



1997 SENATE BILL 187

April 30, 1997 - Introduced by Senators COWLES, CLAUSING, DECKER, PANZER, ROESSLER, A. LASEE, DARLING, FARROW and DRZEWIECKI, cosponsored by Representatives DUFF, ROBSON, AINSWORTH, ALBERS, DOBYNS, R. YOUNG, MUSSER, F. LASEE, OTTE, LAZICH, OWENS, URBAN, RYBA, HUTCHISON, HASENOHRL, NASS, HUBER and PLOUFF. Referred to Committee on Agriculture and Environmental Resources.

1 **AN ACT to repeal** 25.46 (6r), 287.11 (2e) (b), 287.12, 289.63 (3) (c) and (d), 289.65
2 and 289.66; **to renumber and amend** 287.11 (2e) (a); and **to amend** 287.07
3 (7) (a), 287.07 (7) (d), 287.11 (1), 287.11 (2) (b), (c) (intro.), (d) (intro.) and (i),
4 287.11 (2m) (b) (intro.), 287.11 (2m) (c), 287.11 (2p) (c), 289.63 (title), (1) and (2),
5 289.63 (3) (title), 289.63 (5), (6), (7), (8) and (9) (title) and (a) and 289.67 (1) (e)
6 of the statutes; **relating to:** effective recycling programs, effective landfill
7 siting programs and solid waste capacity fees.

Analysis by the Legislative Reference Bureau

Current law prohibits the disposal or incineration of listed recyclable materials. The prohibition does not apply to any local governmental unit in this state (in-state unit) that has an effective recycling program. The prohibition also does not apply to any out-of-state local governmental unit (out-of-state unit) that both has an effective recycling program and is located within a state that has an effective landfill siting program. An "effective recycling program" is a recycling program that has been approved by the department of natural resources (DNR) as satisfying stated criteria. Under current law, DNR may approve an out-of-state unit's recycling program only by formal rule-making procedures.

The application of this state's effective recycling law to out-of-state units as a condition of disposing their waste in this state violates the commerce clause of the

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U.S. Constitution [U.S. Const. art. 1, s. 8, cl. 3]. *National Solid Wastes Mgmt. Ass'n. v. George Meyer*, 63 F.3d 652 (7th Cir. 1995), *U.S. cert. denied*. The federal court of appeals found that this state's effective recycling law applies to numerous waste generators who neither reside nor dispose of their waste in this state and so has the practical effect of regulating commerce occurring wholly outside of this state.

This bill makes numerous changes to the effective recycling law. Under the bill, an out-of-state unit's recycling program is an effective recycling program (thereby making solid waste generated within that out-of-state unit exempt from the prohibition against the disposal or incineration in this state of listed recyclable materials) if the program consists of most of the components required of an in-state unit's recycling program, with exceptions discussed below, but is required only to apply those components to waste disposed of or incinerated in this state. The bill repeals the requirements that the home state in which the solid waste is generated have an "effective landfill siting program" and that DNR promulgate by rule its determination that an out-of-state unit has an effective recycling program, requirements that a federal district court found impermissibly burden interstate commerce. *National Solid Wastes Mgmt. Ass'n. v. George Meyer*, No. 94-C-0603-S (W.D. Wis. Dec. 15, 1994).

The bill also:

1. Repeals the solid waste capacity fee, which is a fee charged for each ton of out-of-state waste disposed of or incinerated in this state based on a comparison of the landfill capacities of this state and of the state of origin.

2. Repeals the requirement that an out-of-state unit comply with all of its home state's recycling requirements in order for its recycling program to qualify as an effective recycling program.

3. Makes out-of-state units eligible for variances and exceptions to the landfill and incinerator bans, for which in-state units are now eligible.

4. Exempts out-of-state units from certain effective recycling program criteria required of in-state units' recycling programs. The bill exempts out-of-state units from having to prohibit the disposal or incineration of materials separated from waste for recycling and to manage waste not separated for recycling in compliance with this state's recycling policy.

5. Requires that waste generators separate recyclable materials from solid waste prior to its collection for disposal or incineration in this state. Currently, recyclable materials must be separated from the solid waste by the waste generator or the solid waste must be treated at a materials recovery facility that separates the recyclable materials from the waste.

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:

1 **SECTION 1.** 25.46 (6r) of the statutes is repealed.

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1 **SECTION 2.** 287.07 (7) (a) of the statutes is amended to read:

2 287.07 (7) (a) The prohibitions in subs. (3) and (4) do not apply with respect to
3 solid waste, except medical waste, as defined in par. (c) 1. cg., that is generated in a
4 region that has an effective recycling program, as determined under s. 287.11, ~~and,~~
5 ~~if the region is not in this state, the region is located in a state that has an effective~~
6 ~~siting program, as determined under s. 287.12.~~ This paragraph does not apply to
7 solid waste that is separated for recycling as part of an effective recycling program
8 under s. 287.11.

9 **SECTION 3.** 287.07 (7) (d) of the statutes is amended to read:

10 287.07 (7) (d) The department may grant, to a responsible unit or out-of-state
11 unit, an exception to a prohibition in sub. (3) or (4) for up to one year for a material
12 identified in sub. (3) or (4) in the event of an unexpected emergency condition.

13 **SECTION 4.** 287.11 (1) of the statutes is amended to read:

14 287.11 (1) DEPARTMENT REVIEW. Upon request of a responsible unit or an
15 out-of-state unit, the department shall review documentation of the responsible
16 unit's solid waste management program created under s. 287.09 (2) (a) or the
17 out-of-state unit's solid waste management program and determine whether the
18 program is an effective recycling program. The department shall complete its review
19 and make a determination within 90 days after receiving the documentation. ~~The~~
20 ~~department shall promulgate, by rule, its determination that an out-of-state unit's~~
21 ~~solid waste management program is an effective recycling program.~~

22 **SECTION 5.** 287.11 (2) (b), (c) (intro.), (d) (intro.) and (i) of the statutes are
23 amended to read:

24 287.11 (2) (b) A requirement that the occupants of single-family residences,
25 buildings containing 2 or more dwelling units and commercial, retail, industrial and

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1 governmental facilities in the region ~~either separate the materials identified in s.~~
2 ~~287.07 (3) and (4) from postconsumer waste generated in the region or treat that~~
3 ~~postconsumer waste at a facility that will recover those materials from solid waste~~
4 ~~in as pure a form as is technically feasible.~~

5 (c) (intro.) A requirement that owners of buildings containing 5 or more
6 dwelling units in the region do all of the following ~~if postconsumer waste generated~~
7 ~~in those buildings is not treated at a facility that will separate the materials~~
8 ~~identified in s. 287.07 (3) and (4) from that postconsumer waste:~~

9 (d) (intro.) A requirement that owners of commercial, retail, industrial and
10 governmental facilities in the region do all of the following ~~if postconsumer waste~~
11 ~~generated in those buildings is not treated at a facility that will separate the~~
12 ~~materials identified in s. 287.07 (3) and (4) from that postconsumer waste:~~

13 (i) A reasonable effort, through the implementation of pars. (a) to (h), as
14 applicable, to reduce to the maximum extent feasible the amount, by weight, of each
15 material specified in s. 287.07 (3) and (4) that is generated as solid waste within the
16 region and disposed of in a solid waste disposal facility or converted into fuel or
17 burned without energy recovery in a solid waste treatment facility.

18 **SECTION 6.** 287.11 (2e) (a) of the statutes is renumbered 287.11 (2e) and
19 amended to read:

20 287.11 **(2e)** EFFECTIVE PROGRAM CRITERIA FOR OUT-OF-STATE UNITS. An
21 out-of-state unit's solid waste management program is an effective recycling
22 program if it is ~~in compliance with all recycling requirements imposed by the state~~
23 ~~in which the out-of-state unit is located and has all of the components under sub.~~
24 (2) (a) to (em) and (f) to (i) and applies those components, as appropriate, to materials

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1 that are to be disposed of, converted into fuel or burned in this state and to persons
2 who generate those waste materials.

3 **SECTION 7.** 287.11 (2e) (b) of the statutes is repealed.

4 **SECTION 8.** 287.11 (2m) (b) (intro.) of the statutes is amended to read:

5 287.11 **(2m)** (b) (intro.) The department shall, at the request of a responsible
6 unit or out-of-state unit that has been determined to have an effective recycling
7 program under this section, grant a variance to the applicable requirements in sub.
8 (2) (b) and (er) for up to one year for a material identified in s. 287.07 (3) or (4) that
9 is generated in the responsible unit's or out-of-state unit's region if the department
10 determines that the cost of selling processed material exceeds any of the following:

11 **SECTION 9.** 287.11 (2m) (c) of the statutes is amended to read:

12 287.11 **(2m)** (c) The department may on its own initiative grant, to one or more
13 responsible units or out-of-state units that have been determined to have effective
14 recycling programs under this section, a variance to the applicable requirements in
15 sub. (2) (b) and (er) for up to one year for a material identified in s. 287.07 (3) or (4)
16 that is generated in the responsible units' or out-of-state units' regions if the
17 department determines that the cost of selling processed material exceeds the
18 amount under par. (b) 1. or 2.

19 **SECTION 10.** 287.11 (2p) (c) of the statutes is amended to read:

20 287.11 **(2p)** (c) The department may grant a responsible unit or an out-of-state
21 unit an exception to a an applicable requirement in sub. (2) (b) or (er) for up to one
22 year for a material that is subject to an exception under s. 287.07 (7) (d).

23 **SECTION 11.** 287.12 of the statutes is repealed.

24 **SECTION 12.** 289.63 (title), (1) and (2) of the statutes are amended to read:

SENATE BILL 187**SECTION 12**

1 **289.63** (title) ~~Groundwater, solid waste capacity and well~~
2 **compensation fees. (1)** (title) IMPOSITION OF GROUNDWATER, SOLID-WASTE-CAPACITY
3 AND WELL COMPENSATION FEES ON GENERATORS. Except as provided under sub. (6), a
4 generator of solid or hazardous waste shall pay separate groundwater, ~~solid waste~~
5 ~~capacity~~ and well compensation fees for each ton or equivalent volume of solid or
6 hazardous waste which is disposed of at a licensed solid or hazardous waste disposal
7 facility. If a person arranges for collection or disposal services on behalf of one or
8 more generators, that person shall pay the groundwater, ~~solid waste capacity~~ and
9 well compensation fees to the licensed solid or hazardous waste disposal facility or
10 to any intermediate hauler used to transfer wastes from collection points to a
11 licensed facility. An intermediate hauler who receives groundwater, ~~solid waste~~
12 ~~capacity~~ and well compensation fees under this subsection shall pay the fees to the
13 licensed solid or hazardous waste disposal facility. Tonnage or equivalent volume
14 shall be calculated in the same manner as the calculation made for tonnage fees
15 under s. 289.62 (1).

16 **(2) COLLECTION.** The owner or operator of a licensed solid or hazardous waste
17 disposal facility shall collect the groundwater, ~~solid waste capacity~~ and well
18 compensation fees from the generator, a person who arranges for disposal on behalf
19 of one or more generators or an intermediate hauler and shall pay to the department
20 the amount of the fees required to be collected according to the amount of solid or
21 hazardous waste received and disposed of at the facility during the preceding
22 reporting period.

23 **SECTION 13.** 289.63 (3) (title) of the statutes is amended to read:

24 289.63 **(3)** (title) AMOUNT OF GROUNDWATER, ~~SOLID-WASTE-CAPACITY~~ AND WELL
25 COMPENSATION FEES.

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1 **SECTION 14.** 289.63 (3) (c) and (d) of the statutes are repealed.

2 **SECTION 15.** 289.63 (5), (6), (7), (8) and (9) (title) and (a) of the statutes are
3 amended to read:

4 **289.63 (5)** IN ADDITION TO OTHER FEES. The groundwater, ~~solid waste capacity~~
5 and well compensation fees collected and paid under sub. (2) are in addition to the
6 tonnage fee imposed under s. 289.62 (1), the environmental repair base fee imposed
7 under s. 289.67 (3) and the environmental repair surcharge imposed under s. 289.67
8 (4).

9 **(6)** (title) EXEMPTION FROM GROUNDWATER, ~~SOLID WASTE CAPACITY~~ AND WELL
10 COMPENSATION FEES; CERTAIN MATERIALS USED IN OPERATION OF THE FACILITY. Solid waste
11 materials approved by the department for lining, daily cover or capping or for
12 constructing berms, dikes or roads within a solid waste disposal facility are not
13 subject to the groundwater, ~~solid waste capacity~~ and well compensation fees imposed
14 under sub. (1), except that foundry sands or shredder fluff approved for use under
15 s. 289.30 (5) or 289.31 (9) are subject to groundwater and well compensation fees.

16 **(7)** REPORTING PERIOD. The reporting period under this section is the same as
17 the reporting period under s. 289.62 (1). The owner or operator of any licensed solid
18 or hazardous waste disposal facility shall pay groundwater, ~~solid waste capacity~~ and
19 well compensation fees required to be collected under sub. (2) at the same time as any
20 tonnage fees under s. 289.62 (1) are paid.

21 **(8)** (title) USE OF GROUNDWATER, ~~SOLID WASTE CAPACITY~~ AND WELL COMPENSATION
22 FEES. The groundwater fees collected under sub. (2) shall be credited to the
23 environmental fund for groundwater management. The well compensation and ~~solid~~
24 ~~waste capacity~~ fees collected under sub. (2) shall be credited to the environmental
25 fund for environmental repair.

