

1999 DRAFTING REQUEST

Assembly Amendment (AA-ASA1-AB133)

Received: **09/27/1999**

Received By: **traderc**

Wanted: **Soon**

Identical to LRB:

For: **Legislative Fiscal Bureau**

By/Representing: **Bonderud**

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

Drafter: **traderc**

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Subject: **Environment - env. cleanup**

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Pre Topic:

LFB:.....Bonderud -

Topic:

Local governmental unit cost recovery (brownfields)

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> |
|--------------|-----------------------|-----------------------|----------------------|----------------|----------------------------|-----------------|-----------------|
| /? | traderc 09/27/1999 | gilfokm 09/27/1999 | | _____ | | | |
| /1 | | | hhagen 09/27/1999 | _____ | lrb_docadmin 09/27/1999 | | |

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|--------------|----------------|------------------|--------------|----------------|------------------|-----------------|-----------------|
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FE Sent For:

<END>

**Legislative Fiscal Bureau**

One East Main, Suite 301 • Madison, WI 53703 • (608) 266-3847 • Fax: (608) 267-6873

KWS

September 23, 1999

TO: Senator Brian Burke
Room 316 South, State Capitol

FROM: Kendra Bonderud, Rick Olin, Al Runde and Ron Shanovich

SUBJECT: Brownfields Modifications to Joint Committee on Finance Provisions in 1999-01 Budget

At your request, this memorandum summarizes potential modifications related to four brownfields provisions in the 1999-01 biennial budget recommended by the Joint Committee on Finance. The Assembly and Senate amendments do not affect these provisions.

Brownfields -- Local Government Cost Recovery

The Joint Finance Committee would authorize a local government to take action to recover costs it incurs in cleaning up a property on which a hazardous substance has been discharged if the local government acquired the property in one of several ways provided for under the local government liability exemption provisions. The proposed modification would include the following changes.

a. Specify that a local government may not recover costs under the local government cost recovery process: (1) from a responsible person who "is exempt" from liability (instead of "qualifies for" an exemption under Joint Finance) under the spills law with respect to the discharge that is the subject of the cost recovery action; (2) from a person that has entered into a contract with the Department of Natural Resources (DNR) under s. 292.31(8)(h) (an agreement between DNR and a responsible person regarding actions which DNR and the responsible person would take to cleanup the property), a consent order under Chapters 289 (solid waste facilities), 291 (hazardous waste management) or 292 (remedial action) or a negotiated agreement under s. 292.11(7)(d) (authority for DNR to negotiate and enter into an agreement containing a schedule for conducting required nonemergency actions with a person who possesses or controls a hazardous substance that

was discharged or who caused the discharge of a hazardous substance if the discharge does not endanger public health); with respect to the discharge, and is in compliance with the contract, order or negotiated agreement; (3) from a responsible person who is exempt from liability under s. 292.35(9)(e) of the current local governmental unit negotiation and cost recovery process with respect to the discharge (the responsible person establishes that his or her contribution to the environmental pollution resulting from the discharge was caused solely by an act of God, an act of war or an act or omission of a third party); and (4) with respect to a discharge, if the discharge was in compliance with a permit, license, approval, special order, waiver or variance issued by DNR.

b. Specify that a responsible person who, at the time that the local government acquired the property, possessed or controlled the hazardous substance that was discharged on the property, is not liable for costs that the local government is unable to recover because a person who caused the discharge of the hazardous substance on the property is exempt from liability under (a)(3) and (a)(4) above.

Brownfields Grant Program

The proposed modification would delete the Joint Finance provisions related to the brownfields grant program that would: (a) require Commerce to make 50% of awards for projects, like recreation or housing, that would be scored without considering the number of jobs created, and (b) require applicants to document their inability to obtain funding from other sources. Instead, in awarding grants in 2000-01, the Department would be required to reduce the weight accorded to job creation in scoring grant applications by a factor that was approximately 50% lower than that same factor in previous award periods. In addition, the Department would be required to award \$1.4 million for projects that were evaluated without considering the number of jobs created by the projects. Finally, the proposed modification would provide that awards of Round III brownfields grants be limited to those who submitted applications by the original deadline established by Commerce (April 16, 1999).

Environmental Remediation Tax Incremental Financing

The proposed modification would make the following changes to the ER-TIF provisions under the Joint Finance version of the bill.

a. Allow eligible expenditures incurred during the entire 23-year period of the ER-TIF district to be reimbursed through the allocation of tax increments. Under the Joint Finance version of the bill and similar to general TIF law, only expenditures that are incurred during the first seven years of an ER-TIF district would be reimbursed through the allocation of tax increments

b. Delete the Joint Finance provision that would require that contaminated properties within an ER-TIF district could not be sold to the party responsible for the contamination. (Properties could still be transferred to other private persons prior to completion of remediation.)

c. Delete the Joint Finance provisions that would require that a joint review board, prior to approving any proposed ER-TIF district that has incurred costs, or has an environmental

1999

Date (time) needed

~~5:00~~ Today

LRB b 1779 1 1

BUDGET AMENDMENT

RCT: King: _____

See form AMENDMENTS — COMPONENTS & ITEMS.

CONFERENCE AMENDMENT
TO ASSEMBLY SUBSTITUTE AMENDMENT 1
TO 1999 ASSEMBLY BILL 133

Note

At the locations indicated, amend the substitute amendment as follows:

✓ #. Page 295, line 11: delete lines 11 to 14 and substitute:
¶ (b) A local governmental unit may not recover costs⁵ in an action under sub. (a) from a person listed in par. (a) if

text: treat

#. Page ..., line ...
any of the following apply: applies

#. Page ..., line ...: ¶ 1. The person is exempt from liability under s. 292.11(9)(e), 292.13, 292.15, 292.16, 292.19 or 292.21 with respect to the discharge that is the subject of the action.

#. Page ..., line ...: ¶ 2. The person has entered into a contract under s. 292.31(e) or a consent order under ch. 289 or 291 or 292 or an agreement under s. 292.11(7)(d) with respect to the discharge that is the subject of the action and the person is in compliance with the contract, consent order or agreement.

#. Page ..., line ...:

#. Page ..., line ...:



6/17/79/1

¶ 3. The person is exempt from liability under s. 292.35(9)(e) with respect to the discharge that is the subject of the action.

¶ 4. The discharge that was caused by the person and that is the subject of the action was in compliance with a permit, license, approval, special order, waiver or variance issued under ch. 283 or 285 or under corresponding federal statute or regulations."

✓ #. Page 1296, line 15: after "2." insert "less the amount that the local governmental unit is unable to recover because the exemptions in §/sub. (3) (b) 3. and 4."

(End)

Note

Note

The language for proposed s. 292.37³(3)(b)4, in
this draft is based on current s. 292.35(9)(bm).

RET

**DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU**

LRBb1779/1dn
RCT:king:hmlh

September 27, 1999

The language for proposed s. 292.33 (3) (b) 4. in this draft is based on current s. 292.35 (9) (bm).

Rebecca C. Tradewell
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State of Wisconsin
1999 - 2000 LEGISLATURE

LRBb1779/1
RCT:kmg:hmh

LFB:.....Bonderud – Local governmental unit cost recovery (brownfields)

FOR 1999-01 BUDGET — NOT READY FOR INTRODUCTION

ASSEMBLY AMENDMENT ,

TO ASSEMBLY SUBSTITUTE AMENDMENT 1,

TO 1999 ASSEMBLY BILL 133

1 At the locations indicated, amend the substitute amendment as follows:

2 **1.** Page 1295, line 11: delete lines 11 to 14 and substitute:

3 “(b) A local governmental unit may not recover costs in an action under sub. (2)

4 from a person listed in par. (a) if any of the following applies:

5 1. The person is exempt from liability under s. 292.11 (9) (e), 292.13, 292.15,
6 292.16, 292.19 or 292.21 with respect to the discharge that is the subject of the action.

7 2. The person has entered into a consent order under this chapter or ch. 289
8 or 291 or an agreement under s. 292.11 (7) (d) or 292.31 (8) (h) with respect to the
9 discharge that is the subject of the action and the person is in compliance with the
10 consent order or agreement.

1 3. The person is exempt from liability under s. 292.35 (9) (e) with respect to the
2 discharge that is the subject of the action.

3 4. The discharge that was caused by the person and that is the subject of the
4 action was in compliance with a permit, license, approval, special order, waiver or
5 variance issued under ch. 283 or 285 or under corresponding federal statutes or
6 regulations.”.

7 **2.** Page 1296, line 15: after “2.” insert “less the amount that the local
8 governmental unit is unable to recover because of the exemptions in sub. (3) (b) 3.
9 and 4.”.

10

(END)