



# State of Wisconsin

LEGISLATIVE REFERENCE BUREAU

## RESEARCH APPENDIX -

**PLEASE DO NOT REMOVE FROM DRAFTING FILE**

☞ Appendix A ... Part 02 of 04

Date Transfer Requested: 01/23/2006 (Per: RCT)



☞ The 2005 drafting file for  
LRB-1287 (transferred)  
LRB-1288 (transferred)  
LRB-1290 (transferred)  
LRB-1390 (transferred)  
where used to create ...



**LRB 05-3740**

☞ The attached 2005 draft was incorporated into the new 2005 draft listed above. For research purposes, this cover sheet and the attached drafting file were added, as a appendix, to the new 2005 drafting file. If introduced this section will be scanned and added, as a separate appendix, to the electronic drafting file folder.

## 2005 DRAFTING REQUEST

### Bill

Received: 12/17/2004

Received By: btradewe

Wanted: As time permits

Identical to LRB:

For: Carol Roessler (608) 266-5300

By/Representing: Karen Asbjornson

This file may be shown to any legislator: NO

Drafter: btradewe

May Contact:

Addl. Drafters:

Subject: Environment - env. cleanup

Extra Copies:

Submit via email: YES

Requester's email: Sen.Roessler@legis.state.wi.us

Carbon copy (CC:) to:

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### Pre Topic:

No specific pre topic given

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### Topic:

Brownfields, exempt local governments from solid waste management standards for certain sites

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### Instructions:

See Attached

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### 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>
/?	btradewe 01/10/2005	kfollett 02/04/2005		_____			S&L
/1			pgreensl 02/04/2005	_____	lemery 02/04/2005		S&L
/2	btradewe 03/28/2005	jdyer 03/29/2005	pgreensl 03/29/2005	_____	lemery 03/29/2005		

FE Sent For:

**<END>**

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/?	btradewe 01/10/2005	kfollett 02/04/2005		<u>3/28</u>			S&L
/1		1/23/ajl 1/29/ajl	pgreensl 02/04/2005	<u>287</u>	lemery 02/04/2005		

FE Sent For:

3/28  
08 <END>

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1/?	btradewe	11/17/04 2/14	2/14 1/18	2/14 1/18			

FE Sent For:

<END>



12-16-04

Becky,

Enclosed are brownfield initiatives (some new - some old) that need to be drafted into one bill (package).

Please call me or Darsi Foss (7-6713) at DNK if you have any questions.

Thank you for your assistance!

Happy Holidays!

Karen Ashpkinson  
Office of Senator  
Roessler

**Recommended Changes to Wisconsin Statutes  
By the Brownfields Study Group**

TOPIC	Draft Language	RECOMMENDATION	Agencies
1. Modify Negotiated Sale In Lieu Of Bidding For Tax Delinquent Brownfields Properties	LRB #03-3314/1	Create a statutory amendment to s.75.69(2), Wis. Stats., that would allow a county or city of the first class to transfer tax delinquent property it owns, without using the competitive bidding process, if environmental pollution is present and the property meets the definition of a brownfield under s.292.75(1)(a), Wis. Stats.	Revenue DNR
2. Assign Judgment Of A Tax Deed Without Taking Title	LRB# 03-1315/1	-allow a county to execute a tax deed under s.75.14(1), Wis. Stats., to an individual under the same conditions as prescribed under s.75.106, Wis. Stats., -allow the individual who has elected to accept a tax deed under the above conditions to commence an action to bar former owners under s.75.39, Wis. Stats.	Revenue DNR
3. Adoption of Federal Brownfields Tax Deduction into State Tax Code	No, need new bill draft	Adopt the federal brownfields tax deduction for cleanup costs associated with non-petroleum contamination	Revenue DNR
4. Changes to Voluntary Party Liability Exemption statute, s. 292.15: <ul style="list-style-type: none"> <li>• Eliminate Interim Liability Exemption for Voluntary Parties – (292.15(2)(at)</li> <li>• Natural Attenuation at Voluntary Party Sites - clarify</li> <li>• Expand definition of landfills that may receive the VPLE.</li> </ul>	LRB# 03-3316	-The first change would eliminate the need for the department to create an insurance mechanism for voluntary parties at the time their site investigation is approved. -The second change provides the department access to a property if natural attenuation has or is suspected to have failed, once a Certificate has been issued. -Presently, only landfills that are not municipal solid waste sites may obtain a VPLE certificate. Expand this to include wider universe of landfills	Revenue DNR DNR
5. Local Government Liability Exemption for Certain Types of Solid Waste Sites	LRB# 03-3318/1 3	This change provides that a local governmental unit that is exempt from the clean-up requirements for a property is also exempt from solid waste management standards and other legal requirements relating to solid waste for that property. This would not apply to licensed or approved facilities, nor a facility where the local government caused the contamination.	DNR
6. Streamline the Land Recycling Loan Program (LRLP)	LRB# 03-3324	-Eliminate the use of the intent to Apply (ITA) form, and the December 31 deadline associated with it -direct financing for Phase I and II environmental assessments, and site investigations.	DNR DOA

**Recommended Changes to Wisconsin Statutes  
By the Brownfields Study Group**

TOPIC	Draft Language	RECOMMENDATION	Agencies
<p>7. Modify the Environmental Remediation TIF statute, s. 66.1106, Stats.</p>	<p>LRB# 03-3347/1</p>	<ul style="list-style-type: none"> <li>- include delinquent taxes as an eligible cost.</li> <li>- extend the ER TIF time period from 16 to 23 years</li> <li>- adopt the technical changes proposed by Revenue in the FY 2001-03 executive budget and AB 510.</li> <li>- makes changes retroactive to existing ER TIDs</li> </ul>	<p>DOR DNR</p>
<p>8. Language to clarify that certain inspection, engineering, repair and monitoring conditions placed on a property by the DNR, Commerce or DATCP at the completion of an environmental clean up are enforceable and run with the land once placed.</p>	<p>Not yet. Bill drafting language is attached.</p>	<ul style="list-style-type: none"> <li>- Clarify that the DNR, Commerce and DATCP have the authority to require that environmental conditions be placed on a property, in accordance with clean up rules and agency approvals.</li> <li>- Clarify that DNR can enforce that requirement.</li> <li>- Clarify that the deed restriction runs with the land.</li> <li>- Clarify they will be tracked in DNR's GIS Registry and that a fee is required to place the property on the Registry.</li> </ul>	<p>DATCP DNR Commerce</p>

5. Local Government Exemption for Certain Types of Solid Waste Facilities LRB – 3318/1

The Brownfields Study Group would like the last version of the solid waste exemption for local governments to be amended, as follows:

a) Universe of waste facilities or sites it applies to:

Redefine the universe of solid waste facilities or sites the LGU exemption would apply to, similar to the previously noted VPLE changes:

✓ *This subsection does not apply to a solid waste facility for which a license has been issued pursuant to s. 289.31, or a predecessor statute.*

b) LGUs eligible for the exemption are those that acquire it in a manner similar to the provisions in s. 292.11(9)(e), except if:

- ✓ (i) the LGU owned or operated the solid waste facility or site;
- ✓ (ii) the LGU contributed waste or other materials to the solid waste facility or site which caused a hazardous substance discharge or environmental contamination at the property;
- ✓ (iii) caused a discharge of a hazardous substance at the property; or
- ✓ (iv) a discharge occurs because the LGU failed to do any of the following (include list from s. 292.11(9)(e).

c) Broaden the "technical" limits of the exemption, and clarify that LGUs retain certain responsibilities under the exemption

The Brownfields Study Group recommends these technical standards be included draft bill:

- ✓ 1. The exemption should not be applicable to waste generated on the site by the LGU or contractors.
- ✓ 2. The exemption should not apply to land use restrictions that are necessary to prevent damage to a cap over waste on the property, or to prevent otherwise incompatible uses (i.e., the owner may need to record a deed restriction and place it on DNR's GIS Registry to ensure that the property/landfill remains undisturbed given its use).
- ✓ 3. The process for getting the equivalent of a DNR approval to build on a landfill should still be required of an LGU that qualifies for the LGU/SW liability exemption. The LGU may not undertake any construction without prior written approval from the Department, and may not undertake any activity that interferes with a closed facility that causes a threat to public health, safety, or welfare.
- ✓ 4. An exempt LGU will take on *existing*, health and safety related requirements to maintain sites with active leachate and/or methane collection systems, or sites with requirements for maintenance of existing landfill caps or groundwater monitoring systems. This would apply only at sites with these monitoring, engineering or maintenance systems already in place.
- ✓ 5. The LGU should have to ensure that the site or property, when put to its intended use, is not a threat to public health or safety, similar to the Spill Law provision.

## **6. Streamline the Land Recycling Program - LRB 03-3324**

The Study Group and Department continue to support the recommended changes of removing the intent to apply provision and expanding the eligibility loan activities. With respect to the making funds available for site assessments and investigations, the DNR's environmental response program has demonstrated that bonding funds can be used for investigations at properties where a remediation/construction expense will incur. The Department has many years of experience making these case-specific decisions regarding the use of bonding funds for assessment/investigation work. EPA supports such use of clean water funds, and other states such as Ohio, use its CWF moneys to pay for site assessments and investigations.

With respect to the intent-to-apply provision, given the short planning time associated with brownfields when compared to lengthy wastewater construction projects, it is felt that this administrative requirement could be eliminated from the program – EPA does not require it. The Study Group and DNR are well aware of the former governor's vetoes. The group is requesting a fresh look at these recommendations, particularly given the over subscription of other state brownfields grant programs, and the under use of this 1997 loan program that still has \$8 million of the original \$20 million remaining to be loaned to communities.

## LGU Liability Exemption for Certain Types of Solid Waste Facilities

### Background

The Brownfields Study Group (BFSG) proposed the LGU solid waste exemption as a recommended statutory change in the 2001-2003 budget bill. It was carried over for consideration in 2003-2005, and is still on the table for further consideration at this time.

The recommended change provided that a local governmental unit (LGU) that is exempt from the clean-up requirements for a property under s. 292.11(9)(e), Stats. (the Spills Law), would also be exempt from the solid waste standards under s. 289.05, Stats., and rules promulgated thereunder, relating to solid waste on that property. As drafted, the exemption did not apply to municipal waste landfills, approved facilities, or to facilities where the local government caused the contamination. The reference to "...a municipal waste landfill, as defined in s. 289.01(22), Stats." creates very restrictive language relative to the types of solid waste facilities covered by the exemption. This language was patterned after the VPLE wording in s. 292.15(2)(d), Stats.

"Municipal waste landfill" (as defined in s. 289.01(22), Stats.) means a solid waste disposal facility that is not one of the following:

- (a) A solid waste disposal facility designed exclusively for the disposal of waste generated by a pulp mill, paper mill, foundry, prospecting or mining operation, electric or process steam generating facility or demolition activity.
- (b) A hazardous waste disposal facility.

### Issue

This definition of "municipal waste landfill" means that many of the small, unknown, historic fill sites--that are found throughout Wisconsin, and that the Brownfields Study Group asked be addressed in the Building on Abandoned Landfill Guidelines--would not be covered by the proposed solid waste exemption. This may be a narrower and more restrictive interpretation of what sites to include than desirable for purposes of encouraging brownfields redevelopment. Expanding the types of sites eligible for coverage by the exemption may be advantageous to LGU brownfield redevelopment efforts.

Recent discussions between the DNR's Bureaus for Waste Management (WA) and Remediation and Redevelopment (RR), and the LGU sub-group of the BFSG, have identified several issues concerning the draft exemption that may warrant further consideration. These include:

- 1) The universe of sites to include (or exclude) under the exemption;
- 2) The "technical" limits of the exemption, and whether the LGU should retain certain responsibilities under the exemption; and
- 3) Liability issues relative to s. 289.46(1), Stats.,

Each issue is discussed further to enable consideration of recommendations by the Brownfields Study Group.

### Options

#### 1) The universe of sites to include (or exclude) under the solid waste (SW) exemption

The current draft language of the proposed exemption is very narrow due to the exclusion of "municipal waste landfills" and "approved facilities". Many of the historic fill sites likely to be encountered during the redevelopment of brownfields would not be covered by the LGU SW exemption because they are "municipal waste landfills".

The types of sites desirable to include under the SW exemption may be directly proportionate to the perceived safety of their inclusion. Will they cause health or safety problems? What controls would exist over subsequent construction/development plans? How would new or larger environmental problems at those sites be prevented? Who would be financially responsible for environmental investigations and clean up?

Options for types of landfill sites to include under the exemption include:

1. All sites could be covered by the LGU/SW Exemption. Since the Building on Abandoned Landfill Guidelines (April 2002) apply to all waste sites, written exemptions from the DNR are required prior to building on all sites, regardless of their size or complexity. Large, complex sites require more work than small, simple sites. But given that all sites require exemptions, virtually all sites could be made eligible for coverage by the LGU SW exemption from a "controls and construction" standpoint.
2. Approved facilities (most sites with approved plans of operation developed after 1975) have been mentioned as a subset of sites to exclude from coverage under the LGU/SW exemption. There are approximately 130-150 of these sites in the state. The size, complexity, and O&M requirements for these sites make them more difficult for the LGU, prospective developer, and DNR to deal with as redevelopment candidates. The exemption process to get approval to build on these sites could be more detailed and problematic. They may represent a logical subset of landfills to exclude from the LGU/SW exemption.
3. Licensed facilities may be too broad a category to exclude from coverage. There are approximately 1000 sites in the state that have been or currently are licensed. They range from small, uncontrolled sites from the late 1960's, to the modern, mega-sites of today. The common factor is that the DNR has had some level of involvement with these sites, although not uniform, over time. S. 289.46(1), Stats. presents major liability implications to how licensed sites can be handled when property transfers occur (discussed later in this paper).
4. Historic fill sites are landfills that originated before 1970 that have not been licensed by the DNR. Many of these sites are the types that could be encountered unexpectedly through property acquisition and brownfields redevelopment. These are types of sites at which little is known, and responsible parties may be very

difficult to identify. The current bill draft excludes many of these sites. WA and RR agree that these sites should be included under the exemption.

**Study Group recommended option: Option D, and to exclude licensed or approved facilities.**

**2) LGU "association" with landfill sites.** Regardless of what other categories are selected for exemptions, the Study Group agreed that LGUs that acquire landfill sites are not eligible for an exemption if the:

- Landfill or facility has or is owned or operated by the LGU, or a political subdivision of the LGU;
- The LGU caused a discharge of a hazardous substance on the property; and/or
- Landfill or facility where the LGU has taken solid waste materials to the facility, and those materials caused a discharge or environmental contamination.

**Study Group recommend an LGU not be eligible for an exemption if one of more of these conditions are met.**

**3) The "technical" limits of the exemption, and whether the LGU should retain certain responsibilities under the exemption**

The current draft of the bill is constructed parallel to the LGU exemption under the Spills Law. It includes exceptions to the liability exemption [s.292.23(3)(a)] for discharges caused by the LGU, or where a discharge results from for failure of the LGU to take actions directed by the DNR, for failure of the LGU to allow access to the property, or for not entering into a limited clean-up agreement with the DNR if Stewardship funds were used for acquisition.

However, the current language is not crafted precisely to address solid waste sites like it is to address hazardous substance spills. Furthermore, since Building on Abandoned Landfill exemptions are required before construction on all landfills, the current draft bill does not clearly take this process into consideration. For large, complex sites, issues like pumping leachate, collecting landfill gas, maintaining caps and drainage facilities, and environmental monitoring programs are also pertinent to the exemption language.

Discussions between WA, RR, and the LGU sub-group recommend these technical standards be included draft bill:

- 1) The exemption should not be applicable to waste generated on the site by the LGU or contractors.
- 2) The exemption should not apply to land use restrictions that are necessary to prevent damage to a cap over waste on the property, or to prevent otherwise incompatible uses (i.e., the owner may need to record a deed restriction and place it on DNR's GIS Registry to ensure that the property/landfill remains undisturbed given its use).
- 3) The process for getting DNR approval to build on a landfill should still be required of an LGU that qualifies for the LGU/SW liability exemption. The LGU may not undertake any construction without prior written approval from

- 
- the Department, and may not undertake any activity that interferes with a closed facility that causes a threat to public health, safety, or welfare.
- 4) An exempt LGU should take on *existing*, health and safety related requirements to maintain sites with active leachate and/or methane collection systems, or sites with requirements for maintenance of existing landfill caps or groundwater monitoring systems. This would apply only at sites with these engineering systems already in place, prior to the LGU's acquisition. These pre-existing maintenance requirements would be the responsibility of the LGU, unless the former owner or another person was taking such responsibility.

**Study Group recommended adoption of items 1 through 4.**



003 BILL

A copy of this draft was  
e-mailed to your office.

- 1 AN ACT to create 292.23 of the statutes; relating to: exempting local  
2 governmental units from solid waste management standards with respect to  
3 certain properties.

*Analysis by the Legislative Reference Bureau*

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 property acquired in specified ways, such as through tax delinquency proceedings and condemnation.

This bill provides that a local governmental unit is exempt from solid waste management standards and other legal requirements relating to solid waste for a property that was acquired in a way that would qualify for the exemption from clean-up requirements, except that the exemption from solid waste requirements does not apply to a solid waste facility that was operated by the local governmental unit or owned by the local governmental unit while it was operated or to landfills.

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:*

## BILL

1           SECTION 1. 292.23 of the statutes is created to read:

2           **292.23 Responsibility of local governmental units; solid waste. (1)**

3           DEFINITION. In this section, "local governmental unit" means a municipality, a  
4           redevelopment authority created under s. 66.1333, a public body designated by a  
5           municipality under s. 66.1337 (4), a community development authority, or a housing  
6           authority.

7           (2) EXEMPTION FROM LIABILITY. Except as provided in sub. (3), a local  
8           governmental unit is exempt from s. 289.05, and rules promulgated under that  
9           section, with respect to property acquired by the local governmental unit before, on,  
10          or after the effective date of this subsection .... [revisor inserts date], if any of the  
11          following applies:

12          (a) The local governmental unit acquired the property through tax delinquency  
13          proceedings or as the result of an order by a bankruptcy court.

14          (b) The local governmental unit acquired the property from a local  
15          governmental unit that is exempt under this subsection with respect to the property.

16          (c) The local governmental unit acquired the property through a condemnation  
17          or other proceeding under ch. 32.

18          (d) The local governmental unit acquired the property for the purpose of slum  
19          clearance or blight elimination.

20          (e) The local governmental unit acquired the property through escheat.

21          (f) The local governmental unit acquired the property using funds appropriated  
22          under s. 20.866 (2) (ta) or (tz).

23          (3) EXCEPTIONS. (a) Subsection (2) does not apply with respect to a discharge  
24          of a hazardous substance caused by any of the following:

25            1. An action taken by the local governmental unit.

**BILL**

1           2. A failure of the local governmental unit to take appropriate action to restrict  
2           access to the property in order to minimize costs or damages that may result from  
3           unauthorized persons entering the property.

4           3. A failure of the local governmental unit to sample and analyze unidentified  
5           substances in containers stored aboveground on the property.

6           4. A failure of the local governmental unit to remove and properly dispose of,  
7           or to place in a different container and properly store, any hazardous substance  
8           stored aboveground on the property in a container that is leaking or is likely to leak.

9           (b) Subsection (2) does not apply if, after considering the intended development  
10          and use of the property, the department determines that action is necessary to reduce  
11          to acceptable levels any substantial threat to public health or safety when the  
12          property is developed or put to that intended use, the department directs the local  
13          governmental unit to take that necessary action, and the local governmental unit  
14          does not take that action as directed.

15          (c) Subsection (2) only applies if the local governmental unit agrees to allow the  
16          department, any authorized representatives of the department, any party that  
17          possessed or controlled a hazardous substance that was discharged or that caused  
18          the discharge of a hazardous substance, and any consultant or contractor of such a  
19          party to enter the property to take action to respond to the discharge.

20          (d) Subsection (2) does not apply to property described in sub. (2) (f) unless the  
21          local governmental unit enters into an agreement with the department to ensure  
22          that the conditions in pars. (a) and (b) are satisfied.

23          (e) Subsection (2) does not apply to any solid waste facility, as defined in s.  
24          289.01 (35), that was operated by the local governmental unit or was owned by the

**BILL**

1 local governmental unit while it was operated, to a municipal waste landfill, as  
2 defined in s. 289.01 (22), or to an approved facility.

3 (END)

1288/1

2005

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KJF

2003 BILL

DNote

Regen

Analysis next

1 AN ACT to create 292.23 of the statutes; relating to: exempting local
2 governmental units from solid waste management standards with respect to
3 certain properties.

Analysis by the Legislative Reference Bureau

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 property acquired in specified ways, such as through tax delinquency proceedings and condemnation.

This bill provides that a local governmental unit is exempt from solid waste management standards and other legal requirements relating to solid waste for a property that was acquired in a way that would qualify for the exemption from clean-up requirements, except that the exemption from solid waste requirements does not apply to a solid waste facility that was operated by the local governmental unit or owned by the local governmental unit while it was operated or to landfills.

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:

with a number of exceptions conditions \*

that had been licensed by this state

**BILL**

1 SECTION 1. 292.23 of the statutes is created to read:

2 **292.23 Responsibility of local governmental units; solid waste. (1)**

3 DEFINITION. In this section, <sup>(a)</sup> "local governmental unit" means a municipality, a  
4 redevelopment authority created under s. 66.1333, a public body designated by a  
5 municipality under s. 66.1337 (4), a community development authority, or a housing  
6 authority.

Insert  
2-6 →

7 (2) EXEMPTION FROM LIABILITY. Except as provided in sub. (3), a local  
8 governmental unit is exempt from s. 289.05, and rules promulgated under that  
9 section, with respect to property acquired by the local governmental unit before, on,  
10 or after the effective date of this subsection .... [revisor inserts date], if any of the  
11 following applies:

12 (a) The local governmental unit acquired the property through tax delinquency  
13 proceedings or as the result of an order by a bankruptcy court.

14 (b) The local governmental unit acquired the property from a local  
15 governmental unit that is exempt under this subsection with respect to the property.

16 (c) The local governmental unit acquired the property through a condemnation  
17 or other proceeding under ch. 32.

18 (d) The local governmental unit acquired the property for the purpose of slum  
19 clearance or blight elimination.

20 (e) The local governmental unit acquired the property through escheat.

21 (f) The local governmental unit acquired the property using funds appropriated  
22 under s. 20.866 (2) (ta) or (tz).

23 (3) EXCEPTIONS. (a) Subsection (2) does not apply with respect to a discharge  
24 of a hazardous substance caused by any of the following:

25 1. An action taken by the local governmental unit.

**BILL**

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3 unauthorized persons entering the property.

4           3. A failure of the local governmental unit to sample and analyze unidentified  
5 substances in containers stored aboveground on the property.

6           4. A failure of the local governmental unit to remove and properly dispose of,  
7 or to place in a different container and properly store, any hazardous substance  
8 stored aboveground on the property in a container that is leaking or is likely to leak.

9           (b) Subsection (2) does not apply if, after considering the intended development  
10 and use of the property, the department determines that action is necessary to reduce  
11 to acceptable levels any substantial threat to public health or safety when the  
12 property is developed or put to that intended use, the department directs the local  
13 governmental unit to take that necessary action, and the local governmental unit  
14 does not take that action as directed.

15           (c) Subsection (2) only applies if the local governmental unit agrees to allow the  
16 department, any authorized representatives of the department, any party that  
17 possessed or controlled a hazardous substance that was discharged or that caused  
18 the discharge of a hazardous substance, and any consultant or contractor of such a  
19 party to enter the property to take action to respond to the discharge.

20           (d) Subsection (2) does not apply to property described in sub. (2) (f) unless the  
21 local governmental unit enters into an agreement with the department to ensure  
22 that the conditions in pars. (a) and (b) are satisfied.

23           (e) Subsection (2) does not apply to any solid waste facility, ~~as defined in s.~~  
24 ~~289.01 (35)~~ <sup>or waste site</sup> that was operated by the local governmental unit or was owned by the

**BILL**

1 local governmental unit while it was operated, ~~to a municipal waste landfill, as~~  
2 ~~defined in s. 289.01 (22), or to an approved facility.~~

Insert  
3 →

(END)

4-2

DNate

2005-2006 DRAFTING INSERT  
FROM THE  
LEGISLATIVE REFERENCE BUREAU

LRB-1288/lins  
RCT:.....

*not* **Analysis insert**

The bill requires a local governmental unit to obtain permission from the Department of Natural Resources (DNR) for any construction on the property and requires the local governmental unit to maintain any health or safety system on the property, such as a system to collect landfill gas, that DNR required before the local governmental unit acquired the property.

**Insert 2-6**

(b) "Solid waste facility" has the meaning given in s. 289.01 (35). ✓

X (c) "Waste site" has the meaning given in s. 289.10 (41). ✓

**Insert 4-2**

X (f) Subsection (2) does not apply to a solid waste facility that was licensed under s. 289.30 or s. 144.44, 1993 stats. ✓

(g) Subsection (2) does not apply to property at which the local governmental unit disposed of waste that caused a discharge of a hazardous substance at the property. ✓

(h) Subsection (2) does not apply to waste generated on the property by the local governmental unit or its contractors. ✓

(i) Subsection (2) does not apply if the local governmental unit undertakes or authorizes construction on the property without the approval of the department or if the local government unit undertakes an activity that interferes with a closed solid waste facility or waste site and that causes a threat to public health, safety, or welfare. ✓

(j) Subsection (2) only applies to property with respect to which the department *Insert from p. 2* has imposed requirements related to health or safety for the maintenance of an active leachate or methane collection system, of a cap over waste on the property, or ✓

*move to p. 1*

of a groundwater monitoring system, before the local governmental unit acquired the property, if the local governmental unit complies with those requirements.

(k) Subsection (2) does not exempt a local governmental unit from land use restrictions that are necessary to prevent damage to a cap over waste on the property or to otherwise prevent uses of the property that cause a threat to public health or safety.

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

LRB-1288/1dn

RCT...*(signature)*

*Date*

This is a draft of the proposal exempting local governmental units from solid waste management standards with respect to properties acquired in certain ways. The draft should be reviewed carefully to ensure that it complies with the intent of study group. In particular, I was uncertain whether the intent was to eliminate any of the exemptions in last session's draft (03-3318/1).

Please contact me with any questions or redraft instructions.

Rebecca C. Tradewell  
Managing Attorney  
Phone: (608) 266-7290  
E-mail: [becky.tradewell@legis.state.wi.us](mailto:becky.tradewell@legis.state.wi.us)

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

LRB-1288/1dn  
RCT:kjf:pg

February 4, 2005

This is a draft of the proposal exempting local governmental units from solid waste management standards with respect to properties acquired in certain ways. The draft should be reviewed carefully to ensure that it complies with the intent of study group. In particular, I was uncertain whether the intent was to eliminate any of the exemptions in last session's draft (03-3318/1).

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**Tradewell, Becky**

---

**From:** Asbjornson, Karen  
**Sent:** Wednesday, March 23, 2005 1:23 PM  
**To:** Tradewell, Becky  
**Subject:** FW: LRB 1288/1 Brownfields Bill Draft

Hi Becky,

Senator Roessler/DNR has some changes to the LRB 1288/1 draft. Please see below as well as word attachment. As usual, you can call Darsi Foss, DNR, directly at 267-6713 if you have any questions or concerns.

Thank you!

Karen Asbjornson

Office of Senator Roessler

Thank you for giving us the opportunity to go over this very important bill draft. We appreciate your and the bill drafter's assistance.

I have included some comments, in the form of redline and strike out in the attached document.

A small inclusion in the draft is the phrase "or environmental pollution" in conjunction to a "discharge of a hazardous substance." This would broaden the coverage for both waste and spill sites in DNR's opinion.

We've eliminated a reference to the solid waste law that was left from an older draft.

Also, we'd like to ask that the bill drafters help resolve a concern of the DNR's. The DNR would like to make sure that the language in the draft of s. 292.23, Stats., does not preclude the LGU exemption in s. 292.11(9)(e) from applying to discharges of a hazardous substance. For example, a large industrial property is tax delinquent, and a county wants to take title to it through the tax foreclosure process. The property had both spills on it, and a licensed solid waste facility (recent pulp landfill). We want to make sure it is clear that is the LGU takes takes, the LGU exemption from the spill law would be in effect for the leaking underground tanks and soil contamination from surface spills, but not the LGU exemption from waste management standards, because it's a licensed landfill. We want to make sure that if you fail to meet the conditions of one exemption, wouldn't prohibit an LGU for using the other exemptoin. Our concern emanates from the definition of solid waste facility, which states " This term includes the land where the facility is located." So, if the property isn't eligible for the waste LGU exemption, we'd like the LGU to still be eligible for the Spill law exemption if they otherwise meet the legal conditions.

If LRB could confirm that the bill draft as currently written would not preclude the LGU from the protections of the Spill Law, in this example, we'd appreciate it. If they can not, we'd like the bill draft amended, such as modifying (3)(f).

Thanks. Hope this all makes some sense.

<<LGU-Waste comments.doc>>

Darsi Foss, Chief  
Brownfields and Outreach Section

03/28/2005

Bureau for Remediation and Redevelopment  
Wisconsin Department of Natural Resources

(☎) phone: (608) 267-6713

(☎) fax: (608) 267 - 7646

(✉) e-mail: [darsi.foss@dnr.state.wi.us](mailto:darsi.foss@dnr.state.wi.us)

<http://www.dnr.state.wi.us/org/aw/rr>

AN ACT *to create* 292.23 of the statutes; relating to: exempting local governmental units from solid waste management standards with respect to certain properties.

*Analysis by the Legislative Reference Bureau*

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 property acquired in specified ways, such as through tax delinquency proceedings and condemnation.

This bill provides that a local governmental unit is exempt from solid waste management standards and other legal requirements relating to solid waste for a property that was acquired in a way that would qualify for the exemption from clean-up requirements, with a number of exceptions and conditions. The exemption from solid waste requirements does not apply to a solid waste facility that was operated by the local governmental unit or owned by the local governmental unit while it was operated or to landfills that had been licensed by this state. The bill requires a local governmental unit to obtain permission from the Department of Natural Resources (DNR) for any construction on the property and requires the local governmental unit to maintain any health or safety system on the property, such as a system to collect landfill gas, that DNR required before the local governmental unit acquired the property.

**SECTION 1.** 292.23 of the statutes is created to read:

**292.23 Responsibility of local governmental units; solid waste. (1)**

DEFINITION. In this section:

- (a) "Local governmental unit" means a municipality, a redevelopment authority created under s. 66.1333, a public body designated by a municipality under s. 66.1337 (4), a community development authority, or a housing authority.
- (b) "Solid waste facility" has the meaning given in s. 289.01 (35).
- (c) "Waste site" has the meaning given in s. 289.01 (41).

(2) EXEMPTION FROM LIABILITY. Except as provided in sub. (3), a local governmental unit is exempt from s. 289.05, and rules promulgated under that section, with respect to property acquired by the local governmental unit before, on, or after the effective date of this subsection .... [revisor inserts date], if any of the following applies:

- (a) The local governmental unit acquired the property through tax delinquency proceedings or as the result of an order by a bankruptcy court.
- (b) The local governmental unit acquired the property from a local governmental unit that is exempt under this subsection with respect to the property.
- (c) The local governmental unit acquired the property through a condemnation or other proceeding under ch. 32.
- (d) The local governmental unit acquired the property for the purpose of slum clearance or blight elimination.
- (e) The local governmental unit acquired the property through escheat.
- (f) The local governmental unit acquired the property using funds appropriated under s. 20.866 (2) (ta) or (tz).

✓ (3) EXCEPTIONS. (a) Subsection (2) does not apply with respect to a discharge of a hazardous substance or environmental pollution caused by any of the following:

1. An action taken by the local governmental unit.

2. A failure of the local governmental unit to take appropriate action to restrict access to the property in order to minimize costs or damages that may result from unauthorized persons entering the property.
3. A failure of the local governmental unit to sample and analyze unidentified substances in containers stored aboveground on the property.
4. A failure of the local governmental unit to remove and properly dispose of, or to place in a different container and properly store, any hazardous substance stored aboveground on the property in a container that is leaking or is likely to leak.

(b) Subsection (2) does not apply if, after considering the intended development and use of the property, the department determines that action is necessary to reduce to acceptable levels any substantial threat to public health or safety when the property is developed or put to that intended use, the department directs the local governmental unit to take that necessary action, and the local governmental unit does not take that action as directed.

(c) Subsection (2) only applies if the local governmental unit agrees to allow the department, any authorized representatives of the department, any party that possessed or controlled a hazardous substance that was discharged or that caused the discharge of a hazardous substance or environmental pollution, and any consultant or contractor of such a party to enter the property to take action to respond to the discharge or environmental pollution.

(d) Subsection (2) does not apply to property described in sub. (2) (f) unless the local governmental unit enters into an agreement with the department to ensure that the conditions in pars. (a) and (b) are satisfied.

(e) Subsection (2) does not apply to any solid waste facility or waste site that was operated by the local governmental unit or was owned by the local governmental unit while it was operated, ~~to a municipal waste landfill, as defined in s. 289.01 (22),~~

or to an approved facility. [this last phase needs to be deleted – it contradicts (f) -  
thanks.]

(f) Subsection (2) does not apply to a solid waste facility that was licensed under s. 289.30 or s. 144.44, 1993 stats.

(g) Subsection (2) does not apply to property at which the local governmental unit disposed of waste that caused a discharge of a hazardous substance or environmental pollution at the property. [Redundant with (e)????]

(h) Subsection (2) does not apply to waste generated on the property by the local governmental unit, agents or its contractors.

(i) Subsection (2) does not apply if the local governmental unit undertakes or authorizes construction on the property without the approval of the department or if the local government unit undertakes an activity that interferes with a closed solid waste facility or waste site and that causes a threat to public health, safety, or welfare.

(j) Subsection (2) only applies to property with respect to which, before the local governmental unit acquired the property, the department imposed requirements related to health or safety for the maintenance of an active leachate or methane collection system, of a cap over waste on the property, or of a groundwater or gas monitoring system, if the local governmental unit complies with those requirements.

(k) Subsection (2) does not exempt a local governmental unit from land use

~~restrictions~~ restrictions required by the department, including those that are necessary to prevent damage to a cap over waste on the property,  
or to otherwise prevent uses of the property that may cause a threat to public health or safety.

**(END)**



State of Wisconsin  
2005 - 2006 LEGISLATURE

LRB-1288/2  
RCT:kjf:pg (mf)

SOON (in 3/28)

2005 BILL

Note

Regen

- 1 AN ACT to create 292.23 of the statutes; relating to: exempting local  
2 governmental units from solid waste management standards with respect to  
3 certain properties.

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*Analysis by the Legislative Reference Bureau*

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 property acquired in specified ways, such as through tax delinquency proceedings and condemnation.

This bill provides that a local governmental unit is exempt from solid waste management standards and other legal requirements relating to solid waste for a property that was acquired in a way that would qualify for the exemption from clean-up requirements, with a number of exceptions and conditions. The exemption from solid waste requirements does not apply to a solid waste facility that was operated by the local governmental unit or owned by the local governmental unit while it was operated or to landfills that had been licensed by this state. The bill requires a local governmental unit to obtain permission from the Department of Natural Resources (DNR) for any construction on the property and requires the local governmental unit to maintain any health or safety system on the property, such as a system to collect landfill gas, that DNR required before the local governmental unit acquired the property.

**BILL**

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. 292.23<sup>X</sup> of the statutes is created to read:

2           **292.23 Responsibility of local governmental units; solid waste. (1)**

3           DEFINITION. In this section:

4           (a) "Local governmental unit" means a municipality, a redevelopment  
5 authority created under s. 66.1333, a public body designated by a municipality under  
6 s. 66.1337 (4), a community development authority, or a housing authority.

7           (b) "Solid waste facility" has the meaning given in s. 289.01 (35).

8           (c) "Waste site" has the meaning given in s. 289.01 (41).

9           **(2) EXEMPTION FROM LIABILITY.** Except as provided in sub. (3), a local  
10 governmental unit is exempt from s. 289.05, and rules promulgated under that  
11 section, with respect to property acquired by the local governmental unit before, on,  
12 or after the effective date of this subsection .... [revisor inserts date], if any of the  
13 following applies:

14           (a) The local governmental unit acquired the property through tax delinquency  
15 proceedings or as the result of an order by a bankruptcy court.

16           (b) The local governmental unit acquired the property from a local  
17 governmental unit that is exempt under this subsection with respect to the property.

18           (c) The local governmental unit acquired the property through a condemnation  
19 or other proceeding under ch. 32.

20           (d) The local governmental unit acquired the property for the purpose of slum  
21 clearance or blight elimination.

**BILL**

1 (e) The local governmental unit acquired the property through escheat.

2 (f) The local governmental unit acquired the property using funds appropriated  
3 under s. 20.866 (2) (ta) or (tz).

4 (3) EXCEPTIONS. (a) Subsection (2) does not apply with respect to <sup>✓ environmental pollution or</sup> a discharge  
5 of a hazardous substance caused by any of the following:

6 1. An action taken by the local governmental unit.

7 2. A failure of the local governmental unit to take appropriate action to restrict  
8 access to the property in order to minimize costs or damages that may result from  
9 unauthorized persons entering the property.

10 3. A failure of the local governmental unit to sample and analyze unidentified  
11 substances in containers stored aboveground on the property.

12 4. A failure of the local governmental unit to remove and properly dispose of,  
13 or to place in a different container and properly store, any hazardous substance  
14 stored aboveground on the property in a container that is leaking or is likely to leak.

15 (b) Subsection (2) does not apply if, after considering the intended development  
16 and use of the property, the department determines that action is necessary to reduce  
17 to acceptable levels any substantial threat to public health or safety when the  
18 property is developed or put to that intended use, the department directs the local  
19 governmental unit to take that necessary action, and the local governmental unit  
20 does not take that action as directed.

21 (c) Subsection (2) only applies if the local governmental unit agrees to allow the  
22 department, any authorized representatives of the department, any party that  
23 possessed or controlled a hazardous substance that was discharged or that <sup>✓</sup> caused

24 <sup>environmental pollution or</sup> the discharge of a hazardous substance, and any consultant or contractor of such a  
25 <sup>environmental pollution or</sup> party to enter the property to take action to respond to the discharge.

## BILL

1 (d) Subsection (2) does not apply to property described in sub. (2) (f) unless the  
2 local governmental unit enters into an agreement with the department to ensure  
3 that the conditions in pars. (a) and (b) are satisfied.

4 (e) Subsection (2) does not apply to any solid waste facility or waste site that  
5 was operated by the local governmental unit or was owned by the local governmental

6 unit while it was operated ~~to a municipal waste landfill, as defined in s. 289.01(22),~~  
7 ~~or to an approved facility.~~

8 (f) Subsection (2) does not apply to a solid waste facility that was licensed under  
9 s. 289.30 or s. 144.44, 1993 stats.

10 (g) Subsection (2) does not apply to property at which the local governmental  
11 unit disposed of waste that caused <sup>environmental pollution or</sup> a discharge of a hazardous substance at the  
12 property.

13 (h) Subsection (2) does not apply to waste generated on the property by the local  
14 governmental unit <sup>or its agents,</sup> or its contractors.

15 (i) Subsection (2) does not apply if the local governmental unit undertakes or  
16 authorizes construction on the property without the approval of the department or  
17 if the local government unit undertakes an activity that interferes with a closed solid  
18 waste facility or waste site and that causes a threat to public health, safety, or  
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21 governmental unit acquired the property, the department imposed requirements  
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**BILL**

1 (k) Subsection (2) does not exempt a local governmental unit from land use  
2 restrictions *required by the department, including those* that are necessary to prevent damage to a cap over waste on the property  
3 or to otherwise prevent uses of the property that *may* cause a threat to public health or  
4 safety.

5

(END)

*ONote*

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

LRB-1288/2dn

RCT: ^:....

JLD

Karen Asbjornson:

This is a redraft of the proposal exempting local governmental units from solid waste management standards under some circumstances.

DNR asked for confirmation that this proposal would not preclude a local governmental unit from eligibility for the spill law liability exemption. In my opinion, there is nothing in this draft that would affect eligibility for the spill law exemption.

DNR also raised the issue of whether proposed s. 292.23 (3) (g) is redundant because of proposed s. 292.23 (3) (e). I think that proposed s. 292.23 (3) (g) would apply to a situation in which the local governmental unit disposed of waste at a solid waste facility operated by someone else and that it is not redundant. Let me know if proposed s. 292.23 (3) (g) should be deleted from the draft.

Please contact me with any questions or redraft instructions.

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E-mail: becky.tradewell@legis.state.wi.us

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

LRB-1288/2dn  
RCT:jld:pg

March 29, 2005

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## 2005 BILL

1 AN ACT *to create* 292.23 of the statutes; **relating to:** exempting local  
2 governmental units from solid waste management standards with respect to  
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### *Analysis by the Legislative Reference Bureau*

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 property acquired in specified ways, such as through tax delinquency proceedings and condemnation.

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**BILL**

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**BILL**

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**BILL**

1 consultant or contractor of such a party to enter the property to take action to respond  
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