



WISCONSIN LEGISLATIVE COUNCIL AMENDMENT MEMO

2007 Senate Bill 122

**Senate Substitute
Amendment 1**

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Under *current law*, in general, property that is used to treat industrial wastes or air contaminants is exempt from the property tax. For purposes of the exemption, “industrial waste” includes various forms of wood waste that can be used as fuel and would otherwise be considered superfluous, discarded, or fugitive material. In addition, the sale, storage, use, or other consumption of tangible personal property that becomes a part of property that receives this property tax exemption is exempt from the sales and use taxes.

The so-called “Newark decision” [*The Newark Group, Inc. v. The Wisconsin Department of Revenue*, Wisconsin Tax Appeals Commission, March 22, 2004] gave a very expansive interpretation to the property tax exemption. In response to that decision, **2007 Senate Bill 122** makes the following changes to the exemption:

1. Requires that the property be used “exclusively and directly to remove, store, or cause a physical or chemical change in” industrial waste or air contaminants.
2. Defines “industrial waste” as waste resulting from any of various processes that “has no use or monetary or market value ... and that would otherwise be considered superfluous, discarded, or fugitive material.”
3. Specifies that the classification of waste as industrial waste “ends when the waste has a use or monetary or market value.”
4. Defines “used exclusively” as “used to the exclusion of all other uses except:
 - a. For other use not exceeding 5% of total use.
 - b. To produce energy for a manufacturing process, if the industrial waste would otherwise be considered superfluous, discarded, or fugitive material.”

5. Deletes the separate reference to the use of wood wastes as fuel in the definition of “industrial waste.”

Senate Substitute Amendment 1 modifies the bill in the following ways:

1. Deletes the words “use or” from the phrase “that has no use or monetary or market value” in the definition of “industrial waste.”
2. Deletes the provision that the classification of waste as industrial waste “ends when the waste has a use or monetary or market value” from the definition of “industrial waste.”
3. Modifies the portion of the definition of “used exclusively” that includes the production of energy for a manufacturing process as follows:
 - a. Replaces the word “energy” with the words “heat or steam.”
 - b. Requires that the fuel consist of either 95% or more industrial waste or 50% or more wood waste.
4. Adds two nonstatutory provisions that do the following:
 - a. Specifies that property tax assessments under the amended property tax exemption statute supersede prior property tax assessments under that statute.
 - b. Provides that the sales and use tax exemption does not apply to tangible property purchased in fulfillment of a contract to construct, repair, or improve a waste treatment facility, if the contract is entered into, or a formal bid is made, prior to the effective date of the bill and the tangible personal property is affixed to and made a structural part of the waste treatment facility.

Legislative History

Senate Substitute Amendment 1 was introduced by Senators and Hansen and Cowles. On May 14, 2007, the Senate Committee on Commerce, Utilities, and Rail, by votes of 7-0, recommended adoption of the substitute amendment and passage of the bill as amended.

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