

2001 DRAFTING REQUEST

Bill

Received: **12/04/2000**

Received By: **traderc**

Wanted: **As time permits**

Identical to LRB:

For: **Administration-Budget 6-7597**

By/Representing: **Wong**

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

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Subject: **Environment - env. cleanup**

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Pre Topic:

DOA:.....Wong -

Topic:

Local governmental liability exemption and Stewardship funding

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>
/1	traderc 12/08/2000	jdye 12/08/2000	rschluet 12/08/2000	_____	gretskl 12/08/2000		S&L

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1?	traderc	1/12/00 jls	12/8/00	12/8/00			

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Date: November 29, 2000
To: Steve Miller, LRB
From: Manyee Wong, DOA
266-7595
Subject: Brownfields Statutory Language

I'm forwarding statutory language requests based on the Brownfields Study Group recommendations for inclusion in the budget. Attached is a draft of the Brownfields Study Group Report.

1. Stewardship Liability Exemption: Substitute statutory reference to the stewardship appropriation under the LGU liability exemption provision with the phrase stewardship program funds.

Reason for change: 1999 Wisconsin Act 9 allowed LGUs to qualify for liability exemption if they purchased a property using stewardship funds. However, s. 292.11(9)(e)1m.f., Wis. Stats., referenced the incorrect appropriation.

2. Solid Waste Liability Exemption: Expand the voluntary party solid waste liability exemption to include local government units.
3. Interim Liability Protection: Remove the interim liability protection exemption from current law.
4. Off-site liability exemption: Expand off-site liability exemption coverage to soil and sediments.
5. Voluntary Party Liability Exemption: Clarify that liability exemptions continue to apply to a voluntary party who no longer owns the property, even if the current property owner fails to maintain and monitor the property in accordance with DNR rules.
6. Use of Natural Attenuation: Require the voluntary party using natural attenuation as a remedial strategy to provide DNR, the responsible party, the insurance company, or any authorized representative access to the property in order to determine whether natural attenuation has failed and to conduct cleanup if necessary.
7. Environmental Remediation Tax Increment Financing (ER TIF): Make technical changes to various definitions under the provision:

- a. Create a definition for "environmental remediation tax incremental tax district" similar to the definition of regular TIFs
- b. Change the definitions of "environmental remediation tax increment", "environmental remediation tax increment base", and "taxable property" as suggested by DOR.
- c. Modify certain provisions of the program to ensure eligible application to both contiguous parcels and individual parcel of property.
- d. Require that a certified audit be done once after the final expenditure is completed.
- e. Change the application due date for environmental remediation tax increment base certification from April 1st to December 31st of the year the ER TIF is created.

Note: For a, b, and c, please refer to LRB 4239/2 created under the 1999 legislative session.

- ✓ 8. Negotiated Sale in Lieu of Bidding: Allow a county or a city to transfer tax delinquent properties it owns without using the competitive bid process if the purchaser agrees to conduct a site assessment and cleanup the property in accordance with DNR rules.
- ✓ 9. Assign Judgement of a Tax Deed: Allow a county to transfer a tax deed to an individual at the time of judgement if the individual agrees to conduct a site assessment and cleanup the property.
- ✓ 10. Liens and Back Taxes: Exclude EPA and DNR liens and back taxes from eligibility under the grant.
- ✓ 11. Vehicle Environmental Impact Fee – Extend the repeal date to June 30, 2003.
- ✓ 12. Land Recycling Loan Program: Allow the Land Recycling Loan Program to be used on contiguous parcels of properties so as to better address cleanup of area-wide groundwater contamination.

Issue: Expand Liability Exemptions For Local Governments

Background

Current liability protections for local governments are very important for brownfields redevelopment. Before the liability exemptions for local governmental units (LGUs) were created, LGUs that acquired contaminated property were considered "responsible parties" under Wisconsin's Hazardous Substance Discharge Law, ch. 292, Wis. Stats. (also known as the Spill Law), because they "possessed" or "controlled" the contaminated property.

As a result of these concerns, the Spill Law was amended to create specific exemptions from liability for LGUs in certain situations. These exemptions are found in s. 292.11(9)(e), Wis. Stats. Local governments can qualify for this exemption if they acquire a property in one of a number of ways listed in the statute. There are several improvements that can be made to make the LGU exemption a more effective tool for brownfields cleanup and redevelopment.

1

Stewardship Grants and Brownfields

The 1999-2001 Biennial Budget allowed LGUs to qualify for the liability exemption for property they purchased using a DNR Stewardship Grant. This change was made so that local governments can use these grants to convert brownfield properties into parks and open space, and at the same time qualify for the LGU exemption.

One reason for this change was that LGUs who are awarded Stewardship grants cannot use condemnation, a type of acquisition eligible for the exemption, to acquire the property. This section, s. 292.11(9)(e)1m.f., Wis. Stats., references the appropriations for the old Stewardship program (1990-2000) and not the new program (Stewardship 2000) that was created in the last budget.

Solid and Hazardous Waste Issues

The LGU exemption only exempts local governments from liability they could face under the Spill Law. Local governments are still concerned about liability if they take title to property that they could potentially be exposed to under hazardous waste and solid waste laws. If a local government qualifies for the LGU exemption, the DNR could not require the LGU to investigate and cleanup the property under the authority of the Spill Law, but the DNR could potentially use its authority under state solid waste laws to require the LGU to take actions.

While the DNR does not typically use this authority to force local governments to take actions at brownfields sites, this potential liability may be a disincentive for local governments to take over properties and may hinder a community's efforts at brownfields cleanup and redevelopment. A similar issue is related to potential liability under the hazardous waste regulations. However, hazardous waste liability is complicated by federal waste laws.

LGUs Negating An Exemption

Under s. 292.11(9)(e)2.a., Wis. Stats., a local government could lose the liability exemption for a discharge that occurs as a result of an action taken by the local government. This section would apply if the local government caused the original contamination. For example, if the discharge is from a leaking underground storage tank operated by the city at the city garage, then the LGU would not qualify for this exemption and they would be considered responsible under the Spill Law.

Furthermore, if an LGU takes action at a site and exacerbates a discharge, that action would also be considered causing a discharge of a hazardous substance, and the LGU could lose the LGU exemption for the discharge they exacerbate. For example, if an LGU removes the pavement on a property which is serving as a cap over contaminated soil, that action could result in increased infiltration and cause an increase in the discharge of the contamination into the groundwater.

Proposal

Based on the above issues discussed in the Liability Subcommittee, the Study Group proposes the following.

① **Stewardship** – amend the LGU exemption [s. 292.11(9)(e)1m.f., Wis.Stats.] to eliminate reference to specific appropriations and add “the local governmental unit acquired the property using Stewardship program funds.”

Solid Waste Liability – amend the law to extend the language in the LGU exemption [s. 292.11(9)(e), Wis. Stats.] to exempt the LGU from the same solid waste laws included in the Voluntary Party Liability Exemption listed in s. 292.15(2)(a), Wis. Stats; this would extend the exemption to cover the provisions of ss. 289.05 (1), (2), (3) and (4), 289.42(1), 289.67, Wis. Stats., and any rules promulgated under those provisions.

This exemption from solid waste laws should be limited so that it does not apply to any municipal waste landfills (as defined in s. 289.01(22), Stats.) or to any approved facilities (as defined in s. 289.01(3), Stats.). This is the same exclusion that is contained in the Voluntary Party Liability Exemption (s. 292.15(2)(d), Stats.). As a result, the exemption would only apply to historic fill sites. The exemptions from solids waste laws should also not apply to any facility that was owned or operated by the LGU.

The intent of the recommendation is that all the requirements and limitations contained in the existing LGU exemption statute (ss. 292.11(9)(e)1 through 7, Stats.) would continue to apply. Specifically, an LGU that acquires a historic fill site would still be subject to s. 292.11(9)(e)4, Stats., which applies when the LGU intends to use or redevelop the property subject to the exemption. This section states that the LGU exemption does not apply if the LGU does not take actions that the DNR determines are necessary to address threats to public health or safety. Also, this extension of the LGU exemption would only apply to the LGU and would not be transferable to future owners. Furthermore, if there was a discharge of a hazardous substance at a historic fill site acquired by an LGU, this exemption would not limit the DNR authority to require (under authority under the Hazardous Substance Discharge Law - s. 292.11, Wis. Stats.) any party who caused the discharge to take actions to respond to that discharge.

In addition to this statutory change, as part of the waste streamlining effort described on page ??? in Chapter ???, the DNR should continue its efforts to clarify the options related to development on all types of solid waste sites.

- **Hazardous Waste Liability** – the Study Group supports the efforts undertaken by the DNR as part of the waste streamlining effort described in the issue "Waste Regulatory Issues at Brownfields Sites", in Appendix ???, page ????
- **Interpretation of Exemption** – The Study Group recommends that DNR staff issue a written clarification that an LGU who causes or exacerbates a hazardous substance discharge would



State of Wisconsin
2001 - 2002 LEGISLATURE

LRB-1307/1

RCT...
JLd

SOON

DOA:.....Wong – Local governmental liability exemption and Stewardship funding

FOR 2001-03 BUDGET — NOT READY FOR INTRODUCTION

do not gen

1 AN ACT ...; relating to: the budget.

Analysis by the Legislative Reference Bureau

ENVIRONMENT

HAZARDOUS SUBSTANCES AND ENVIRONMENTAL CLEANUP

Current law generally requires a person who possesses or controls a hazardous substance that is discharged or who causes the discharge of a hazardous substance to restore the environment to the extent practicable and to minimize the harmful effects of the discharge on the environment. Current law generally exempts a local governmental unit from these clean-up requirements with respect to hazardous substance discharges on land acquired in specified ways, such as through tax delinquency proceedings and condemnation. This exemption applies to land acquired with funds from the original Warren Knowles-Gaylord Nelson stewardship program. This bill expands the exemption so that it applies to land that a local governmental unit acquires with funds from the Warren Knowles-Gaylord Nelson stewardship 2000 program.

*

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.** 292.11 (9) (e) 1m. f. [✓] of the statutes is amended to read:

2 292.11 **(9)** (e) 1m. f. The local governmental unit acquired the property using
3 funds appropriated under s. 20.866 (2) (ta) [✓] or (tz).

4 **History:** 1995 a. 227 ss. 700, 703 to 707, 710, 993; 1997 a. 27, 35; 1999 a. 9; 1999 a. 150 s. 672.

(END)



State of Wisconsin
2001 - 2002 LEGISLATURE

LRB-1307/1

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