## **1995 SENATE BILL 165**

May 3, 1995 – Introduced by Senators Leean, Ellis and Rude, by request of Governor Tommy G. Thompson. Referred to Committee on Environment and Energy.

AN ACT to repeal 159.12; and to amend 159.07 (7) (a) and 159.11 (1) of the statutes; relating to: approval of out-of-state effective landfill siting programs.

## Analysis by the Legislative Reference Bureau

Current law prohibits the disposal or incineration of listed recyclable materials. The prohibition does not apply to any out-of-state local governmental unit (foreign municipality) that both has an approved recycling program and is located within a state that has an approved landfill siting program. The prohibition does not apply to any municipality located within this state that has an approved recycling program. The department of natural resources (DNR), upon request of a municipality, evaluates the municipality's recycling program or state landfill siting program and, where stated criteria are satisfied, issues the necessary approval. Under current law, DNR may approve a foreign municipality's recycling program only by formal rule-making procedures, including a public hearing.

A federal district court held that the additional procedural requirements imposed on foreign municipalities, beyond those requirements placed on municipalities located within this state, discriminated against out-of-state interests in violation of the commerce clause of the U.S. Constitution. *National Solid Wastes Management Assoc. v. George Meyer*, No. 94-C-0603-S (W.D. Wis. Dec. 15, 1994), petition for cert. filed.

Under this bill, a foreign municipality is not required to obtain DNR approval of its home state landfill siting program before disposing of or incinerating listed recyclable materials in this state. Under the bill, DNR is not required to undertake formal rule–making procedures to determine that a foreign municipality has an effective recycling program.

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For further information see the **state** 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:

**Section 1.** 159.07 (7) (a) of the statutes is amended to read:

159.07 (7) (a) The prohibitions in subs. (3) and (4) do not apply with respect to solid waste, except medical waste, as defined in par. (c) 1. cg., that is generated in a region that has an effective recycling program, as determined under s. 159.11, and, if the region is not in this state, the region is located in a state that has an effective siting program, as determined under s. 159.12.

**Section 2.** 159.11 (1) of the statutes is amended to read:

159.11 (1) Department review. Upon request of a responsible unit or an out-of-state unit, the department shall review documentation of the responsible unit's solid waste management program created under s. 159.09 (2) (a) or the out-of-state unit's solid waste management program and determine whether the program is an effective recycling program. The department shall complete its review and make a determination within 90 days after receiving the documentation. The department shall promulgate, by rule, its determination that an out-of-state unit's solid waste management program is an effective recycling program.

**Section 3.** 159.12 of the statutes is repealed.

17 (END)