

2007 DRAFTING REQUEST

Senate Substitute Amendment (SSA-SB122)

Received: **05/03/2007**

Received By: **jkreye**

Wanted: **Today**

Identical to LRB:

For: **David Hansen (608) 266-5670**

By/Representing: **jay**

This file may be shown to any legislator: **NO**

Drafter: **jkreye**

May Contact:

Addl. Drafters:

Subject: **Tax, Property - exemption**

Extra Copies:

Submit via email: **YES**

Requester's email: **Sen.Hansen@legis.wisconsin.gov**

Carbon copy (CC:) to: **joseph.kreye@legis.wisconsin.gov**

Pre Topic:

No specific pre topic given

Topic:

Waste treatment facility

Instructions:

See Attached

Drafting History:

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Typed</u>	<u>Proofed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
/?	jkreye 05/03/2007	jdyer 05/03/2007		_____			
/1	jkreye 05/04/2007	kfollett 05/04/2007	jfrantze 05/03/2007	_____	sbasford 05/03/2007	sbasford 05/03/2007	
/2			rschluet 05/04/2007	_____	sbasford 05/04/2007	sbasford 05/04/2007	

FE Sent For:

<END>

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/?	jkreye 05/03/2007	jdyer 05/03/2007		_____			
/1		12/15/07 5/4/07	jfrantze 05/03/2007	_____	sbasford 05/03/2007	sbasford 05/03/2007	

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/?	jkreye	1/5/3 jw	J. Self	5/3			

FE Sent For:

<END>

Kreye, Joseph

From: Grosz, Scott
Sent: Friday, April 27, 2007 8:12 AM
To: Olin, Rick; Wadd, Jay; Kreye, Joseph
Subject: RE: Newark: Question

I agree with Rick.

Scott

From: Olin, Rick
Sent: Thursday, April 26, 2007 5:55 PM
To: Wadd, Jay; Grosz, Scott; Kreye, Joseph
Subject: RE: Newark: Question

Gentlemen:

The third line ends with the words "wood products manufacturing" but should be changed to "paper and wood products manufacturing" to precisely reflect current law provisions. Otherwise, I think Joe has achieved your intent. Nonetheless, we should be aware of the distinction between incorporating the "hog fuel" language in the definition of industrial waste (which is similar to its treatment under current law) versus incorporating the "hog fuel" language under "used exclusively." The latter construction seems narrower in a literal sense and would limit the wood waste exception only to boilers. That is the intent of the current law provision, as well, but it seems that the current law provision could be applied more broadly. At this point, I'm probably splitting hairs, but I'm convinced there is a grammatical distinction. Nonetheless, I think Joe was faithful to Jay's instructions. To repeat my earlier advice, the folks at DOR, who will administer and litigate this language, are in a better position than me to opine.

Rick

From: Wadd, Jay
Sent: Thursday, April 26, 2007 5:15 PM
To: Olin, Rick; Grosz, Scott
Subject: FW: Newark: Question

Hi, Rick and Scott

Below is an email that I got from Ed Wilusz in response to questions i asked to try to nail down the hog fuel boiler issue. after sending that information to Joe i asked if he could draft something that takes the boiler issue out of the bill so to speak but still leave in the 95% benchmark to address DOR's concerns in other areas.

Can you both look at this and tell me if you think Joe was successful?

Thanks...

From: Kreye, Joseph
Sent: Thursday, April 26, 2007 4:59 PM
To: Wadd, Jay
Subject: RE: Newark: Question

Jay,

Here's one option. Using LRBs0068/1 as the base document, remove the "wood residue" language from the definition of "industrial waste" on page 2, lines 17 to 20, and replace subdivision 3. b. on line 24 with the following:

b. To produce heat or steam from fuel for a manufacturing process, if the fuel consists either of 95 percent

04/27/2007

paper end

industrial waste that would otherwise be considered superfluous, discarded, or fugitive material or of any quantity of wood chips, sawdust, or other wood residue from the wood products manufacturing process, if the wood chips, sawdust, or other wood residue would otherwise be considered superfluous, discarded, or fugitive material.

This combines DOR's "95 percent" recommendation with something to address the "hog boiler" concern. I think this might work, but you may want to have Scott and Rick look at this.

Joe

Joseph T. Kreye

Senior Legislative Attorney
Legislative Reference Bureau
(608) 266-2263

From: Wadd, Jay
Sent: Thursday, April 26, 2007 4:23 PM
To: Kreye, Joseph
Subject: FW: Newark: Question

From: Ed Wilusz [mailto:wilusz@wipapercouncil.org]
Sent: Thursday, April 26, 2007 4:09 PM
To: Wadd, Jay
Subject: RE: Newark: Question

Jay:

Here is some partial information.

One hog fuel boiler is 100% wood waste. Others are about 50% wood/50% coal and about 33% wood/67% coal.

Where I have information, the source of the wood waste is both self-generated and purchased. The purchased wood waste clearly has a market or monetary value, so it wouldn't qualify as industrial waste. Is the self-generated wood waste also not industrial waste because there is a market for wood waste in general? Assuming, for sake of discussion, that self-generated wood waste would qualify as industrial waste, the above percentages would drop from 100% to 50% (50% of the wood waste is purchased and wouldn't qualify as industrial waste) and from 33% to 20% (40% of the wood waste is purchased and wouldn't qualify). I'm still gathering information from companies.

We will oppose any change to the wood waste boiler exemption that limits or make it more restrictive. This has nothing to do with Newark. If you want to expand it, that's up to you, but don't hurt our guys in the process.

Ed

-----Original Message-----

From: Wadd, Jay [mailto:Jay.Wadd@legis.wisconsin.gov]
Sent: Thursday, April 26, 2007 2:17 PM
To: Ed Wilusz
Subject: Newark: Question

04/27/2007

Ed,

I need some information from you as to the hog fuel boiler issue.

1. I've heard that hog fuel boilers operate differently than boilers that burn regular fuels and that waste fuels and regular fuels are not easily interchangeable. Is that true? Do mills burn anything other than wood waste or industrial waste in these hog fuel boilers? Or do they operate solely on industrial/paper waste?

2. Do you have sepcific examples of boilers that burn less than 95% wood/industrial waste?

Can you get me this information this afternoon?

Thanks,

Jay



Capitol Fax

From the office of Sen. Dave Hansen

Wisconsin State Senate—District 30

Phone: 608-266-5679 Fax: 608-267-6791

FAX Number: 4-6948

TO: Joe Kreye

FR: Jay

RE: Newark

No. of Pages (inc. cover sheet): 2

Message:

Here are their suggestions—

Jay

From: Wadd, Jay [mailto:Jay.]
 Sent: Thursday, April 26, 2007
 To: Gates-Hendrix, Sherrie
 Cc: Ervin, Roger M - DOR
 Subject: New language for hog

Post-It® Fax Note	7671	Date	# of pages ▶
To	Jay Wadd	From	Paul Ziegler
Co. Name	Senator Hansen's office	Co.	DOR
Phone #	6-5670	Phone #	6-5773
Fax #	7-6791	Fax #	

Sherrie,

Can you run this language by your analysts? We're trying to find a way to split out the exemption for hog fuel boilers without losing the 95% issue for other uses:

Here's one option. Using LRBs0068/1 as the base document, remove the "wood residue" language from the definition of "industrial waste" on page 2, lines 17 to 20, and replace subdivision 3. b. on line 24 with the following:

b. To produce heat or steam from fuel for a manufacturing process, if the fuel consists either of:

i) 95 percent OR MORE industrial waste that would otherwise be considered superfluous, discarded, or fugitive material; or

ii) of any quantity 50 PERCENT OR MORE of wood chips, sawdust, or other wood residue from the wood products manufacturing process, if the wood chips, sawdust, or other wood residue would otherwise be considered superfluous, discarded, or fugitive material.

any of the following

Jay - Three suggestions:

1. Specify 95% or more for non-wood waste

2. 50% or more for wood waste

3. Separate into two subparagraphs

See circled changes to April 26 option.

Paul Ziegler, DOR
 5/2/07

5008/11

KEEP

**SENATE SUBSTITUTE AMENDMENT ,
TO 2007 SENATE BILL 122**

in 5-3-07

Today

D-N

Regen

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.

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

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

7 70.11 (21) (am) All property purchased or constructed as a waste treatment
8 facility used for the treatment of exclusively and directly to remove, store, or cause
9 a physical or chemical change in industrial wastes, as defined in s. 281.01 (5), waste
10 or air contaminants, as defined in s. 285.01 (1), but not for other wastes, as defined
11 in s. 281.01 (7), for the purpose of abating or eliminating pollution of surface waters,

1 the air, or waters of the state if that property is not used to grow agricultural products
2 for sale and, if the property's owner is taxed under ch. 76, if the property is approved
3 by the department of revenue. ~~For the purposes of this subsection, "industrial waste"~~
4 ~~also includes wood chips, sawdust, and other wood residue from the paper and wood~~
5 ~~products manufacturing process that can be used as fuel and would otherwise be~~
6 ~~considered superfluous, discarded, or fugitive material.~~ The department of natural
7 resources and department of health and family services shall make
8 recommendations upon request to the department of revenue regarding such
9 property. All property purchased or upon which construction began prior to
10 July 31, 1975, shall be subject to s. 70.11 (21), 1973 stats.

11 SECTION 2. 70.11 (21) (ab) ^x of the statutes is created to read:

12 70.11 (21) (ab) In this subsection:

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

14 2. "Industrial waste" means waste resulting from any process of industry,
15 trade, or business, or the development of any natural resource, that has no monetary
16 or market value, except as provided in subd. 3. b., and that would otherwise be
17 considered superfluous, discarded, or fugitive material. "Industrial waste" also
18 includes wood chips, sawdust, and other wood residue from the paper and wood
19 products manufacturing process that can be used as fuel and would otherwise be
20 considered superfluous, discarded, or fugitive material.

21 3. "Used exclusively" means to the exclusion of all other uses except any of the
22 following:

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

24 b. To produce heat or steam for a manufacturing process.

25 SECTION 3. 74.35 (2m) ^x of the statutes is amended to read:

✓
INSERT 2-24

1 74.35 **(2m)** EXCLUSIVE PROCEDURE. A claim that property is exempt, other than
2 a claim that property is exempt under s. 70.11 (21) ~~(a)~~ or (27), may be made only in
3 an action under this section. Such a claim may not be made by means of an action
4 under s. 74.33 or an action for a declaratory judgment under s. 806.04.

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

6 74.35 **(5)** (d) No claim may be made under this section based on the contention
7 that the tax was unlawful because the property is exempt from taxation under s.
8 70.11 (21) ~~(a)~~ or (27).

9 **SECTION 5.** 76.025 (1) [✓] of the statutes is amended to read:

10 76.025 **(1)** The property taxable under s. 76.13 shall include all franchises, and
11 all real and personal property of the company used or employed in the operation of
12 its business, excluding property that is exempt from the property tax under s. 70.11
13 (39) and (39m), such motor vehicles as are exempt under s. 70.112 (5) and treatment
14 plant and pollution abatement equipment exempt under s. 70.11 (21) ~~(a)~~. The
15 taxable property shall include all title and interest of the company referred to in such
16 property as owner, lessee or otherwise, and in case any portion of the property is
17 jointly used by 2 or more companies, the unit assessment shall include and cover a
18 proportionate share of that portion of the property jointly used so that the
19 assessments of the property of all companies having any rights, title or interest of
20 any kind or nature whatsoever in any such property jointly used shall, in the
21 aggregate, include only one total full value of such property.

22 **SECTION 6.** 76.81 [✓] of the statutes is amended to read:

23 **76.81 Imposition.** There is imposed a tax on the real property of, and the
24 tangible personal property of, every telephone company, excluding property that is
25 exempt from the property tax under s. 70.11 (39) and (39m), motor vehicles that are

1 exempt under s. 70.112 (5), property that is used less than 50% in the operation of
2 a telephone company, as provided under s. 70.112 (4) (b), and treatment plant and
3 pollution abatement equipment that is exempt under s. 70.11 (21) (a). Except as
4 provided in s. 76.815, the rate for the tax imposed on each description of real property
5 and on each item of tangible personal property is the net rate for the prior year for
6 the tax under ch. 70 in the taxing jurisdictions where the description or item is
7 located. The real and tangible personal property of a telephone company shall be
8 assessed as provided under s. 70.112 (4) (b).

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

10 77.54 (26) The gross receipts from the sales of and the storage, use, or other
11 consumption of tangible personal property which becomes a component part of an
12 industrial waste treatment facility that is exempt under s. 70.11 (21) (a) or that
13 would be exempt under s. 70.11 (21) (a) if the property were taxable under ch. 70, or
14 tangible personal property which becomes a component part of a waste treatment
15 facility of this state or any agency thereof, or any political subdivision of the state or
16 agency thereof as provided in s. 40.02 (28). The exemption includes replacement
17 parts therefor, and also applies to chemicals and supplies used or consumed in
18 operating a waste treatment facility and to purchases of tangible personal property
19 made by construction contractors who transfer such property to their customers in
20 fulfillment of a real property construction activity. This exemption does not apply
21 to tangible personal property installed in fulfillment of a written construction
22 contract entered into, or a formal written bid made, prior to July 31, 1975.

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

24 79.04 (1) (a) An amount from the shared revenue account or, for the
25 distribution in 2003, from the appropriation under s. 20.835 (1) (t), 2003 stats.,

1 determined by multiplying by 3 mills in the case of a town, and 6 mills in the case
2 of a city or village, the first \$125,000,000 of the amount shown in the account, plus
3 leased property, of each public utility except qualified wholesale electric companies,
4 as defined in s. 76.28 (1) (gm), on December 31 of the preceding year for “production
5 plant, exclusive of land,” “general structures,” and “substations,” in the case of light,
6 heat and power companies, electric cooperatives or municipal electric companies, for
7 all property within a municipality in accordance with the system of accounts
8 established by the public service commission or rural electrification administration,
9 less depreciation thereon as determined by the department of revenue and less the
10 value of treatment plant and pollution abatement equipment, as defined under s.
11 70.11 (21) (a), as determined by the department of revenue plus an amount from the
12 shared revenue account or, for the distribution in 2003, from the appropriation under
13 s. 20.835 (1) (t), 2003 stats., determined by multiplying by 3 mills in the case of a
14 town, and 6 mills in the case of a city or village, of the first \$125,000,000 of the total
15 original cost of production plant, general structures, and substations less
16 depreciation, land and approved waste treatment facilities of each qualified
17 wholesale electric company, as defined in s. 76.28 (1) (gm), as reported to the
18 department of revenue of all property within the municipality. The total of amounts,
19 as depreciated, from the accounts of all public utilities for the same production plant
20 is also limited to not more than \$125,000,000. The amount distributable to a
21 municipality under this subsection and sub. (6) in any year shall not exceed \$300
22 times the population of the municipality.

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

24 79.04 (2) (a) Annually, except for production plants that begin operation after
25 December 31, 2003, or begin operation as a repowered production plant after

1 December 31, 2003, the department of administration, upon certification by the
2 department of revenue, shall distribute from the shared revenue account or, for the
3 distribution in 2003, from the appropriation under s. 20.835 (1) (t), 2003 stats., to any
4 county having within its boundaries a production plant, general structure, or
5 substation, used by a light, heat or power company assessed under s. 76.28 (2) or
6 76.29 (2), except property described in s. 66.0813 unless the production plant or
7 substation is owned or operated by a local governmental unit that is located outside
8 of the municipality in which the production plant or substation is located, or by an
9 electric cooperative assessed under ss. 76.07 and 76.48, respectively, or by a
10 municipal electric company under s. 66.0825 an amount determined by multiplying
11 by 6 mills in the case of property in a town and by 3 mills in the case of property in
12 a city or village the first \$125,000,000 of the amount shown in the account, plus
13 leased property, of each public utility except qualified wholesale electric companies,
14 as defined in s. 76.28 (1) (gm), on December 31 of the preceding year for “production
15 plant, exclusive of land,” “general structures,” and “substations,” in the case of light,
16 heat and power companies, electric cooperatives or municipal electric companies, for
17 all property within the municipality in accordance with the system of accounts
18 established by the public service commission or rural electrification administration,
19 less depreciation thereon as determined by the department of revenue and less the
20 value of treatment plant and pollution abatement equipment, as defined under s.
21 70.11 (21) (a), as determined by the department of revenue plus an amount from the
22 shared revenue account or, for the distribution in 2003, from the appropriation under
23 s. 20.835 (1) (t), 2003 stats., determined by multiplying by 6 mills in the case of
24 property in a town, and 3 mills in the case of property in a city or village, of the total
25 original cost of production plant, general structures, and substations less

1 depreciation, land and approved waste treatment facilities of each qualified
2 wholesale electric company, as defined in s. 76.28 (1) (gm), as reported to the
3 department of revenue of all property within the municipality. The total of amounts,
4 as depreciated, from the accounts of all public utilities for the same production plant
5 is also limited to not more than \$125,000,000. The amount distributable to a county
6 under this subsection and sub. (6) in any year shall not exceed \$100 times the
7 population of the county.

8 **SECTION 10. Nonstatutory provisions.**

9 (1) PROPERTY TAX EXEMPTION. Notwithstanding any other provision of chapter
10 70 of the statutes, property tax assessments under section 70.11 (21) of the statutes,
11 as affected by this act, as of January 1, 2007, supersede any other property tax
12 assessments under section 70.11 (21), 2005 stats., for property tax assessments as
13 of January 1, 2007, that are made prior to the effective date of this subsection.
14 Notwithstanding sections 70.47 (7) and 70.995 (8) of the statutes, an objection to a
15 property tax assessment under section 70.11 (21) of the statutes, as affected by this
16 act, for property tax assessments as of January 1, 2007, may be filed no later than
17 60 days after the effective date of this subsection or no later than the time allowed
18 under sections 70.47 (7) and 70.995 (8) of the statutes, whichever is later.

19 (2) SALES AND USE TAX EXEMPTION. Section 77.54 (26) of the statutes, as affected
20 by this act, does not apply to tangible personal property purchased in fulfillment of
21 a contract to construct, repair, or improve a waste treatment facility, if the contract
22 is entered into, or a formal bid is made, prior to the effective date of this subsection
23 and the tangible personal property is affixed to and made a structural part of the
24 waste treatment facility.

25 **SECTION 11. Initial applicability.**

DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU

date

LRBs0081¹/₂dn

JK:....

Jid

Senator Hansen:



This draft incorporates the changes I suggested in my e-mail to Jay, dated April 26, 2007, and the changes recommended by Paul Ziegler at DOR on May 2, 2007.

Joseph T. Kreye
Legislative Attorney
Phone: (608) 266-2263
E-mail: joseph.kreye@legis.wisconsin.gov

2007-2008 DRAFTING INSERT
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRBs0081/?ins
JK:.....

Insert 2-24

1  , if the fuel consists of either 95[✓] percent or more industrial waste that would
2 otherwise be considered superfluous, discarded, or fugitive material or 50[✓] percent or
3 more of wood chips, sawdust, or other wood residue from the paper and wood
4 products manufacturing process, if the wood chips, sawdust, or other wood residue
5 would otherwise be considered superfluous, discarded, or fugitive material 

Kreye, Joseph

From: Wadd, Jay
Sent: Thursday, May 03, 2007 4:40 PM
To: Kreye, Joseph; Grosz, Scott; Olin, Rick
Subject: FW: Newest sub for SB-122

Attachments: 07s0081/1

Here is what dor had to say about our most recent amendment. For rick and scot and copy of the amendment is attached.



07s00811.pdf (28 KB)

From: Ziegler, Paul D - DOR
Sent: Thursday, May 03, 2007 4:25 PM
To: Wadd, Jay
Cc: Gates-Hendrix, Sherrie L - DOR; Wardwell, William B - DOR; Walgren, Pamela J - DOR; Erlandsen, Dana J - DOR
Subject: RE: Newest sub for SB-122

Jay -- We have one very strong, but also a very simple (and we fully expect, a very acceptable) recommendation to amend the new substitute.

Current law excludes "other wastes, as defined in s.281.01 (7)".

In the new sub, however, this limitation to the definition of waste is being deleted by the striking of this phrase on lines 10 and 11 on page 1.

To avoid some inadvertent broadening of the definition of industrial waste, we urge that this limitation be retained by a simple addition as follows: On line 17 of page 2 of the new sub, add the following sentence: "Industrial waste does not include other wastes, as defined in s.281.01 (7)."

While this merely keeps an existing phrase, we feel this change is important.

Other than this, the draft looks OK.

Regarding the bio-diesel/digestor issue, we cannot really comment without a better understanding of the specific circumstances.

From: Wadd, Jay [<mailto:Jay.Wadd@legis.wisconsin.gov>]
Sent: Thursday, May 03, 2007 12:28 PM
To: Gates-Hendrix, Sherrie L - DOR; Ziegler, Paul D - DOR
Subject: Newest sub for SB-122

Can you look at this today and let me know if we're good to go? Also, below is a concern raised by Rep. Wood.

Can you tell me if this bill affects the following example?

He's concerned about the bio-diesel fuel industry, in particular, methane digestors produce a by-product they sell as bedding for livestock.

I know you're busy but I need to get info back on these two things today. I want to meet with everyone tomorrow to hopefully wrap this up. We are execing on the 10th with no further delay.

Thanks again for all your help,

jay

From: Kreye, Joseph
Sent: Thursday, May 03, 2007 12:17 PM
To: Wadd, Jay
Subject: Here's a copy of the sub you requested

<< File: 07s0081/1 >>

Joseph T. Kreye
Senior Legislative Attorney
Legislative Reference Bureau
(608) 266-2263



State of Wisconsin
2007 - 2008 LEGISLATURE

LRBs0081/1

JK:jld:jf

RM

SENATE SUBSTITUTE AMENDMENT,
TO 2007 SENATE BILL 122

Today 5-4-07

Regen

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.

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6 amended to read:
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8 facility used ~~for the treatment of~~ exclusively and directly to remove, store, or cause
9 a physical or chemical change in industrial wastes, as defined in s. 281.01 (5), waste
10 or air contaminants, as defined in s. 285.01 (1), but not for other wastes, as defined
11 in s. 281.01 (7), for the purpose of abating or eliminating pollution of surface waters,

1 the air, or waters of the state if that property is not used to grow agricultural products
2 for sale and, if the property's owner is taxed under ch. 76, if the property is approved
3 by the department of revenue. For the purposes of this subsection, "industrial waste"
4 also includes wood chips, sawdust, and other wood residue from the paper and wood
5 products manufacturing process that can be used as fuel and would otherwise be
6 considered superfluous, discarded, or fugitive material. The department of natural
7 resources and department of health and family services shall make
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10 July 31, 1975, shall be subject to s. 70.11 (21), 1973 stats.

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

12 70.11 (21) (ab) In this subsection:

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

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

18 3. "Used exclusively" means to the exclusion of all other uses except any of the
19 following:

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

21 b. To produce heat or steam for a manufacturing process, if the fuel consists of
22 either 95 percent or more industrial waste that would otherwise be considered
23 superfluous, discarded, or fugitive material or 50 percent or more of wood chips,
24 sawdust, or other wood residue from the paper and wood products manufacturing

"Industrial waste" does not include other wastes,
as defined in s. 281.01(7).

1 process, if the wood chips, sawdust, or other wood residue would otherwise be
2 considered superfluous, discarded, or fugitive material.

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

4 74.35 (2m) EXCLUSIVE PROCEDURE. A claim that property is exempt, other than
5 a claim that property is exempt under s. 70.11 (21) (a) or (27), may be made only in
6 an action under this section. Such a claim may not be made by means of an action
7 under s. 74.33 or an action for a declaratory judgment under s. 806.04.

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

9 74.35 (5) (d) No claim may be made under this section based on the contention
10 that the tax was unlawful because the property is exempt from taxation under s.
11 70.11 (21) (a) or (27).

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

13 76.025 (1) The property taxable under s. 76.13 shall include all franchises, and
14 all real and personal property of the company used or employed in the operation of
15 its business, excluding property that is exempt from the property tax under s. 70.11
16 (39) and (39m), such motor vehicles as are exempt under s. 70.112 (5) and treatment
17 plant and pollution abatement equipment exempt under s. 70.11 (21) (a). The
18 taxable property shall include all title and interest of the company referred to in such
19 property as owner, lessee or otherwise, and in case any portion of the property is
20 jointly used by 2 or more companies, the unit assessment shall include and cover a
21 proportionate share of that portion of the property jointly used so that the
22 assessments of the property of all companies having any rights, title or interest of
23 any kind or nature whatsoever in any such property jointly used shall, in the
24 aggregate, include only one total full value of such property.

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

1 **76.81 Imposition.** There is imposed a tax on the real property of, and the
2 tangible personal property of, every telephone company, excluding property that is
3 exempt from the property tax under s. 70.11 (39) and (39m), motor vehicles that are
4 exempt under s. 70.112 (5), property that is used less than 50% in the operation of
5 a telephone company, as provided under s. 70.112 (4) (b), and treatment plant and
6 pollution abatement equipment that is exempt under s. 70.11 (21) (a). Except as
7 provided in s. 76.815, the rate for the tax imposed on each description of real property
8 and on each item of tangible personal property is the net rate for the prior year for
9 the tax under ch. 70 in the taxing jurisdictions where the description or item is
10 located. The real and tangible personal property of a telephone company shall be
11 assessed as provided under s. 70.112 (4) (b).

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

13 **77.54 (26)** The gross receipts from the sales of and the storage, use, or other
14 consumption of tangible personal property which becomes a component part of an
15 industrial waste treatment facility that is exempt under s. 70.11 (21) (a) or that
16 would be exempt under s. 70.11 (21) (a) if the property were taxable under ch. 70, or
17 tangible personal property which becomes a component part of a waste treatment
18 facility of this state or any agency thereof, or any political subdivision of the state or
19 agency thereof as provided in s. 40.02 (28). The exemption includes replacement
20 parts therefor, and also applies to chemicals and supplies used or consumed in
21 operating a waste treatment facility and to purchases of tangible personal property
22 made by construction contractors who transfer such property to their customers in
23 fulfillment of a real property construction activity. This exemption does not apply
24 to tangible personal property installed in fulfillment of a written construction
25 contract entered into, or a formal written bid made, prior to July 31, 1975.

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

2 79.04 (1) (a) An amount from the shared revenue account or, for the
3 distribution in 2003, from the appropriation under s. 20.835 (1) (t), 2003 stats.,
4 determined by multiplying by 3 mills in the case of a town, and 6 mills in the case
5 of a city or village, the first \$125,000,000 of the amount shown in the account, plus
6 leased property, of each public utility except qualified wholesale electric companies,
7 as defined in s. 76.28 (1) (gm), on December 31 of the preceding year for “production
8 plant, exclusive of land,” “general structures,” and “substations,” in the case of light,
9 heat and power companies, electric cooperatives or municipal electric companies, for
10 all property within a municipality in accordance with the system of accounts
11 established by the public service commission or rural electrification administration,
12 less depreciation thereon as determined by the department of revenue and less the
13 value of treatment plant and pollution abatement equipment, as defined under s.
14 70.11 (21) (a), as determined by the department of revenue plus an amount from the
15 shared revenue account or, for the distribution in 2003, from the appropriation under
16 s. 20.835 (1) (t), 2003 stats., determined by multiplying by 3 mills in the case of a
17 town, and 6 mills in the case of a city or village, of the first \$125,000,000 of the total
18 original cost of production plant, general structures, and substations less
19 depreciation, land and approved waste treatment facilities of each qualified
20 wholesale electric company, as defined in s. 76.28 (1) (gm), as reported to the
21 department of revenue of all property within the municipality. The total of amounts,
22 as depreciated, from the accounts of all public utilities for the same production plant
23 is also limited to not more than \$125,000,000. The amount distributable to a
24 municipality under this subsection and sub. (6) in any year shall not exceed \$300
25 times the population of the municipality.

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

2 79.04 (2) (a) Annually, except for production plants that begin operation after
3 December 31, 2003, or begin operation as a repowered production plant after
4 December 31, 2003, the department of administration, upon certification by the
5 department of revenue, shall distribute from the shared revenue account or, for the
6 distribution in 2003, from the appropriation under s. 20.835 (1) (t), 2003 stats., to any
7 county having within its boundaries a production plant, general structure, or
8 substation, used by a light, heat or power company assessed under s. 76.28 (2) or
9 76.29 (2), except property described in s. 66.0813 unless the production plant or
10 substation is owned or operated by a local governmental unit that is located outside
11 of the municipality in which the production plant or substation is located, or by an
12 electric cooperative assessed under ss. 76.07 and 76.48, respectively, or by a
13 municipal electric company under s. 66.0825 an amount determined by multiplying
14 by 6 mills in the case of property in a town and by 3 mills in the case of property in
15 a city or village the first \$125,000,000 of the amount shown in the account, plus
16 leased property, of each public utility except qualified wholesale electric companies,
17 as defined in s. 76.28 (1) (gm), on December 31 of the preceding year for "production
18 plant, exclusive of land," "general structures," and "substations," in the case of light,
19 heat and power companies, electric cooperatives or municipal electric companies, for
20 all property within the municipality in accordance with the system of accounts
21 established by the public service commission or rural electrification administration,
22 less depreciation thereon as determined by the department of revenue and less the
23 value of treatment plant and pollution abatement equipment, as defined under s.
24 70.11 (21) (a), as determined by the department of revenue plus an amount from the
25 shared revenue account or, for the distribution in 2003, from the appropriation under

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

11 **SECTION 10. Nonstatutory provisions.**

12 (1) PROPERTY TAX EXEMPTION. Notwithstanding any other provision of chapter
13 70 of the statutes, property tax assessments under section 70.11 (21) of the statutes,
14 as affected by this act, as of January 1, 2007, supersede any other property tax
15 assessments under section 70.11 (21), 2005 stats., for property tax assessments as
16 of January 1, 2007, that are made prior to the effective date of this subsection.
17 Notwithstanding sections 70.47 (7) and 70.995 (8) of the statutes, an objection to a
18 property tax assessment under section 70.11 (21) of the statutes, as affected by this
19 act, for property tax assessments as of January 1, 2007, may be filed no later than
20 60 days after the effective date of this subsection or no later than the time allowed
21 under sections 70.47 (7) and 70.995 (8) of the statutes, whichever is later.

22 (2) SALES AND USE TAX EXEMPTION. Section 77.54 (26) of the statutes, as affected
23 by this act, does not apply to tangible personal property purchased in fulfillment of
24 a contract to construct, repair, or improve a waste treatment facility, if the contract
25 is entered into, or a formal bid is made, prior to the effective date of this subsection

1 and the tangible personal property is affixed to and made a structural part of the
2 waste treatment facility.

3 **SECTION 11. Initial applicability.**

4 (1) The treatment of sections 70.11 (21) (a) and (ab) and 74.35 (2m) and (5) (d)
5 of the statutes first applies retroactively to the property tax assessments as of
6 January 1, 2007.

7 **SECTION 12. Effective dates.** This act takes effect retroactively on January
8 1, 2007, except as follows:

9 (1) The treatment of section 77.54 (26) of the statutes takes effect on the first
10 day of the 2nd month beginning after publication.

11 (END)

NEWARK TAC DECISION IMPLICATIONS

The data extract contains data of all manufacturing property in Wisconsin classified by the DOR Manufacturing and Utility Assessment Section for 2004 in the following Standard Industrial Classification (SIC) groups:

- 2600 Paper and Pulp (261, 262, 263, 265, 267) - Some paper mills use only waste paper in their process while others may use part waste and part virgin raw materials.
- 3089 Plastics - Many plastic injection molding manufacturers reuse plastic scraps from their manufacturing process along with virgin plastic resin.
- 3300 Metal Industries (331, 332, 334, 336) - Many rolling mills, iron and steel foundries and metal smelting operations combine scrap metals with virgin raw metals.
- 3200 Glass (321, 322) - Glass manufacturers reuse glass scrap from their manufacturing process with virgin raw material.
- 5093 Recyclers of Scrap and Waste Materials - Scrap processors using large machines processing iron, steel or nonferrous scrap metal and whose principal product is scrap iron and steel or nonferrous scrap metal for sale for remelting purposes. Processors of waste paper, fibers or plastics using large machines for recycling purposes.

The SIC codes listed above represent the majority of the larger manufacturing facilities in Wisconsin that could be affected by an adverse decision in the Newark TAC case. The list is not all-inclusive.

Personal Property Data - The spreadsheet contains the name and number of personal property accounts in each municipality that fall into the above codes. The 2004 assessed values of each account are not included in the data. We are unsure how an adverse decision would affect personal property assessment. However, it is thought that equipment at issue is likely already exempt as manufacturing machinery and equipment (M & E) under Section 70.11(27) or under the waste treatment law as it currently exists according to DOR interpretation of Section 70.11(21). The taxable equipment may remain taxable, then again, maybe not.

Real Estate - The spreadsheet contains the 2004 real estate assessed value of all parcels in each municipality included in the above SIC codes. An adverse decision in the Newark case could have a huge affect on the municipal tax base and the assessment of these parcels. This would be due primarily to the fact that the TAC ruled the property does not have to be used exclusively as a waste treatment facility to be exempt under the

waste treatment law. The slightest reuse of scrap materials in the manufacturing process could allow the entire real estate parcel, land and improvements, to go exempt as a waste treatment facility.

Exclusivity Issue – Many of the taxable manufacturing real estate parcels used by industries listed above may go totally exempt if they reuse the slightest amount of scrap in the manufacturing process and the TAC ruling on exclusivity is upheld. Locally assessed gas stations may also be affected by this since most gas pumps have vapor recovery equipment (exempt waste treatment) associated with them. Many locally assessed auto repair shops have received a waste treatment exemption on the paint booths that recover paint fumes and particles from the air. These could go exempt as well.

Prevention Issue – Trash dumpsters and compactors could be exempt if they are determined to “prevent/eliminate” pollution or are determined to be part of the “recycling” process. It should also be noted that an adverse decision could greatly affect the assessment/exemption of property owned and used by the locally assessed road-building industry and locally assessed landfills. Often, asphalt or concrete roads being replaced will be crushed on-site and laid back down as a highway base in replacing pavement. If road-builders “abate or eliminate” pollution, would all of their equipment be exempt waste treatment? Would the real estate of landfills and landfill operator’s equipment be exempt waste treatment because they are “abating or eliminating pollution”?

Summary

An adverse decision in the Newark TAC appeals has a far-reaching impact on the local tax base. If the TAC decision is upheld as presented, it will affect the taxability/exemption of personal property and real estate. It will affect locally assessed property and state assessed manufacturing property. The fall-out of this ruling will likely have an effect on the taxability of utility property assessed under Chapter 76. Utilities are granted waste treatment exemptions also under Section 70.11(21)(c).

The attached worksheet shows that nearly an additional \$1.8 billion in manufacturing real estate value alone could be lost tax base for municipalities. This is in addition to the \$2.4 billion waste treatment exemptions granted by the formal approval process prior to 2002 (includes real and personal property for all non-utility classes of property).

MEMORANDUM

To: Ed Wilusz, Wisconsin Paper Council
From: Curt Witynski, League of Wisconsin Municipalities
Date: October 31, 2006
Re: Local Governments' Proposed Legislative Response to *Newark*

Following up on our Sept. 28th meeting, this memo presents local governments' recommendations for modifying the property tax exemption for waste treatment facilities used for the treatment of industrial wastes in response to the *Newark* decision.

Background

To ensure that we are on the same page, I offer the following by way of background: On April 22, 2004, the Wisconsin Tax Appeals Commission issued a decision broadly interpreting the tax exemption in sec. 70.11(21), Stats., for property purchased or constructed as a waste treatment facility used for the treatment of industrial wastes. In what is known as the *Newark* decision, the commission held that a manufacturing facility which used cardboard waste and waste paper to create pulp for manufacturing paperboard qualified for the waste treatment property tax exemption in sec. 70.11(21). The decision resulted in the company's entire 20 acre real estate parcel, including parking lots and waste paper storage yards, being declared exempt from real and personal property taxes.

In August 2005 a Dane County Circuit Court upheld the Commission's decision. The Department of Revenue decided against further appeals. So, the Commission's *Newark* decision stands as the most recent authoritative interpretation of the exemption.

Local governments are concerned that the *Newark* decision will, over time, result in a significant loss in the manufacturing property tax base and shift even more of the property tax burden onto homeowners. Homeowners already pay in excess of 70% of the statewide property tax levy.

We are concerned that any reuse of scrap materials in any manufacturing or food production process could allow the entire facility, including real property, to become exempt as a waste treatment facility. Examples of industries that have already or may soon seek exempt status under the *Newark* decision include: paper mills, paperboard mills, cheese plants, oil refineries, wood product manufacturers, chemical companies, glass manufacturers, metal rolling mills, iron and steel foundries, plastic injection moulding manufacturers, auto repair shops, and gas stations. By one estimate, *Newark* has a worst case potential of removing over \$1.8 billion in tax base from the manufacturing assessment rolls plus more from the local assessment roll.

Local Governments' Dual Response

We are proceeding on two fronts to address our concerns about *Newark*. First, we are advocating a much narrower interpretation of the waste treatment facility exemption in

pending litigation over tax exemption claims made by two manufacturers in reliance on *Newark*. Currently, the cities of Green Bay and DePere are challenging tax exemption claims made by two manufacturers similar to *Newark*. Our goal is to obtain a Court of Appeals or Supreme Court decision that effectively overturns the Tax Appeals Commission's decision in *Newark*.

Second, as a back up we are pursuing legislation that would reverse *Newark* or at least narrow the scope of the exemption as it's been interpreted by the Tax Appeals Commission.

Local Governments' Legislative Recommendations

In response to *Newark* we seek legislation that accomplishes the following broadly stated goals:

- ◆ Requires manufacturing property owners to apply with the Department of Revenue for waste treatment facility tax exempt status under sec. 70.11(21). (Restore DOR approval requirement that was part of the law until 2001.)
- ◆ Limits the waste treatment facility tax exemption provided by sec. 70.11(21) to only that part of the real and personal property that is used exclusively and directly for the treatment of industrial wastes.
- ◆ Defines the term "industrial wastes" as liquid waste. Exclude solid wastes from the definition of "industrial wastes" except for those already mentioned in the statute: "wood chips, sawdust, and other wood residue from the paper and wood products manufacturing process that can be used as fuel and would otherwise be considered superfluous, discarded, or fugitive material."
- ◆ Prohibits the exemption from applying to facilities that reuse, recycle or convert industrial wastes into a product that has value or is saleable.

I look forward to your reaction and response.