

2007 SENATE BILL 122

March 30, 2007 – Introduced by Senators HANSEN, COWLES, DECKER, PLALE, A. LASEE, BRESKE, WIRCH, ROESSLER, COGGS, CARPENTER, SCHULTZ, TAYLOR, RISSER and ERPENBACH, cosponsored by Representatives KAUFERT, TAUCHEN, MONTGOMERY, SOLETSKI, HINTZ, NELSON, VAN ROY, SEIDEL, ROTH, MOLEPSKE, A. OTT, SCHNEIDER, GRIGSBY, BIES, RICHARDS, TOWNSEND, FIELDS, GOTTLIEB, SINICKI, HIXSON, MUSSER, BLACK, STRACHOTA, HAHN, ALBERS, BALLWEG and NYGREN. Referred to Committee on Commerce, Utilities and Rail.

1 **AN ACT** *to renumber and amend* 70.11 (21) (a); *to amend* 74.35 (2m), 74.35 (5)
 2 (d), 76.025 (1), 76.81, 77.54 (26), 79.04 (1) (a) and 79.04 (2) (a); and *to create*
 3 70.11 (21) (ab) of the statutes; **relating to:** the property tax exemption for waste
 4 treatment facilities.

Analysis by the Legislative Reference Bureau

Under current law, generally, all property purchased or constructed as a waste treatment facility and used to treat industrial wastes or air contaminants is exempt from property taxes.

Under this bill, all property purchased or constructed as a waste treatment facility and used exclusively and directly to remove, store, or cause a physical or chemical change in industrial waste or air contaminants is exempt from property taxes.

Because this bill relates to an exemption from state or local taxes, it may be referred to the Joint Survey Committee on Tax Exemptions for a report to be printed as an appendix to the bill.

For further information see the *state and local* 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:

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1 **SECTION 1.** 70.11 (21) (a) of the statutes is renumbered 70.11 (21) (am) and
2 amended to read:

3 70.11 **(21)** (am) All property purchased or constructed as a waste treatment
4 facility used ~~for the treatment of~~ exclusively and directly to remove, store, or cause
5 a physical or chemical change in industrial wastes, as defined in s. 281.01 (5), waste
6 or air contaminants, as defined in s. 285.01 (1), but not for other wastes, as defined
7 in s. 281.01 (7), for the purpose of abating or eliminating pollution of surface waters,
8 the air, or waters of the state if that property is not used to grow agricultural products
9 for sale and, if the property's owner is taxed under ch. 76, if the property is approved
10 by the department of revenue. For the purposes of this subsection, "industrial waste"
11 also includes wood chips, sawdust, and other wood residue from the paper and wood
12 products manufacturing process that can be used as fuel and would otherwise be
13 considered superfluous, discarded, or fugitive material. The department of natural
14 resources and department of health and family services shall make
15 recommendations upon request to the department of revenue regarding such
16 property. All property purchased or upon which construction began prior to
17 July 31, 1975, shall be subject to s. 70.11 (21), 1973 stats.

18 **SECTION 2.** 70.11 (21) (ab) of the statutes is created to read:

19 70.11 **(21)** (ab) In this subsection:

20 1. "Air contaminants" has the meaning given in s. 285.01 (1).

21 2. "Industrial waste" means waste resulting from any process of industry,
22 trade, or business, or the development of any natural resource, that has no use or
23 monetary or market value, except as provided in subd. 3. b., and that would
24 otherwise be considered superfluous, discarded, or fugitive material. The

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1 classification of waste as industrial waste ends when the waste has a use or monetary
2 or market value.

3 3. “Used exclusively” means to the exclusion of all other uses except:

4 a. For other use not exceeding 5 percent of total use.

5 b. To produce energy for a manufacturing process, if the industrial waste would
6 otherwise be considered superfluous, discarded, or fugitive material.

7 **SECTION 3.** 74.35 (2m) of the statutes is amended to read:

8 74.35 (2m) EXCLUSIVE PROCEDURE. A claim that property is exempt, other than
9 a claim that property is exempt under s. 70.11 (21) (a) or (27), may be made only in
10 an action under this section. Such a claim may not be made by means of an action
11 under s. 74.33 or an action for a declaratory judgment under s. 806.04.

12 **SECTION 4.** 74.35 (5) (d) of the statutes is amended to read:

13 74.35 (5) (d) No claim may be made under this section based on the contention
14 that the tax was unlawful because the property is exempt from taxation under s.
15 70.11 (21) (a) or (27).

16 **SECTION 5.** 76.025 (1) of the statutes is amended to read:

17 76.025 (1) The property taxable under s. 76.13 shall include all franchises, and
18 all real and personal property of the company used or employed in the operation of
19 its business, excluding property that is exempt from the property tax under s. 70.11
20 (39) and (39m), such motor vehicles as are exempt under s. 70.112 (5) and treatment
21 plant and pollution abatement equipment exempt under s. 70.11 (21) (a). The
22 taxable property shall include all title and interest of the company referred to in such
23 property as owner, lessee or otherwise, and in case any portion of the property is
24 jointly used by 2 or more companies, the unit assessment shall include and cover a
25 proportionate share of that portion of the property jointly used so that the

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1 assessments of the property of all companies having any rights, title or interest of
2 any kind or nature whatsoever in any such property jointly used shall, in the
3 aggregate, include only one total full value of such property.

4 **SECTION 6.** 76.81 of the statutes is amended to read:

5 **76.81 Imposition.** There is imposed a tax on the real property of, and the
6 tangible personal property of, every telephone company, excluding property that is
7 exempt from the property tax under s. 70.11 (39) and (39m), motor vehicles that are
8 exempt under s. 70.112 (5), property that is used less than 50% in the operation of
9 a telephone company, as provided under s. 70.112 (4) (b), and treatment plant and
10 pollution abatement equipment that is exempt under s. 70.11 (21) (a). Except as
11 provided in s. 76.815, the rate for the tax imposed on each description of real property
12 and on each item of tangible personal property is the net rate for the prior year for
13 the tax under ch. 70 in the taxing jurisdictions where the description or item is
14 located. The real and tangible personal property of a telephone company shall be
15 assessed as provided under s. 70.112 (4) (b).

16 **SECTION 7.** 77.54 (26) of the statutes is amended to read:

17 **77.54 (26)** The gross receipts from the sales of and the storage, use, or other
18 consumption of tangible personal property which becomes a component part of an
19 industrial waste treatment facility that is exempt under s. 70.11 (21) (a) or that
20 would be exempt under s. 70.11 (21) (a) if the property were taxable under ch. 70, or
21 tangible personal property which becomes a component part of a waste treatment
22 facility of this state or any agency thereof, or any political subdivision of the state or
23 agency thereof as provided in s. 40.02 (28). The exemption includes replacement
24 parts therefor, and also applies to chemicals and supplies used or consumed in
25 operating a waste treatment facility and to purchases of tangible personal property

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1 made by construction contractors who transfer such property to their customers in
2 fulfillment of a real property construction activity. This exemption does not apply
3 to tangible personal property installed in fulfillment of a written construction
4 contract entered into, or a formal written bid made, prior to July 31, 1975.

5 **SECTION 8.** 79.04 (1) (a) of the statutes is amended to read:

6 79.04 (1) (a) An amount from the shared revenue account or, for the
7 distribution in 2003, from the appropriation under s. 20.835 (1) (t), 2003 stats.,
8 determined by multiplying by 3 mills in the case of a town, and 6 mills in the case
9 of a city or village, the first \$125,000,000 of the amount shown in the account, plus
10 leased property, of each public utility except qualified wholesale electric companies,
11 as defined in s. 76.28 (1) (gm), on December 31 of the preceding year for “production
12 plant, exclusive of land,” “general structures,” and “substations,” in the case of light,
13 heat and power companies, electric cooperatives or municipal electric companies, for
14 all property within a municipality in accordance with the system of accounts
15 established by the public service commission or rural electrification administration,
16 less depreciation thereon as determined by the department of revenue and less the
17 value of treatment plant and pollution abatement equipment, as defined under s.
18 70.11 (21) (a), as determined by the department of revenue plus an amount from the
19 shared revenue account or, for the distribution in 2003, from the appropriation under
20 s. 20.835 (1) (t), 2003 stats., determined by multiplying by 3 mills in the case of a
21 town, and 6 mills in the case of a city or village, of the first \$125,000,000 of the total
22 original cost of production plant, general structures, and substations less
23 depreciation, land and approved waste treatment facilities of each qualified
24 wholesale electric company, as defined in s. 76.28 (1) (gm), as reported to the
25 department of revenue of all property within the municipality. The total of amounts,

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1 as depreciated, from the accounts of all public utilities for the same production plant
2 is also limited to not more than \$125,000,000. The amount distributable to a
3 municipality under this subsection and sub. (6) in any year shall not exceed \$300
4 times the population of the municipality.

5 **SECTION 9.** 79.04 (2) (a) of the statutes is amended to read:

6 79.04 (2) (a) Annually, except for production plants that begin operation after
7 December 31, 2003, or begin operation as a repowered production plant after
8 December 31, 2003, the department of administration, upon certification by the
9 department of revenue, shall distribute from the shared revenue account or, for the
10 distribution in 2003, from the appropriation under s. 20.835 (1) (t), 2003 stats., to any
11 county having within its boundaries a production plant, general structure, or
12 substation, used by a light, heat or power company assessed under s. 76.28 (2) or
13 76.29 (2), except property described in s. 66.0813 unless the production plant or
14 substation is owned or operated by a local governmental unit that is located outside
15 of the municipality in which the production plant or substation is located, or by an
16 electric cooperative assessed under ss. 76.07 and 76.48, respectively, or by a
17 municipal electric company under s. 66.0825 an amount determined by multiplying
18 by 6 mills in the case of property in a town and by 3 mills in the case of property in
19 a city or village the first \$125,000,000 of the amount shown in the account, plus
20 leased property, of each public utility except qualified wholesale electric companies,
21 as defined in s. 76.28 (1) (gm), on December 31 of the preceding year for “production
22 plant, exclusive of land,” “general structures,” and “substations,” in the case of light,
23 heat and power companies, electric cooperatives or municipal electric companies, for
24 all property within the municipality in accordance with the system of accounts
25 established by the public service commission or rural electrification administration,

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1 less depreciation thereon as determined by the department of revenue and less the
2 value of treatment plant and pollution abatement equipment, as defined under s.
3 70.11 (21) (a), as determined by the department of revenue plus an amount from the
4 shared revenue account or, for the distribution in 2003, from the appropriation under
5 s. 20.835 (1) (t), 2003 stats., determined by multiplying by 6 mills in the case of
6 property in a town, and 3 mills in the case of property in a city or village, of the total
7 original cost of production plant, general structures, and substations less
8 depreciation, land and approved waste treatment facilities of each qualified
9 wholesale electric company, as defined in s. 76.28 (1) (gm), as reported to the
10 department of revenue of all property within the municipality. The total of amounts,
11 as depreciated, from the accounts of all public utilities for the same production plant
12 is also limited to not more than \$125,000,000. The amount distributable to a county
13 under this subsection and sub. (6) in any year shall not exceed \$100 times the
14 population of the county.

15 **SECTION 10. Initial applicability.**

16 (1) This act first applies to the property tax assessments as of January 1, 2007.

17 (END)