



"Leadership in Public School Governance"

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TO: Members, Wisconsin Assembly

FROM: Dan Rossmiller, Legislative Services Director

DATE: July 27, 2007

RE: SB 122, relating to the property tax exemption for waste treatment facilities

The Wisconsin Association of School Boards (WASB) **supports** Senate Bill 122, as a legislative remedy to address the "*Newark* decision" and prevent both a major property tax shift onto homeowners and a major erosion of the property tax base for schools and other units of local government.

Senate Bill 122 closes what some have called a property tax exemption "loophole" for manufacturers that recycle material as part of the manufacturing process that was created by a court decision.

In August 2005, in what is now known as the *Newark* decision, a circuit court upheld a 2004 Wisconsin Tax Appeals Commission decision that broadly interpreted the tax exemption in state statutes for property purchased or constructed as a waste treatment facility and used for the treatment of industrial wastes. In that case, Wisconsin Paperboard, and its successor, the Newark Group, argued that it is entitled to a tax exemption on its entire facility as a waste treatment facility, since it uses part of its manufacturing property to recycle cardboard waste and waste paper into paperboard, even though the end product is sold for profit. The decision removed property from the tax rolls in Green Bay and Milwaukee.

The potential implications of the *Newark* decision are far-reaching because the ruling states the property does not have to be used exclusively as a waste treatment facility to be statutorily exempt. Thus, the slightest reuse of scrap materials in the manufacturing process could allow the entire real estate parcel, land and improvements, to become exempt as a waste treatment facility.

According to a July 17, 2007 Legislative Fiscal Bureau memo, eight additional manufacturers have already been granted an exemption for property similar to that owned by Wisconsin Paperboard companies. We understand additional appeals are pending and that a broad range of companies such as paper mills, cheesemakers, chemical plants that have facilities located throughout the state are likely to seek to have their facilities exempted as well. By one estimate, the *Newark* decision has the potential to remove over \$2 billion in tax base from the manufacturing assessment rolls plus more from the local assessment rolls, resulting in a \$40 million tax shift to other taxpayers.

Under Senate Bill 122, as amended, only property purchased or constructed as a waste treatment facility and “used exclusively and directly” to remove, store or cause physical or chemical change in industrial waste or air contaminants would be exempt. It also specifies that “industrial waste” has no monetary or market value, except as specified in the definition of "used exclusively," and that industrial waste would otherwise be considered as superfluous, discarded, or fugitive material. The bill, as much as possible, restores the original intent of the 1953 law and allows those treatment facilities that have been receiving the tax exemption properly for 50 years to continue to do so.

The WASB supports developing a well-balanced tax system that lowers Wisconsin’s heavy reliance on the income and property taxes while maintaining a commitment to two-thirds funding for schools and properly funding existing mandates. Allowing the Newark decision to stand does not foster the goal of reducing reliance on the property tax; it only shifts the burden from one group of taxpayers to another group.

The decision to grant or expand a property tax exemption inevitably takes funding sources away from local units of government. Such a decision properly belongs with the legislative branch, particularly where the decision could cause an enormous shift of the property tax burden onto homeowners as well as significant shifts in state aids.

The WASB notes that the Department of Revenue (DOR) has indicated that this legislation must be passed by August 1, 2007, in order for the DOR to be able administer the changes for the 2007(08) property tax year. The WASB thanks you for taking up Senate Bill 122 in a timely manner that addresses this concern.

We ask your support for Senate Bill 122.