate capacity of at least 50 megawatts, each municipality and county in which such a production plant is located shall receive annually from the public utility account a payment in an amount that is equal to the number of megawatts that represents the production plant's name-plate capacity, multiplied by \$600.

Vetoed
In Part

2. If a baseload electric generating facility as described in subd. 1. is located on a site that is contiguous to a municipality in which the facility is not located, the contiguous municipality shall receive annually from the public utility account a payment in an amount that is equal to the number of megawatts that represents the production plant's name-plate capacity, multiplied by \$100. A municipality that receives a payment under this subdivision may not receive a mitigation payment as defined in s. 196.20 (7) (a).

(c) 1. Except as provided in subd. 2., beginning with payments in 2005, if a production plant, as described in sub. (6) (a), that derives energy from an alternative energy resource is built after December 31, 2003, and has a name-plate capacity of at least one megawatt, each municipality and county in which such a production plant is located shall receive annually from the public utility account a payment in an amount that is equal to the number of megawatts that represents the production plant's name-plate capacity, multiplied by \$1,000.

Vetoed
In Part

1m. Beginning with payments in 2005, if a cogeneration production plant, as described in sub. (6) (a), is built and completed after December 31, 2003, and before December 31, 2006, and has a name-plate capacity of at least one megawatt, each municipality and county in which such a cogeneration production plant is located shall receive annually from the public utility account a payment in an amount that is equal to the number of megawatts that represents the cogeneration production plant's name-plate capacity, multiplied by \$1,000. Any municipality or county that receives a

payment under this subdivision in any year may not receive a payment under subd. 1. in that year.

2. If a production plant as described under subd. 1. fires an alternative energy resource together with a fuel other than an alternative energy resource, the number of megawatts used to calculate the payment under subd. 1. is the number of megawatts that represents the production plant's name-plate capacity multiplied by a percentage that represents the energy content of the alternative energy resource in the year prior to the year in which the payment is made as compared to the total energy content of the alternative energy resource and the other fuel in the year prior to the year in which the payment is made.

SECTION 23. 196.20 (7) of the statutes is created to read:

Vetoed
In Part

196.20 (7) (a) In this subsection, "mitigation payment" means, as approved by the commission, an unrestricted or recurring monetary payment to a local unit of government in which an electric generating facility is located to mitigate the impact of the electric generating facility on the local unit of government. "Mitigation payment" does not include payments made or in-kind contributions for restricted purposes to directly address health or safety impacts of the electric generating facility on the local unit of government.

(b) Except as provided in par. (c), an electric public utility may not recover in rates any of the following:

- 1. The cost of mitigation payments paid by the utility.
- 2. The cost of mitigation payments paid by the owner or operator of an electric generating facility that the owner or operator recovers from the utility by selling electricity to the utility, by leasing the facility to the utility, or by any agreement between the owner or operator of the electric generating facility and the public utility.

(c) The commission shall only approve a mitigation payment agreement that is received by the commission before June 10, 2003, and, if the commission finds the agreement to be reasonable, shall not subsequently modify the agreement.

SECTION 24. Initial applicability.

(1) The treatment of sections 20.835 (1) (d) and (dm), 79.005 (1), (1b), (1d), (1f), (2m), (3), and (4), 79.01 (2m), and 79.04 (1) (intro.), (a), (b) 2., and (c) 1., (2) (a) and (am) 2., (3m), (4), (5), (6), and (7) of the statutes first applies to distributions made on the 4th Monday in July, 2005.