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☞ (FORM UPDATED: 08/11/2010)

## WISCONSIN STATE LEGISLATURE ... PUBLIC HEARING - COMMITTEE RECORDS

### 2005-06

(session year)

### Senate

(Assembly, Senate or Joint)

### Committee on Judiciary, Corrections and Privacy...

#### COMMITTEE NOTICES ...

- Committee Reports ... **CR**
- Executive Sessions ... **ES**
- Public Hearings ... **PH**

#### INFORMATION COLLECTED BY COMMITTEE FOR AND AGAINST PROPOSAL

- Appointments ... **Appt** (w/Record of Comm. Proceedings)
- Clearinghouse Rules ... **CRule** (w/Record of Comm. Proceedings)
- Hearing Records ... bills and resolutions (w/Record of Comm. Proceedings)
  - (**ab** = Assembly Bill)                      (**ar** = Assembly Resolution)                      (**ajr** = Assembly Joint Resolution)
  - (**sb** = Senate Bill)                              (**sr** = Senate Resolution)                              (**sjr** = Senate Joint Resolution)
- Miscellaneous ... **Misc**

\* Contents organized for archiving by: Stefanie Rose (LRB) (July 2012)

**JOHN M. ANTARAMIAN**  
**MAYOR**



*CITY OF KENOSHA*  
625 - 52nd Street  
Kenosha, Wisconsin 53140  
(262) 653-4000  
Fax (262) 653-4010

**Testimony of the Honorable John Antaramian, Mayor of the City of Kenosha**

Mr. Chairman, members of the Committee, I come before you today both as a former colleague as well as the Mayor of my hometown, Kenosha. One of the biggest problems I have faced as a municipal elected official is the number of contaminated properties within the borders of my community.

Not only do they contribute nothing to the tax base, but these properties often cannot be redeveloped without the infusion of millions of dollars for environmental remediation. These contaminated sites also lower the value of adjacent properties and many of these sites constitute a danger to the health and safety of our mutual constituents.

Since the adoption of the Land Recycling Act in 1994, and the subsequent amendments to the state budgets in 1997, 1999 and 2001, the State of Wisconsin has made major substantive change in the statutes to promote the remediation and reuse of contaminated sites.

The primary reason that there are still over 7,000 sites with known contamination is the lack of resources for remediation despite millions of dollars in brownfield grant programs and the best efforts of DNR and the Department of Commerce.

In overruling the *City of Edgerton* decision, the Wisconsin Supreme Court in the *Johnson Controls* case clearly resolved the environmental liability issue for pre-1986 insurance policies. However, the issue of the choice of laws regarding liability remains as the largest single impediment to using insurance proceeds to remediate contaminated sites.

The adoption of Senate Bill 356 has the potential to result in a massive infusion of private resources to clean up contaminated properties across the state. By making it clear that Wisconsin law would apply to contaminated sites in Wisconsin, insurers would pay the cost of environmental cleanups without delay or litigation because Wisconsin law would clearly define the issue of liability.

Scarce governmental resources could be targeted for truly orphan sites, rather than going to properties where there was an insurance policy in effect when the contamination occurred.

The passage of this legislation would expedite the remediation and reuse of thousands of contaminated areas and return these sites to the local property tax rolls. It would also help to address the immediate threat to health and safety of the people we represent.

Today, you have an opportunity to clean up the environment, save taxpayer money, and promote economic development. Together, we can redevelop environmentally contaminated properties and put them back on the local property tax rolls. I urge you to approve this bill and to send it for consideration before the full Senate as soon as possible.

Thank you for your attention.



**BEFORE THE SENATE JUDICIARY, CORRECTIONS, AND PRIVACY COMMITTEE**

SB 356 )  
\_\_\_\_\_ )

**COMMENTS OF  
MIDWEST ENVIRONMENTAL ADVOCATES**

**October 26, 2005**



Thank you, Chairperson Zien and members of the Senate Judiciary, Corrections and Privacy Committee for the opportunity to testify today. My name is Melissa Scanlan and I am the Executive Director of Midwest Environmental Advocates, Inc., a non-profit environmental law center that provides legal and technical assistance to communities working for clean air and water. Midwest Environmental Advocates urges you to support SB 356.

Having grown up in the Fox River Valley, I am well aware of the PCB contamination that plagues that community. But the Fox River Valley represents one of about 7,000 contaminated sites in Wisconsin.

These sites can be threats to public health and safety, and are certainly an inefficient use of land as they often cannot be redeveloped to create new jobs.

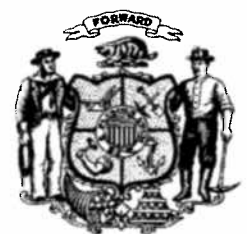
Insurance policies purchased to cover the unfortunate reality of environmental contamination should be available to clean up these sites.

And if Wisconsin law applies to interpret these policies, it may provide a vehicle to require insurance companies to cover these claims. That means that money will be directed more quickly to clean up Wisconsin's land and water, protect public health, and encourage job growth.

I encourage you to vote in favor of SB 356.



# WISCONSIN STATE LEGISLATURE



CHAIR:  
Energy, Utilities and  
Information Technology Committee

MEMBER:  
Joint Committee on Finance  
Joint Committee on Audit

**ROBERT L. COWLES**  
Wisconsin State Senator • 2nd Senate District



**Wisconsin First/Choice of Law Act - SB 356**  
**Senate Committee on Judiciary, Corrections and Privacy**  
**Testimony Submitted by State Senator Robert Cowles**  
**October 26, 2005**

Good Morning.

Thank you for the opportunity to provide testimony on Senate Bill 356, a very simple bill that is of great significance to every citizen in the Fox Valley.

SB 356 is an important bill for the papermaking industry, from both an economic development perspective and an environmental perspective.

Wisconsin is the number-one papermaking state in the nation and has been the leader for 50 years.

The industry employs approximately 40,000 men and women -- which represent one in every 12 manufacturing jobs in Wisconsin -- with annual payroll of over 2.5 billion dollars.

Papermakers recognize they have a legal obligation to participate in cleaning up the Fox. But before that process can move into high gear, it is critical that legislation clarifies the insurance industry's obligation to cover damages of general liability policyholders -- who in this case are the papermakers.

The paper companies involved have already invested \$130 million in the cleanup effort and are prepared to assume additional responsibility when their insurance companies honor their obligations under the insurance policies they have purchased.

The bill is actually very simple. It says that claims made under a general liability policy from pollution in Wisconsin are to be governed by Wisconsin law. That's it.

Passing SB 356 means the process will be streamlined and cleanup projects can move forward faster, and that means our communities benefit. It also means the papermaking industry in Wisconsin will be able to put its resources toward meeting tomorrow's challenges and opportunities rather than getting bogged down in costly and lengthy litigation. Insurers will certainly argue to use laws in other states in an effort to deny insurance coverage.

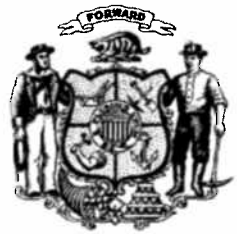
SB 356 also helps protect local governments in the Fox Valley that have the same type of insurance policies as paper companies. Passage of this bill will help streamline the process and use Wisconsin environmental law. I know we have some local officials here today who will address this in more detail.

Thank you for holding this hearing. I ask for your support of this bill, which I believe provides an opportunity to speed up the process, clean up the Fox River and usher in a new generation of activity on our great river.

Thank you.



# WISCONSIN STATE LEGISLATURE



# MEMORANDUM

TO: Senator Dave Zien – Chairman  
FR: Brian Deschane - Clerk  
DT: October 26, 2005  
RE: Agenda for Committee hearing on October 26, 2005

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The committee will hold a public hearing on the following items at the time specified below:

Wednesday, October 26, 2005  
10:00 AM  
201 Southeast

The following is an agenda for today's committee hearing:

## **Welcome all committee members and make introductions.**

I. Will the Senate Committee on Judiciary, Corrections and Privacy and the Assembly Committee on Criminal Justice please come to order.

II. Roll call - **CLERK CALL THE ROLL**

III. Purpose of holding hearing.

▪ **SB 356**

IV. Public testimony.

- Limit testimony to 5 minutes per speaker.
- Ensure testimony is germane to topic.
- Summarize/limit redundant testimony.

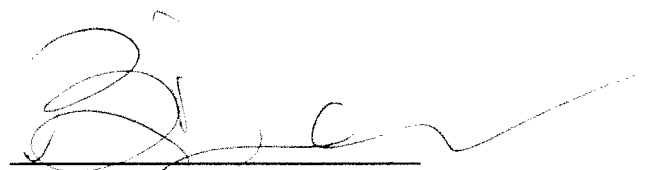
### **Senate Bill 356**

Relating to: choice of law in cases involving environmental claims under general liability insurance policies.

By Senators A. Lasee, Cowles, Wirch, Roessler and Coggs.

V. Committee discussion/actions.

VI. Adjournment— 1:00pm



Brian Deschane, Committee Clerk



POTENTIAL WITNESSES IN SUPPORT OF SB 356

Sen. Lasee

Sen. Cowles

Sen. Roessler

~~Sen. Wirch (staff)~~

~~Sen. Coggs (staff)~~

1 Ed Huck (John Antaramian)

3 Paul Karch and Mickey Thompson (Appleton Papers)

4 Randy Paar (Arjo Wiggins)

2 Melissa Scanlan (Midwest Environmental Advocates)

7 George Meyer (Wisconsin Wildlife Federation)

5 David Kleisner (Wisconsin Paper Council)

3 Tom Nelson (Wisconsin Realtors Association)

8 Keith Rappale (Clean Wisconsin)

Mark Huenemann (CNH)

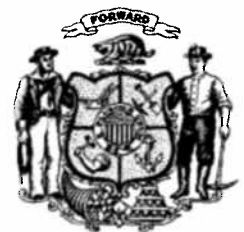
10 Ron Ragatz (Arjo Wiggins)

6 Jeff Fern (for John Cappy, President of Appleton Coatings Inc.)

a  
Craig  
Peterson for



# WISCONSIN STATE LEGISLATURE



STATE OF WISCONSIN LEGISLATURE  
BEFORE THE  
SENATE JUDICIARY, CORRECTIONS AND PRIVACY COMMITTEE

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STATEMENT OF  
WISCONSIN ATTORNEY GENERAL PEG LAUTENSCHLAGER  
IN THE MATTER OF 2005 SB 356 (LRB-3650/1)

October 26, 2005

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INTRODUCTION

Thank you for the opportunity to comment on this bill. As Wisconsin's Attorney General, I believe it is in the best interest of Wisconsin's businesses, municipalities, taxpayers and environment. I strongly urge your support for SB 356.

SB 356 merely provides that Wisconsin law should be applied in environmental insurance disputes in cases where the policy is silent as to the applicable governing law. Passage of this bill will eliminate years of expensive litigation over a procedural issue and allow a court to resolve promptly the insurance dispute applying Wisconsin law to the substantive issues.

By simplifying the choice of law a court is to apply, insurance companies and environmental policy holders will have a simple, consistent framework in place in which to evaluate a potential insurance dispute. Rather than spend years and millions of dollars litigating an arcane issue, this bill will hopefully quicken the pace at which contaminated properties throughout this state are cleaned up, redeveloped and put back on the local property tax rolls.

In sum, SB 356 is sound policy and should be passed into law promptly.

Thank you for the opportunity to comment on this bill.





A large, handwritten mark resembling a stylized letter 'Z' or a signature is located in the top right corner of the page.

**Remarks in Support of SB 356**  
**Statement of Anne Sayers, Program Director**  
**October 26, 2005**

The Wisconsin League of Conservation Voters urges you to support SB 356.

Wisconsin's economy is changing, with many of our traditional manufacturing industries closing up shop. Unfortunately, as plants close, Wisconsin communities are often left with sites that are contaminated with hazardous chemicals. These contaminated sites threaten human health, harm our natural resources, lower property values and delay redevelopment for new industries.

There are over 7,000 known sites across Wisconsin that are contaminated and have not been remediated, mainly because of lack of funds. While some public money is available for clean-up of these contaminated areas, it is not nearly enough to remediate all the sites. In addition, the liability for these sites rests with the companies who polluted the site and their insurance companies, not with Wisconsin taxpayers.

Unfortunately, insurance companies often use the courts to avoid their responsibility for clean-up. While the Wisconsin Supreme Court has determined that insurance companies must pay for environmental damage if a valid policy is in force at the time of the contamination, out-of-state insurers often argue that other states' laws apply.

When land and water are contaminated by toxic substances, they should be cleaned up to protect the health of Wisconsin citizens. Wisconsin insurance claims involving environmental contamination should not be denied because of legal loopholes from other states. We need to put Wisconsin laws first to make sure contaminated lands and waters are cleaned up. SB 356 will help do just that.

In order to facilitate clean up for *both* land and water, we urge you to amend SB 356 from covering claims only for navigable waters to cover claims for land and water.

The passage of this legislation will expedite the remediation and reuse of thousands of contaminated areas, returning these sites to the local property tax rolls and eliminating the threat to the health and safety of Wisconsin citizens.

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The Wisconsin League of Conservation Voters is a nonprofit, nonpartisan organization dedicated to electing conservation leaders to the state legislature and encouraging lawmakers to champion conservation policies that effectively protect Wisconsin's public health and natural resources.

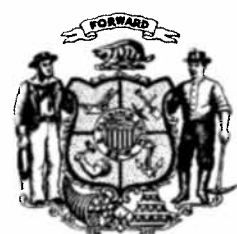
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**Educate • Advocate • Evaluate**

306 E. Wilson Street #2E, Madison, WI 53703 • Tel. (608) 661-0845 • Fax (608) 260-9799  
info@conservationvoters.org • www.conservationvoters.org

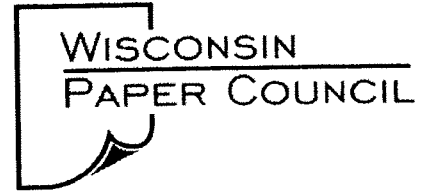


WISCONSIN STATE LEGISLATURE



*Martin Z. ...*

*Z*



MEMORANDUM

October 26, 2005

To: Senate Committee on Judiciary, Corrections and Privacy  
From: Edward J. Wilusz  
Vice President, Government Relations  
Subject: Senate Bill 356

*largest margin  
was only 3 min  
passed*

Senate Bill 356 provides that Wisconsin law will be applied in cases involving environmental claims under general liability insurance policies.

The Wisconsin Paper Council supports Senate Bill 356.

The paper industry in Wisconsin is under tremendous competitive pressures and is struggling to successfully compete in the global marketplace. To further compound our industry's efforts to remain economically healthy, several companies are facing hundreds of millions of dollars in cleanup costs relating to the Fox River.

The issue of choice of laws, often referred to as forum shopping, could be a major impediment for companies seeking to use insurance resources to remediate contaminated sites. This legal tactic should not be allowed to create another hurdle that Wisconsin companies must jump over in order to receive insurance proceeds from policies paid for, and in place, during the time of the claim. SB 356 would prohibit this tactic and make it more likely that insurance resources can be brought to bear when cleaning up contaminated sites in Wisconsin.

We should not have the law of other states dictating the terms of cleanup costs here in our state. Wisconsin law should apply.

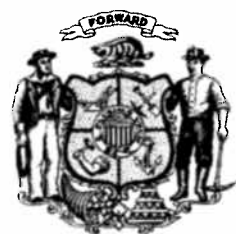
We urge your support for Senate Bill 356.

*E. J. Wilusz*

rg



WISCONSIN STATE LEGISLATURE







# STATE SENATOR DAVE ZIEN

**CHAIRPERSON**

COMMITTEE ON JUDICIARY, CORRECTIONS AND PRIVACY

**VICE CHAIRPERSON**

COMMITTEE ON VETERANS, HOMELAND SECURITY, MILITARY AFFAIRS, SMALL BUSINESS AND GOVERNMENT REFORM

**MEMBER**

COMMITTEE ON JOB CREATION, ECONOMIC DEVELOPMENT AND CONSUMER AFFAIRS

SENTENCING COMMISSION

COUNCIL ON TOURISM

JUDICIAL COUNCIL

JOINT LEGISLATIVE COUNCIL

BUILDING COMMISSION

**PRESIDENT PRO TEMPORE**

November 9, 2005

The Honorable Alan Lasee  
PO Box 7882  
Madison, WI 53707

Mary Panzer  
635 Tamarack Drive  
West Bend, WI 53095

Eric Englund  
Wisconsin Insurance Alliance  
44 E Mifflin Street  
Madison, WI 53703

Dear Senator Lasee, Mary and Eric:

Re: SB 356

This letter is in follow-up to the public hearing on SB 356.

As you are aware, issues regarding conflicts of law do not regularly come before us, and the public testimony raised a number of unanswered questions.

In order for the Senate Committee on Judiciary, Corrections and Privacy to further deliberate on this bill, I would appreciate your response to the items below.

## CONCERNS FOR SENATOR LASEE AND OTHERS SUPPORTING THE BILL

- 1) I understand that the amendment proposed by Senator Lasee would expand the scope of the bill to apply to Brownfields throughout Wisconsin. I further understand that this extension is based upon the sense that such an extension will expedite Brownfields clean ups. I would appreciate your providing documentation as to Brownfields clean ups that are currently being delayed because of the inability to resolve conflicts of law issues.
- 2) I understand that one of the primary reasons for your support of this legislation is that it will expedite court proceedings in environmental clean up matters. The testimony was unclear as to the time/effort courts use in disposing of conflicts of law issues. I would appreciate your providing us with examples where the resolution of conflicts of law issues in environmental clean up claims in Wisconsin has significantly retarded the resolution of those claims.



OFFICE: P.O. BOX 7882 • STATE CAPITOL • MADISON, WI 53707-7882  
PHONE (608) 268 7511 • FAX (608) 267 6794 E-MAIL SEN.ZIEN@LEGIS.STATE.WI.US • Website: WWW.LEGIS.STATE.WI.US  
SENATE DISTRICT: 505 S. DEWEY STREET, SUITE 214 • EAU CLAIRE, WI 54702 • PHONE: (715) 834 7723

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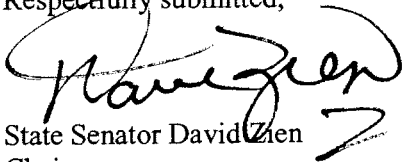


CONCERNS FOR THOSE OPPOSED

- 1) You provided testimony that passage of this legislation will encourage forum shopping. Kindly provide examples.
- 2) You have indicated that the Wisconsin conflicts of law rule is consistent with a majority of other jurisdictions; please provide definitive research on this point.
- 3) Please respond to question # 2 above for Senator Lasee and those supporting the bill.
- 4) You claim that SB 356 is a mulligan for the failed attempt to pass All Sums legislation; why is this choice of law legislation not worthy of a stand-alone bill?

Time is of the essence, I would appreciate your earliest response to these inquires.

Respectfully submitted,

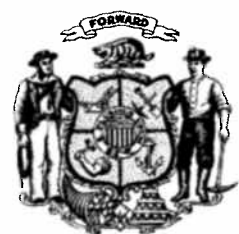


State Senator David Zien  
Chairman  
Committee on Judiciary, Corrections and Privacy

Cc: State Senator Carol Roessler  
State Senator Lena Taylor  
State Senator Glenn Grothman  
State Senator Fred Risser



# WISCONSIN STATE LEGISLATURE





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November 16, 2005

State Senator Dave Zien  
President *Pro Tempore*  
P.O. Box 7882  
State Capitol  
Madison, Wisconsin 53707-7882

Re: SB 356

Dear Senator Zien:

This letter responds to yours dated November 9, 2005 and, specifically, answers those questions which you have posed to the parties supporting passage of SB 356.

Response To Question 1.

You are correct that the amendment proposed by Senator Lasee would expand the scope of SB 356 to apply to all insurance coverage disputes pending in Wisconsin involving environmental sites in Wisconsin. That expansion would include all Brownfield sites in Wisconsin that are or become the subject of insurance coverage litigation.

There currently are at least 7,000 Brownfield sites in Wisconsin which are located in all State Senate districts of this state.<sup>1</sup> For those disputes that are or become

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<sup>1</sup> Brownfields are defined as "abandoned, idle, or underused industrial or commercial facilities or sites, the expansion or redevelopment of which is adversely affected by actual or perceived environmental contamination." Presently, the Wisconsin Department of Natural Resources does not keep a list of "brownfields" properties, as this involves a site-by-site evaluation of thousands of properties. Rather, the Wisconsin Department of Natural Resources maintains a large data base of properties where the public has notified the Wisconsin Department of Natural Resources that contamination was discovered at the property. Brownfield sites are a large subset of that data base.

See the Wisconsin Department of Natural Resources' Bureau for Remediation and Redevelopment (BRRTS) data base, at <http://botw.dnr.state.wi.us/botw/Welcome.do>. As of July 1, 2005, the Wisconsin Department of Natural Resources records indicate that there were 6,135 properties that needed further environmental work. Also, the Wisconsin

the subject of coverage litigation, SB 356 would expedite the disposition of the threshold issue of choice of law enabling the Courts to move directly to the substantive issues presented by the case. SB 356 also would encourage insurers to contribute to the clean-up of the Brownfield sites even before coverage litigation is started by strengthening the policyholders' position in negotiation with their insurers. It is impossible to estimate the additional financial resources for environmental clean-up that will be made available through SB 356 without months of investigation into the facts related to each of the Brownfield sites, including the insurance policies which insure property damage at those sites.

Response To Question 2.

Examples of the delay caused by a choice of law dispute in an environmental coverage litigation are limited in Wisconsin because the decision which gave rise to the favorable Wisconsin law, *Johnson Controls v. Employers Insurance of Wausau*, was decided only two years ago. Accordingly, we have surveyed reported case law from around the nation. A chart listing examples of environmental cases is attached to this letter as Exhibit A. Our research shows that, on average, insureds wait 38 months from the filing of a declaratory judgment action until a decision on choice of law is made. When appeals are factored in, this delay increases to 61 months.

In addition, the following cases discuss choice of law determinations related to Wisconsin environmental sites:

- *Crucible Materials Corp. v. Aetna Cas. & Sur. Co.*, 228 F.Supp.2d 182 (N.D.N.Y. 2001) involved the Trent Tube Site, 32 acres in East Troy, Wisconsin. The insurance coverage action was filed June 7, 1996; the choice of law decision (applying NY law) was made on July 6, 2001, more than 5 years later.
- *Curran Composites, Inc. v. Liberty Mut. Ins. Co.*, 874 F.Supp. 261 (W.D. Mo. 1994) involved a resin production plant in Saukville, Wisconsin. The coverage action was filed on November 4, 1993; the choice of law decision was made on December 1, 1994.
- *Amcast Indus. Corp. v. Affiliated FM Ins. Co.*, 221 Wis.2d 145, n. 14 (Wis. App. 1998) involved an aluminum die casting facility in

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Department of Natural Resources records indicate that approximately 400 new "sites" are reported each year that require environmental work.

In addition, the Department of Natural Resources maintains a historic list entitled the "Registry of Waste Disposal Sites," which contains a listing of approximately 4,000 historic disposal sites. This electronic spreadsheet (PDF) can be downloaded at: <http://dnr.wi.gov/org/aw/rr/brrts/databases.htm>.

Cedarburg, Wisconsin. The case was filed on September 21, 1992. The insurance companies raised choice of law on appeal. The issue was declared moot.

- *Fortier v. Flambeau Plastics Co.*, 164 Wis.2d 639 (Wis. App. 1991) involved contamination at the City of Baraboo's landfill. The action was filed in 1985. Insurers were added to case by July 29, 1988. After the Wisconsin Supreme Court's June 19, 1990 decision in *Just v. Land Reclamation Ltd.*, 155 Wis.2d 737 (1990), the court held on September 19, 1991, that Wisconsin law applied to eight of the nine insurers in the case. Accordingly, there was a three year delay on the resolution of choice of law.
- *Spic & Span Inc. v. Continental Cas. Co.*, 203 Wis.2d 118 (Wis. App. 1996) involved contamination in California. It was filed in Wisconsin in September, 1989. The lower court held on November 16, 1992, that Wisconsin law would apply. Again, it took three years to obtain a choice of law determination.

The burden on courts dealing with choice of law issues is on the rise. The total number of choice of law decisions (state and federal courts) rose by 74.7% between 1987 and 2004. Symeonides, Symeon. "Choice of Law in the American Courts in 2004," 52 American Journal of Comparative Law, 919, 923 (Fall 2004). The rise in state courts was most pronounced, with the number of choice of law decisions growing by 94.5%.

The cost of sorting out choice of law issues, under the current indeterminate rules, both in terms of money and delaying settlement, is real and growing. As one commentator noted:

Parties pay dearly for the administrative chaos that accompanies the present array of indeterminate choice-of-law criteria. When litigation begins, the parties must bear the costs of litigating choice of law. The grab-bag of criteria proffered by section 6 of the Second Restatement makes this litigation battle an intellectually enjoyable one for the lawyers, but surely not for the clients who must pay their fees. ...The indeterminacy of choice of law also impedes early settlement of disputes, as the parties cannot confidently estimate the likely outcome of the case.

Gottesman, Michael, "Adrift on a Sea of Indeterminacy," 75 Indiana Law Journal 527, 528-29 (Spring 2000).

#### Questions Posed To The Insurers.

1. Forum Shopping.

The insurers' argument at the hearing that SB 356 would encourage forum shopping was disingenuous. As the insurers well know, forum shopping already exists. As noted at the hearing, the dispute between Northern State Power ("NSP") and its insurers presents an example. While NSP was negotiating with its insurers for coverage over environmental sites in Wisconsin, one of its insurers brought an action in Minnesota seeking to avoid the application of Wisconsin law. NSP was forced to file a coverage action in Wisconsin. *Northern State Power Company v. Admiral Insurance Company*, 03 CV 753 (Eau Claire County Circuit Court). On January 15, 2004, the insurers filed a motion to stay the Wisconsin action pending resolution of their competing Minnesota action. That motion was denied on April 5, 2004. On July 26, 2004, NSP filed a motion seeking a declaration that Wisconsin law applied. On September 23, 2004, there was a hearing on choice of law, but no decision was rendered. The docket sheet fails to indicate that any decision on choice of law has been made. Rather, discovery is ongoing. This case demonstrates not only that forum shopping is already being practiced by the insurance industry, but that the absence of a clear Wisconsin rule on choice of law is causing delay and unnecessary expense.<sup>2</sup>

In fact, passage of SB 356 could reduce forum shopping. In the choice of law analysis advocated by the insurance industry, one of the factors to be considered is the public interest of the state in which the contaminated site is located. Under that analysis, if the insurers engaged in forum shopping by filing a declaratory judgment action in another state, that forum would have to consider the strong public policy expressed by SB 356 that Wisconsin law should be applied to insurance for Wisconsin property damage. Thus, SB 356 would encourage other states to apply Wisconsin law to an environmental coverage action involving Wisconsin property. This would discourage forum shopping by the insurance industry.

## 2. Consistency Of Choice Of Law Rules.

At the hearing, representatives of the insurance industry argued that choice of law rules were "evolving" into a complicated multi-factored and fact-intensive inquiry. It is doubtful that such an "evolution" is a positive development, given the inherent cost and delay required by the insurance industry's choice of law analysis. Moreover, the insurance industry ignored the numerous exceptions that state legislatures around the country have written into their laws. Attached to the written committee testimony of Randy Paar were examples of 17 such legislative exceptions.

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<sup>2</sup> The NCP litigation involves over 35 insurance companies. It is an example of why the choice of law analysis advocated here by the insurance industry, involving a fact specific inquiry into the details of the negotiation process for each insurance policy, is expensive and causes delay, particularly in the context of environmental coverage litigation.

State Senator Dave Zien  
November 16, 2005  
Page 5

Conclusion

Thank you for your thoughtful consideration of SB 356. For the reasons stated above and at the Committee hearing, I urge you to vote in favor of the legislation.

Very truly yours,



Peter Peshek

cc: State Senator Alan Lasee  
State Senator Carol Roessler  
State Senator Lena Taylor  
State Senator Glenn Grothman  
State Senator Fred Risser



EXHIBIT A

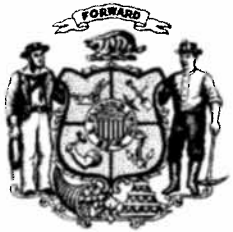
	Case Name	Juris- diction	DJ Filed	Choice Of Law Decision Reached At Trial Level	Time In Month s	Final Appeal	Total Time In Months
1	<i>Employers Mut. Cas. Co. v. Lennox Intern., Inc.</i> , 375 F. Supp.2d 500 (S.D.Miss., Jun 17, 2005)	MS	3-Dec- 03	17-Jun-05	18	n/a	18
2	<i>Maryland Cas. Co. v. Continental Cas. Co.</i> , 332 F.3d 145 (2d Cir., Jun 13, 2003)	NY	1-Jan- 88	8-Jun-92	42	13-Jun- 03	185
3	<i>Arrow Electronics, Inc. v. Federal Ins. Co.</i> , 2002 WL 172662 (Conn. Super., Jan 07, 2002)	CT	11-Jan- 00	7-Jan-02	24	n/a	24
4	<i>Nationwide Mut. Ins. Co. v. Richardson</i> , 270 F.3d 948, (D.C.Cir., Nov 02, 2001)	DC	1-May- 99	26-Jul-00	15	2-Nov- 01	30
6	<i>Emerson Elec. Co. v. Aetna Cas. &amp; Sur. Co.</i> , 319 Ill.App.3d 218, 743 N.E.2d 629 (Ill.App. 1 Dist., Jan 16, 2001)	IL	1-Mar- 97	10-Dec-98	21	16-Jan- 01	47
7	<i>Employers Ins. of Wausau v. Recticel Foam Corp.</i> , 716 N.E.2d 1015 (Ind.App., Sep 30, 1999)	IN	1-Oct- 94	6-Jan-97	27	30-Sep- 99	60
8	<i>Travelers Indem. Co. v. Summit Corp. of America</i> , 715 N.E.2d 926 (Ind.App., Aug 30, 1999)	IN	23-Jun- 95	21-Jul-97	25	30-Aug- 99	50
9	<i>Commercial Union Ins. Co. v. Porter Hayden Co.</i> , 698 A.2d 1167 (Md.App., Aug 29, 1997)	MD	21-Sep- 90	14-Feb-92	17	29-Aug- 97	83
10	<i>In re Combustion, Inc.</i> , 960 F. Supp. 1051 (W.D.La., Jan 10, 1997)	LA	1-Jun- 95	10-Jan-97	19	n/a	19

	Case Name	Jurisdiction	DJ Filed	Choice Of Law Decision Reached At Trial Level	Time In Months	Final Appeal	Total Time In Months
11	<i>NL Industries, Inc. v. Commercial Union Ins. Cos.</i> , 938 F. Supp. 248 (D.N.J., Aug 13, 1996)	NJ	30-May-90	23-May-96	72	n/a	72
12	<i>Canron, Inc. v. Federal Ins. Co.</i> , 918 P.2d 937 (Wash.App. Jul 08, 1996)	WA	19-Sep-91	1-May-94	31	8-Jul-96	58
13	<i>American Mut. Liability Ins. Co. v. Beatrice Cos, Inc.</i> , 924 F. Supp. 861 (N.D.Ill., Apr 02, 1996)	IL	1-Jan-86	2-Apr-96	123	n/a	123

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# WISCONSIN STATE LEGISLATURE



## TESTIMONY OF JEFFREY M. FERN

My name is Jeffrey M. Fern. I am here representing John M. Cappy, President and Chief Executive Officer of Appleton Coated, LLC. We urge the committee to vote in favor of SB 356.

Appleton Coated owns and operates a coated paper manufacturing plant located in Combined Locks, Wisconsin. The corporate headquarters is in Kimberly, Wisconsin. Appleton Coated is a premier manufacturer of high-end coated papers marketed in North America under the brand name Utopia.

Appleton Coated invested \$40 million to expand the coated manufacturing capability of its Combined Locks plant. At the same time its investing in its physical facilities, it is also investing in the training of approximately 100 employees. We are working hard to keep our Wisconsin-based company competitive in the global economy.

I am speaking in support of SB 356 because it helps employers who want to invest in Wisconsin and create and maintain good jobs for Wisconsin employees. Appleton Coated and its employees are part of a local Wisconsin community. We care about Wisconsin's natural resources and recognize that there are contaminated sites in Wisconsin that must be cleaned up to preserve our natural resource heritage.

One of the resources for companies struggling with the financial burden of cleaning up old contaminated sites is insurance. Companies that paid premiums for protection against unforeseen liabilities need that insurance protection when faced with the often large cost of environmental clean up.

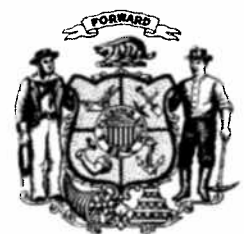
We support SB 356 because it assures that when Wisconsin judges are deciding claims for insurance coverage by Wisconsin-based companies for environmental

contamination in Wisconsin, that they will be deciding those cases under Wisconsin law. Wisconsin has strong law to protect and clean up its environment. When businesses are called upon to clean up contaminated sites under those Wisconsin laws, their claims for insurance coverage should likewise be decided under Wisconsin law. It's a common sense rule that will help Wisconsin employers be actively involved in cleaning up the environment and still continue to create and maintain good jobs in Wisconsin.

I urge you to vote in favor of SB 356.



# WISCONSIN STATE LEGISLATURE



Testimony before the Wisconsin Senate Committee Judiciary, Corrections and Privacy

Re SB 356 – Application of Wisconsin law in cases involving environmental claims under general liability insurance policies

Mr. Chairman and committee members, I appreciate the opportunity to testify regarding this bill.

I am Mark Huenemann, Director of State Government Affairs for Case New Holland, based in Racine. I am here today representing neither a paper company nor an insurance company, but rather an equipment manufacturing company. Case New Holland is an old line Wisconsin manufacturer, that today is one of the largest manufacturers of tractors, combines and tractor loader backhoes in the world, with over 16,000 employees, and doing business in over 160 countries.

We are the second largest employer in Racine. We operate a manufacturing plant that employs nearly 500 people, and in other functions related to that equipment manufacturing we employ over 1,000 additional people. These are good jobs, with good benefits, and the majority are well paid white color jobs.

Case New Holland has a long history in Racine County, beginning when J I Case formed his company in Rochester in 1842. We have occupied a site on the Root River since 1844, which for many years was used for manufacturing. I am sure you all can understand that I would not want to speculate about what might have occurred on that site that long ago. We also operated a 1,000,000 square foot manufacturing plant in Racine that built tractors for well over 80 years; a plant located just a couple hundred yards from Lake Michigan. So you can see we have an interest in this subject.

As a manufacturing company, we watch very closely the business climate in the state, and that includes the legal climate, taxes, and the support available

from the state government to retain jobs here. About four years ago, we faced a decision about staying in Racine County, versus leaving the state, and we made a non-economic decision to stay in Wisconsin.

Let me repeat that: we made a non-economic decision to stay. Wisconsin did not necessarily present the best value proposition, including concerns we had about business climate. We are rather old fashioned about things like company roots, and our 160-year history in this state, and we chose to stay.

We are very aware of, and carefully watch, the business climate in the state, and that includes thinking about things like "what if at some point in the future, with our long history by the Root River, and by Lake Michigan, what if we end up in a circumstance similar to what the paper companies are facing today? Will the State of Wisconsin have the rules in place to bring insurance companies to the table to get situations like this resolved, and cleaned up, or will we face years of costly litigation and delay?" It is all part of the total picture we have to look at when we consider our continued presence in Wisconsin.

One of the biggest problems we face in Wisconsin is the loss of manufacturing jobs that pay family supporting wages. Together with the business community, our representatives in government must do everything they can to help keep existing jobs as well as attracting new ones to Wisconsin.

Former manufacturing sites are invariably contaminated with environmental pollutants. The way these sites are addressed can also have implications for future development.

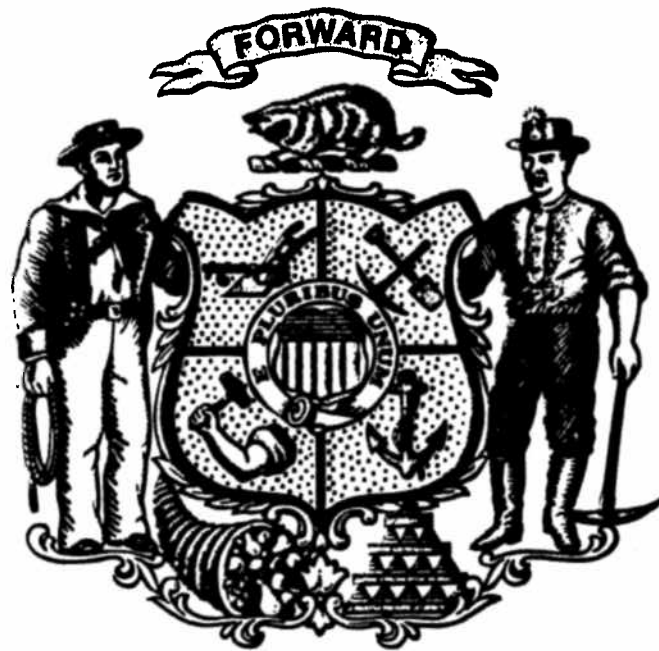
Fortunately, the Wisconsin Supreme Court has clearly resolved that insurance companies are liable for paying for this environmental damage if there was a valid policy in force at the time of the contamination. However, because most of the insurers who are liable are out-of-state, the issue of which state's laws apply poses the largest single impediment to using insurance proceeds to remediate contaminated sites.

**It may seem common sense to you that Wisconsin law should apply to contaminated sites in Wisconsin, and Senate Bill 356 does exactly that.**



The passage of Senate Bill 356 would be a signal to the business community that Wisconsin wants to retain existing manufacturers and be able to attract new development in a competitive global economy. I urge your support for this legislation.

Thank you for your consideration.



## TESTIMONY OF PAUL KARCH

My name is Paul Karch. I am Vice President of Administration for Appleton Papers. I am submitting this testimony in support of SB 356.

Appleton Papers is a 100 percent employee-owned company based in Appleton, Wisconsin. It has 1,800 employee owners who are Wisconsin citizens.

Appleton Papers is headquartered in Appleton, Wisconsin and employs nearly 1,300 people in the Appleton area. In addition to facilities in the Appleton area, Appleton Papers also owns facilities in Portage, Merrill, Rhinelander and Milton, Wisconsin. Those operations also employ Wisconsin workers.

The business was founded in Appleton in 1907 and has been a mainstay of the community for nearly 100 years. With deep roots in the Fox Valley, the employee owners of Appleton Papers have a strong interest in seeing the long-standing issues about PCB contamination in the Fox River resolved. The PCB contamination in the Fox River poses a financial impact for Appleton Papers. Just as important, the local employee owners of Appleton Papers value the Fox River as an important local natural resource. We are all interested in resolution of the problem without unnecessary delay.

Appleton Papers is doing its part to help solve the problem. Four years ago, it entered into a consent order under which tens of millions of dollars have already been paid to the government. Much more remains to be done and Appleton Papers is actively engaged with the government in that process.

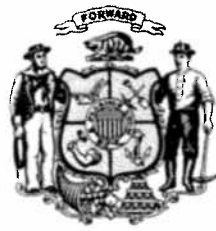
However, Appleton Papers needs help from its insurers. It needs its insurers to live up to the promises that they made when they accepted premiums for insurance.

I urge this committee to vote in favor of SB 356 because it will help expedite the resolution of insurance claims not only for the Fox River but for many other environmental sites in Wisconsin. The bill doesn't change any substantive rights under the insurance policies. Those issues can and will be sorted out by the courts.

Rather, the bill simply assures that in deciding those issues, Wisconsin's courts will apply the law of the state of Wisconsin. Our local judges will look to the Court of Appeals and Supreme Court of Wisconsin for guidance in making their decision, rather than the courts of some other state. They will follow the public policy of Wisconsin in deciding whether there will be insurance coverage for contaminated sites in Wisconsin.

It only stands to reason that when deciding whether a Wisconsin-based company like Appleton Papers will have insurance coverage for contaminated sites in Wisconsin that a Wisconsin judge should take guidance from Wisconsin's highest court, rather than courts in other states. This same principle applies not only to the Fox River but to hundreds of contaminated sites throughout the state. I encourage the committee to vote in favor of SB 356.





**1st Senate District**  
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# Alan Lasee

## *Senate President*

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web: [www.legis.state.wi.us/senate/sen1/news/](http://www.legis.state.wi.us/senate/sen1/news/)

I appreciate the opportunity to speak to the Committee today in support of Senate Bill 356. As sponsor of the bill, I want to share my thoughts on why it is good policy.

Senate Bill 356 designed to ensure that Wisconsin law will govern insurance disputes over contaminated property in Wisconsin. Courts in other states often interpret liability insurance policies differently than Wisconsin courts. As a result, claims that are covered under Wisconsin law may not be covered under another state's law. My legislation will make sure that Wisconsin policyholders will have the benefit of Wisconsin law for claims involving contaminated property in Wisconsin.

Do not be misled by misinformation being spread by the insurance industry:

- This bill does not interfere with the contractual rights of the insurance companies. It honors choice-of-law provisions in insurance policies, including provisions that select the law of a state other than Wisconsin. The legislation applies only when a policy has no choice-of-law provision.
- Contrary to the claims of the insurance industry, most liability policies do not contain choice-of-law provisions. This allows carriers to go forum-shopping for a state whose law favors the insurance industry when a claim arises. What possible interest does Wisconsin have in having another state's law govern the outcome of insurance claims involving contaminated sites in Wisconsin?
- This bill does not intrude upon the role of the courts. It simply provides that the decisions of Wisconsin's courts will govern Wisconsin's contaminated property.

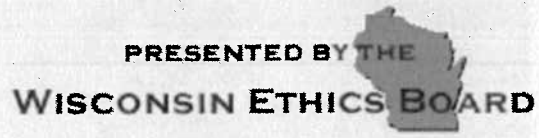
- Far from being unconstitutional, this proposed legislation is consistent with decades-old Wisconsin legislation providing for Wisconsin law to apply to claims under fire and property insurance policies. Moreover, the legislation is consistent with other Wisconsin statutes—ruled constitutional by the Wisconsin Supreme Court—that mandate the application of Wisconsin law to matters of special interest to Wisconsin residents.
- Wisconsin-based insurers insuring Wisconsin residents will not be affected by this bill, as claims under these policies are already governed by Wisconsin law. This bill affects only non-Wisconsin insurers seeking to deny Wisconsin-based claims on the basis of the law of another state.

Senate Bill 356 protects the right and interests of Wisconsin's policyholders. The insurance claims of your constituents involving environmental contamination in Wisconsin should not be denied because a court in another state ruled that the laws of New York or another state governed that policy. I hope you will join me in supporting Senate Bill 356.





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- ▶ Lobbying in Wisconsin
- ▶ Organizations employing lobbyists
- ▶ Lobbyists



as of Wednesday, October 26, 2005

**2005-2006 legislative session**  
**Legislative bills and resolutions**

(search for another legislative bill or resolution at the bottom of this page)

Text, Sponsors and Analysis  
 Status and Fiscal Estimate  
 Lobbying Effort on this item

**Senate Bill 356**

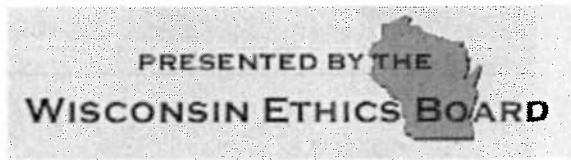
choice of law in cases involving environmental claims under general liability insurance policies.

Organization		These organizations have reported lobbying on this proposal:	Place pointer on icon to display comments, click icon to display prior comments		
Profile	Interests		Date Notified	Position	Comments
●	●	American Family Insurance Group	10/26/2005	?	
●	●	American International Group	10/7/2005	↓	
●	●	Arjo Wiggins Appleton Limited	10/17/2005	↑	
●	●	Case New Holland Inc	10/11/2005	↑	
●	●	International Paper	10/26/2005	↑	
●	●	Kenosha County	10/25/2005	↑	
●	●	Sentry Insurance Group	10/3/2005	↓	
●	●	State Farm Insurance Companies	10/10/2005	↓	
●	●	Stora Enso North America	10/7/2005	?	
●	●	Wausau Insurance (a member of the Liberty Mutual Group)	10/7/2005	↓	
●	●	Wisconsin Alliance of Cities Inc	10/26/2005	↑	
●	●	Wisconsin Association of Mutual Insurance Companies	10/12/2005	↓	
●	●	Wisconsin Federation of Cooperatives	10/25/2005	?	
●	●	Wisconsin Insurance Alliance	10/3/2005	↓	
●	●	Wisconsin Paper Council	10/6/2005	?	
●	●	Wisconsin Reinsurance Corporation	10/12/2005	↓	

Select a legislative proposal and click "go"

**House**    
**Proposal Type**     
**Proposal Number**  (enter proposal number)  
**Legislative Session**

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as of Wednesday, October 26, 2005

**2005-2006 legislative session**  
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(search for another legislative bill or resolution at the bottom of this page)

- Text, Sponsors and Analysis
- Status and Fiscal Estimate
- Lobbying Effort on this item

**Assembly Bill 222**

environmental claims under general liability insurance policies, fees related to removal of contaminated material from a navigable water, and making an appropriation. (FE)

Organization		These organizations have reported lobbying on this proposal:	Place pointer on icon to display comments, click icon to display prior comments		
Profile	Interests		Date Notified	Position	Comments
●	●	American Family Insurance Group	4/8/2005	↓	
●	●	American International Group	3/17/2005	↓	
●	●	Arjo Wiggins Appleton Limited	4/4/2005	↔	
●	●	Case New Holland Inc	8/22/2005	↑	
●	●	Clean Wisconsin Inc	4/26/2005	↔	💬
●	●	Domtar Industries Inc.	7/12/2005	↑	
●	●	Georgia-Pacific Corporation	3/18/2005	↑	
●	●	IBEW Local Union 2150	6/21/2005	↑	
●	●	Independent Insurance Agents of Wisconsin	6/3/2005	?	
●	●	Kimberly-Clark Corporation	5/22/2005	↔	
●	●	League of Wisconsin Municipalities	4/20/2005	↑	
●	●	NCR Corporation	3/24/2005	↑	
●	●	Northern States Power d/b/a Xcel Energy	4/18/2005	?	
●	●	Oneida Tribe of Indians of Wisconsin	3/29/2005	↔	
●	●	Onyx Waste Services Inc	5/5/2005	↔	💬
●	●	Operating Engineers Local #139	4/18/2005	↑	
●	●	Professional Insurance Agents of Wisconsin	6/6/2005	↓	
●	●	Sentry Insurance Group	3/17/2005	↓	
●	●	State Farm Insurance Companies	3/18/2005	↓	
●	●	Stora Enso North America	5/5/2005	↑	
●	●	Wausau Insurance (a member of the Liberty Mutual Group)	7/26/2005	↓	
●	●	Wisconsin Alliance of Cities Inc	4/22/2005	↑	
●	●	Wisconsin Association of Health Underwriters	4/29/2005	?	
●	●	Wisconsin Association of Mutual Insurance Companies	4/7/2005	↓	
●	●	Wisconsin Farm Bureau Federation	3/24/2005	↔	
●	●	Wisconsin Federation of Cooperatives	3/24/2005	↓	

●	●	Wisconsin Insurance Alliance	3/17/2005	↓	
●	●	Wisconsin Laborers District Council	6/21/2005	↑	
●	●	Wisconsin Manufacturers & Commerce	5/2/2005	?	
●	●	Wisconsin Merchants Federation	3/22/2005	↔	
●	●	Wisconsin Paper Council	3/17/2005	↑	
●	●	Wisconsin Reinsurance Corporation	4/7/2005	↓	
●	●	Wisconsin State AFL-CIO	6/20/2005	↑	
●	●	Wisconsin State Council of Carpenters	6/22/2005	↑	
●	●	Wisconsin Utilities Association Inc	3/18/2005	↔	

Select a legislative proposal and click "go"

**House**  Assembly  Senate  
**Proposal Type**  Bill  Joint Resolution  Resolution  
**Proposal Number**  (enter proposal number)  
**Legislative Session**



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