

**Testimony Of:
City Of Waukesha**

**Carol J. Lombardi, Mayor
Katie Jelacic, Civil Engineer
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Assembly Committee on Environment

**Tuesday, February 15, 2000
State Capitol, Room 415 Northwest**

**RE: SUPPORT FOR AB708 – EXPANDED APPLICABILITY OF THE “UMPIRE
PROCESS” UNDER SECTION 292.35, WIS. STATS.**

Under current law, Wisconsin communities face only two choices for cost recovery when cleaning up contaminated properties:

1. Superfund (CERCLA) under Federal Law, or
2. The local governmental unit negotiation and cost-recovery processes for contaminated property (“Umpire Process”) under State Law

Without the statutory change set forth in AB708, the City of Waukesha and communities with similar properties, will be left with only one choice – Superfund! Unfortunately, under Superfund, the local businesses and persons who are defined as “potentially responsible parties” (PRPs) must not only pay their direct share(s), but must also pay an additional allocated portion of the “orphan” share to cover the non-solvent, bankrupt and dissolved entities who are not around to pay. This results in an unjust added burden on these parties. Further, the administrative and legal costs are usually much greater for the community and for the PRPs under Superfund.

However, under Wisconsin’s “Umpire Process,” these same parties pay only their direct share, while the orphan share is paid by the community or, in Waukesha’s case, by the WDNR. This allows the community the opportunity to pay for the orphan share or find alternative funding for the orphan share.

To illustrate, a landfill identified as the “West Avenue Landfill” was closed and capped by Waukesha in 1978. In 1991, the DNR and EPA completed a site screening report concluding our community needed to proceed with clean-up procedures. Since 1991, many changes in rules, processes and deadlines have occurred, adding to the time and financial investment made by the

City of Waukesha, however, resulting in no “clean-up.” Thus, the City of Waukesha is asking for legislative support in the passage of AB708.

Passage of AB708 will allow the City to implement its plans, bring a recreational use to the land and allow businesses bordering the area to grow our tax base with increased customer service. Waukesha has dollars to get the work done, arbitrage laws are closer than ever before to use the bonded funds for the project and the PRPs already know their obligation and have participated in a third-party, neutral allocation process.

In summary, passage of AB708 will:

- Expand the applicability of a state-based, less expensive process for municipalities to “clean-up” contaminated properties by removing a technicality.
- Allow communities to negotiate with their corporate citizens rather than engaging them in litigation.
- Protect the environment and groundwater sources from contamination more efficiently.
- Create opportunities for municipalities to utilize abandoned, unproductive land.
- Allow communities to recycle contaminated land into useable greenspace available for parks and athletic fields.

1999 ASSEMBLY BILL 708

February 2, 2000 – Introduced by Representatives JENSEN, VRAKAS, PETTIS, KELSO, STONE, GUNDRUM, KEDZIE, LADWIG, OWENS, DUFF, HOVEN, OLSEN, WALKER, STASKUNAS, MUSSER, KREIBICH, SYKORA, SPILLNER, ALBERS, PORTER, TURNER and KREUSER, cosponsored by Senators WIRCH, HUELSMAN and SCHULTZ. Referred to Committee on Environment.

1 **AN ACT** *to renumber and amend* 292.35 (2); and *to create* 292.35 (1) (am) and
2 292.35 (2) (b) of the statutes; **relating to:** applicability of the local
3 governmental unit negotiation and cost-recovery process for contaminated
4 property.

Analysis by the Legislative Reference Bureau

Current law authorizes a local governmental unit that owns property that is contaminated with hazardous substances to initiate a process for negotiating about how the contamination will be remedied and how much the various parties that are responsible for the contamination will contribute toward the investigation and remedial action costs. The negotiations are conducted by an umpire. If an agreement is reached, it is binding on the parties. If an agreement is not reached, the umpire makes a recommendation that may be accepted or rejected by the parties. If the local governmental unit accepts the recommendation and another party rejects the recommendation, the local governmental unit may sue that party to attempt to recover a portion of the investigation and remedial action costs. If the local governmental unit recovers an amount equal to or exceeding the amount that the party would have paid under the umpire's recommendation, the local governmental unit may recover interest and litigation costs.

This bill expands the applicability of this negotiation and cost-recovery process so that it may be used by a local governmental unit that does not own a contaminated property if the local governmental unit commits itself to paying more than 50% of the

