

1999 DRAFTING REQUEST

Bill

Received: **09/22/98**

Received By: **traderc**

Wanted: **As time permits**

Identical to LRB:

For: **Administration-Budget**

By/Representing: **Wong**

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

Drafter: **traderc**

May Contact: **DNR**

Alt. Drafters:

Subject: **Environment - env. cleanup**

Extra Copies:

Topic:

DOA:.....Wong - Local governmental exemption from clean-up liability

Instructions:

See Attached

Drafting History:

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Typed</u>	<u>Proofed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
/1	traderc 10/27/98	gilfokm 11/4/98	martykr 11/4/98	_____	lrb_docadmin 11/4/98		
/2	traderc 12/9/98	gilfokm 12/9/98	hhagen 12/10/98	_____	lrb_docadmin 12/10/98		Local
/3	traderc 01/13/99	gilfokm 01/14/99	ismith 01/15/99	_____	lrb_docadmin 01/15/99		Local
/4	traderc 02/3/99	gilfokm 02/3/99	ismith 02/3/99	_____	lrb_docadmin 02/3/99		Local

FE Sent For:

1999 DRAFTING REQUEST

Bill

Received: **09/22/98**

Received By: **traderc**

Wanted: **As time permits**

Identical to LRB:

For: **Administration-Budget**

By/Representing: **Wong**

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

Drafter: **traderc**

May Contact: **DNR**

Alt. Drafters:

Subject: **Environment - env. cleanup**

Extra Copies:

Topic:

DOA:.....Wong - Local governmental exemption from clean-up liability

Instructions:

See Attached

Drafting History:

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Typed</u>	<u>Proofed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
/1	traderc 10/27/98	gilfokm 11/4/98	martykr 11/4/98	_____	lrb_docadmin 11/4/98		
/2	traderc 12/9/98	gilfokm 12/9/98	hhagen 12/10/98	_____	lrb_docadmin 12/10/98		Local
/3	traderc 01/13/99	gilfokm 01/14/99	ismith 01/15/99	_____	lrb_docadmin 01/15/99		Local
FE Sent For:		1/4-2-3-99 King	IS 2/3/99	28/2F 2/3/99			

<END>

1999 DRAFTING REQUEST

Bill

Received: **09/22/98**

Received By: **traderc**

Wanted: **As time permits**

Identical to LRB:

For: **Administration-Budget**

By/Representing: **Wong**

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

Drafter: **traderc**

May Contact: **DNR**

Alt. Drafters:

Subject: **Environment - env. cleanup**

Extra Copies:

Topic:

DOA:.....Wong - Local governmental exemption from clean-up liability

Instructions:

See Attached

Drafting History:

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Typed</u>	<u>Proofed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
/1	traderc 10/27/98	gilfokm 11/4/98	martykr 11/4/98	_____	lrb_docadmin 11/4/98		
/2	traderc 12/9/98	gilfokm 12/9/98	hhagen 12/10/98	_____	lrb_docadmin 12/10/98		Local
FE Sent For:		13-1-14 kmg	IS 1/15/99	IS/JF 1/15/99			
				<END>			

1999 DRAFTING REQUEST

Bill

Received: **09/22/98**

Received By: **traderc**

Wanted: **As time permits**

Identical to LRB:

For: **Administration-Budget**

By/Representing: **Wong**

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

Drafter: **traderc**

May Contact: **DNR**

Alt. Drafters:

Subject: **Environment - env. cleanup**

Extra Copies: **DNR
PEN**

Topic:

DOA:.....Wong - Local governmental exemption from clean-up liability

Instructions:

See Attached

Drafting History:

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Typed</u>	<u>Proofed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
/1	traderc 10/27/98	gilfokm 11/4/98	martykr 11/4/98	_____	lrb_docadmin 11/4/98		
/2	traderc 12/9/98	gilfokm 12/9/98	hhagen 12/10/98	_____	lrb_docadmin 12/10/98		Local

FE Sent For:

<END>

1999 DRAFTING REQUEST

Bill

Received: **09/22/98**

Received By: **traderc**

Wanted: **As time permits**

Identical to LRB:

For: **Administration-Budget**

By/Representing: **Schmiedicke**

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

Drafter: **traderc**

May Contact: **DNR**

Alt. Drafters:

Subject: **Environment - env. cleanup**

Extra Copies: **DNR
PEN**

Topic:

DOA:.....Schmiedicke - Local governmental exemption from clean-up liability

Instructions:

See Attached

Drafting History:

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Typed</u>	<u>Proofed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
/1	traderc 10/27/98	gilfokm 11/4/98	martykr 11/4/98	_____	lrb_docadmin 11/4/98		

12-13-98 King
11/12/98
11/12/98

FE Sent For:

<END>

1999 DRAFTING REQUEST

Bill

Received: 09/22/98

Received By: traderc

Wanted: As time permits

Identical to LRB:

For: Administration-Budget

By/Representing: Schmiedicke

This file may be shown to any legislator: NO

Drafter: traderc

May Contact: DNR

Alt. Drafters:

Subject: Environment - env. cleanup

Extra Copies: DNR
PEN

Topic:

DOA:.....Schmiedicke - Local governmental exemption from cleanup liability

Instructions:

See Attached

Drafting History:

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Typed</u>	<u>Proofed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
1?	traderc	1-11-2 Kmg	km 11/4	2-7 km 10/4			

FE Sent For:

<END>

1999 DRAFTING REQUEST

Bill

Received: **09/22/98**

Received By: **traderc**

Wanted: **As time permits**

Identical to LRB:

For: **Natural Resources**

By/Representing:

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

Drafter: **traderc**

May Contact:

Alt. Drafters:

Subject: **Environment - env. cleanup**

Extra Copies: *PEN*

Topic:

Local governmental exemption from cleanup liability

Instructions:

See Attached

Drafting History:

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Typed</u>	<u>Proofed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
/?	traderc			_____			

FE Sent For:

<END>

Division: Air and Waste

Bureau: Remediation and Redevelopment

Issue/Topic: Local Governmental Unit Liability Exemption

Proposed Change: 1993 Wisconsin Act 453 and the 1997 - 1999 biennial budget include statutory language that exempts local governmental units from liability under the Spill Law. We request statutory language changes that modify this exemption and, in some cases, to make Act 453 and the 1997 - 1999 biennial budget more consistent with each other.

- 1) Escheat – We request statutory language that exempts local units of government from the Spill law when they acquire contaminated property through escheat (where there is no heir to the property).

Create s. 292.11(9)(e)1m.

.....
e. The local governmental unit acquired the property through escheat.

- 2) Underground Storage Tanks – The current statutory language requires local governmental units to address any discharge of a hazardous substance from an underground storage tank regulated under 42 USC 6991 to 6991i., on property involuntarily acquired, even though they are exempt from investigating or cleaning up any other type of hazardous substance discharge. We request elimination of the requirement that local governmental units investigate and cleanup any discharge of a hazardous substance from an underground storage tank through the repeal of s. 292.11(9)(e)3., Stats.

Repeal 292.11(9)(e)3.

~~Subdivisions 1m. and 1s. do not apply if the discharge is a discharge of a hazardous substance from an underground storage tank that is regulated under 42 USC 6991 to 6991i.~~

- 2) Civil Immunity; Local Governmental Units -- We request statutory language that expands the civil immunity for local governmental units so that the immunity exists even if the property is still owned by the local governmental unit at the time that the discharge is discovered.

Amend 292.26(2) Civil immunity; local governmental units.

.....
(2) Except as provided in sub. (3), a local governmental unit is immune from civil liability related to the discharge of a hazardous substance that it did not cause on or from property currently or formerly owned or controlled by the local governmental unit if the property is no longer owned by the local governmental unit at the time that the discharge is discovered and 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.

- 5) Access to Sites, Local Governmental Units and Economic Development Corporations-- The current statutory language does not give the state or a responsible party the authority to access sites and conduct environmental investigations when a local unit of government or an economic development corporation qualifies for a liability exemption for property under s. 292.11(9)(e), Stats. We request statutory language that conditions the liability exemption on a local governmental unit's or economic development

corporation's agreement to provide property access to the department or a responsible party for the purpose of conducting environmental investigations or cleanups.

Create 292.11(9)(e)

.....
6. Subdivisions 1m. and 1s apply only if:

- a. The local governmental unit or the economic development corporation agrees to allow the department, any authorized representatives of the department, any party that possessed or controlled the hazardous substance or caused the discharge of the hazardous substance and any consultant or contractor of such a party to enter the property to take action to respond to the discharge; and
- b. The local governmental unit or the economic development corporation agrees to avoid any interference with actions undertaken to respond to the discharge and to avoid actions that worsen the discharge; and
- c. The local governmental unit or the economic development corporation agrees to any other condition that the department determines is reasonable and necessary to ensure that the department or other person described in subpar. a. can adequately respond to the discharge.

- 6) Transfer of Property and the Exemption to Another Local Unit of Government – We request statutory language in s. 292.11(9)(e)1m.b., Stats., that provides an exemption from the Spill law to any local unit of government that acquires property from another local unit of government under any of the methods described in s. 292.11(9)(e)1m., Stats., not just subd. 1m.a., Stats. We also request a similar change to s. 292.15(4), Stats., so that the monetary responsibility of a voluntary party can be limited if a municipality acquires the property by any method described in s. 292.11(9)(e)1m., Stats., not just 1m. a, or b, Stats.

Amend 292.11(9)(e)1m.

-
b. The local governmental unit acquired the property from a local governmental unit that acquired the property under a method described in subd. 1m.

Amend 292.15

.....
(4) LIMITED RESPONSIBILITY. The responsibility of a voluntary party under sub. (2) (a) 2. may be monetarily limited by agreement between the voluntary party and the department if the voluntary party purchased the property from a municipality that acquired the property in a way described in s. 292.11 (9) (e) 1m. ~~a or b~~. The agreement shall stipulate all of the following:

- 7) Clarify that the Local Governmental Unit exemption applies to properties acquired by the Local Governmental Unit even if those properties were acquired prior to the effective date of the statute.

Amend 292.11(9)(e)

.....
1m. A local governmental unit is exempt from subs. (3), (4) and (7) (b) and (c) with respect to property acquired by the local government unit before, on, or after the effective date of this statute if any of the following applies:

Explanatory Note:

- 1) Escheat – The federal Superfund law currently exempts municipalities that acquire property through escheat. We recommend this statutory language change so that the Wisconsin statutes are more consistent with Federal law.
- 2) Underground Storage Tanks – The exclusion of underground storage tanks from the local governmental unit liability exemption may, in some situations, prevent a local unit of government from redeveloping a brownfield contaminated by a leaking underground storage tank.
- 3) Commerce Grant Program – The statutory language for Commerce’s brownfield grant program should include the same entities as the statutory exemption for local units of government under the Spill Law so that the greatest number of government entities that qualify for the liability exemption can take advantage of grant opportunities and ultimately redevelop brownfields and preserve green space.
- 4) Civil Immunity; Local Governmental Units – Some local governmental units are fearful of civil suits associated with contaminated property even when the exemption applies to involuntary acquisitions. Providing greater civil immunity may convince some local governmental units to acquire and redevelop more brownfields.
- 5) Access to Sites -- The authority to have access to a site that a local unit of government involuntarily acquires provides the Department with greater ability to require a viable responsible party to proceed with a cleanup, especially if the local unit of government’s property is impacted by off-site contamination.
- 6) Transfer of Property and the Exemption to Another Local Unit of Government – Greater flexibility with transferring property between local units of government, especially counties and local municipalities, may create more options for a community that wants to redevelop a brownfield. Furthermore, it would make the different sections of our statutes more consistent with each other.
- 7) Clarifying that the Local Governmental Unit exemption is retroactive will encourage the redevelopment of more properties. The statutes are in need of modification to clarify that we currently allow the exemption to be retroactive.

Desired Effective Date: Effective date of budget act.

Contact Person: Eric Ebersberger, MB/5, 266-0818; Sam Essak, 608/266-7019



State of Wisconsin
1999 - 2000 LEGISLATURE

LRB-0257/1

RCT: King

SOON

DOA:.....Schmiedicke - Local governmental exemption from cleanup liability

FOR 1999-01 BUDGET — NOT READY FOR INTRODUCTION

ONote

1

Don't contact
AN ACT relating to: the budget.

Analysis by the Legislative Reference Bureau

ENVIRONMENT

HAZARDOUS SUBSTANCES AND ENVIRONMENTAL CLEANUP

Current law generally requires a person who possesses or controls a hazardous substance that is discharged or who causes the discharge of a hazardous substance to restore the environment to the extent practicable and to minimize the harmful effects of the discharge on the environment. Current law generally exempts a local governmental unit from these cleanup requirements with respect to hazardous substance discharges on land acquired in specified ways, such as through tax delinquency proceedings and condemnation.

This bill expands the exemption from the cleanup requirements so that it applies to land acquired through escheat *and land* or acquired from another local governmental unit that is entitled to the exemption. Land is acquired through escheat when the owner dies without a will that disposes of the land and without any heir. Under current law, the exemption from the cleanup requirements is not available if the discharge is from an underground petroleum storage tank. This bill eliminates that limitation. This bill also requires local governmental units to agree to provide access to the land for the purpose of letting someone else conduct a cleanup of the discharge.

*

*

subject to the exemption
that is

Current law exempts a local governmental unit from civil liability related to the discharge of a hazardous substance on land formerly owned by the local governmental unit if the local governmental unit acquired the land in a specified way, if the discharge is discovered after the local governmental unit ceased to own the land and if the discharge was not caused by an activity conducted by the local governmental unit while the local governmental unit owned the land. This bill expands the exemption from civil liability so that it applies to land that was acquired in one of the specified ways whether it is currently or formerly owned by the local governmental unit, as long as the local governmental unit did not cause the discharge.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

99-0257/1 ins

strike space

1 SECTION 1. 292.11 (9) (e) 1m. (intro.) of the statutes is amended to read:
2 292.11 (9) (e) 1m. (intro.) ~~A~~ Except as provided in subs. 2., 4. and 6., a local
3 governmental unit is exempt from subs. (3), (4) and (7) (b) and (c) with respect to
4 property acquired by the local government unit before, on or after the effective date
5 of this subdivision [revisor inserts date] if any of the following applies:

History: 1995 a. 227 ss. 700, 703 to 707, 710, 993; 1997 a. 27, 35.

6 SECTION 2. 292.11 (9) (e) 1m. b. of the statutes is amended to read:
7 292.11 (9) (e) 1m. b. The local governmental unit acquired the property from
8 a local governmental unit that acquired is exempt under this subdivision with
9 respect to the property under a method described in subd. 1m. a.

History: 1995 a. 227 ss. 700, 703 to 707, 710, 993; 1997 a. 27, 35.

10 SECTION 3. 292.11 (9) (e) 1m. e. of the statutes is created to read:
11 292.11 (9) (e) 1m. e. The local governmental unit acquired the property through
12 escheat.

13 SECTION 4. 292.11 (9) (e) 1s. of the statutes is amended to read:
14 292.11 (9) (e) 1s. ~~An~~ Except as provided in subs. 2., and 4. to 6., an economic
15 development corporation described in section 501 (c) of the Internal Revenue Code,
16 as defined in s. 71.22 (4), that is exempt from federal taxation under section 501 (a)

1 of the Internal Revenue Code, or an entity wholly owned and operated by such a
2 corporation, is exempt from subs. (3), (4) and (7) (b) and (c) with respect to property
3 acquired before, on or after October 14, 1997, if the property is acquired to further
4 the economic development purposes that qualify the corporation as exempt from
5 federal taxation.

6 History: 1995 a. 227 ss. 700, 703 to 707, 710, 993; 1997 a. 27, 35. ✓

SECTION 5. 292.11 (9) (e) 3. of the statutes is repealed.

SECTION 6. 292.11 (9) (e) 5. c. of the statutes is repealed.

SECTION 7. 292.11 (9) (e) 6. of the statutes is created to read:

9 292.11 (9) (e) 6. Subdivisions 1m. and 1s. only apply if the local governmental
10 unit or the economic development corporation agrees to do all of the following:

↓
Insert
3-10

SECTION 8. 292.15 (4) (intro.) of the statutes is amended to read:

12 292.15 (4) LIMITED RESPONSIBILITY. (intro.) The responsibility of a voluntary
13 party under sub. (2) (a) 2. may be monetarily limited by agreement between the
14 voluntary party and the department if the voluntary party purchased the property
15 from a local governmental unit that acquired the property in a way described in s.

16 292.11 (9) (e) 1m. a., b., c. or ~~d.~~^{strike} The agreement shall stipulate all of the following:

17 History: 1993 a. 453; 1995 a. 225; 1995 a. 227 s. 712, 714, 715; 1997 a. 27, 237.

SECTION 9. 292.26 (2) (intro.) of the statutes is amended to read:

18 292.26 (2) (intro.) ~~Except as provided in sub. (3),~~ a A local governmental unit
19 is immune from civil liability related to the discharge of a hazardous substance on
20 or from property owned^d or controlled, or formerly owned or controlled, by the local
21 governmental unit if ~~the property is no longer owned by the local governmental unit~~
22 at the time that the discharge is discovered did not cause the discharge and if any
23 of the following applies:

History: 1997 a. 27.

**1999-2000 DRAFTING INSERT
FROM THE
LEGISLATIVE REFERENCE BUREAU**

LRB-0257/lins
RCT:.....

SECTION 1. 292.11 (9) (e) 1. of the statutes is amended to read:

292.11 (9) (e) 1. ~~Local~~ In this paragraph, "local governmental unit" means a municipality, a redevelopment authority created under s. 66.431, a public body designated by a municipality under s. 66.435 (4) or a housing authority.

History: 1995 a. 227 ss. 700, 703 to 707, 710, 993; 1997 a. 27, 35.

Insert 3-10 V

-0257/1

1 ~~SECTION 1. 292.21 (1) (c) 1. b. of the statutes is repealed.~~

2 ~~SECTION 2. 292.21 (1) (c) 1. g. of the statutes is created to read:~~

3 ~~292.21 (1) (c) 1. g. The lender agrees to~~ allow the department, any authorized
4 representatives of the department, any party that possessed or controlled the
5 hazardous substance or caused the discharge of the hazardous substance and any
6 consultant or contractor of such a party to enter the ~~real~~ property to take action to
7 respond to the discharge.

8 ~~SECTION 3. 292.21 (1) (c) 1. h. of the statutes is created to read:~~

9 ~~292.21 (1) (c) 1. h. The lender agrees to~~ avoid any interference with action
10 undertaken to respond to the discharge and ~~to~~ avoid actions that worsen the
11 discharge.

12 ~~SECTION 4. 292.21 (1) (c) 1. i. of the statutes is created to read:~~

13 ~~292.21 (1) (c) 1. i. The lender agrees to~~ any other condition that the department
14 determines is reasonable and necessary to ensure that the department or other
15 person described in subd. ~~1. i.~~ ^{6. a.} can adequately respond to the discharge.

(END of insert)

DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-0257/1dn

RCT: King

* This is a first draft of the proposal concerning local governmental liability exemptions related to hazardous substance spills.

This draft restores the "before, on or after" language to s. 292.11 (9) (e) 1m. (intro.), as requested. I think that that language was deleted last session to clean up the statute with the belief that the legislature's intent that the exemption apply to land without regard to when it was acquired had been established and that the language was no longer necessary. If that belief is correct, it is not necessary to restore the language and it could also be removed from s. 292.11 (9) (e) 1s.

This draft repeals s. 292.11 (9) (e) 5. c. because it seems redundant given proposed s. 292.11 (9) (e) 6.

Please review s. 292.26 carefully. This proposal broadens the civil liability exemption greatly. Do you want the methods of acquiring the property to be the same as in 292.11 (9) (e) 1m.? Note that I repealed s. 292.26 (3) because placing "did not cause" in sub. (2) makes sub. (3) unnecessary.

6.

Rebecca C. Tradewell
Assistant Chief Counsel
266-7290

DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-0257/1dn
RCT:kmg:km

November 4, 1998

This is a first draft of the proposal concerning local governmental liability exemptions related to hazardous substance spills.

This draft restores the "before, on or after" language to s. 292.11 (9) (e) 1m. (intro.), as requested. I think that that language was deleted last session to clean up the statute with the belief that the legislature's intent that the exemption apply to land without regard to when it was acquired had been established and that the language was no longer necessary. If that belief is correct, it is not necessary to restore the language and it could also be removed from s. 292.11 (9) (c) 1s.

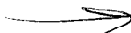
This draft repeals s. 292.11 (9) (e) 5. c. because it seems redundant given proposed s. 292.11 (9) (e) 6.

Please review s. 292.26 carefully. This proposal broadens the civil liability exemption greatly. Do you want the methods of acquiring the property to be the same as in s. 292.11 (9) (e) 1m.? Note that I repealed s. 292.26 (3) because placing "did not cause" in sub. (2) makes sub. (3) unnecessary.

Rebecca C. Tradewell
Assistant Chief Counsel
266-7290

DATE: December 9, 1998
TO: Manyee Wong
FROM: Brian Dranzik
SUBJECT: LRB Drafter's Notes

Here are the comments from the R and R staff.

1. LRB-0303/1dn: We have no comments on this note. The note is correct that the intent of the request change is to make it clear that a person only receives certification that they qualify as a voluntary party, and nothing more.
2. LRB-0257/1dn:
 - a. The "before on or after" language is requested because the presence of the language in 292.11(9)(e)1s., Stats., may be used to argue that the absence of that language in s. 292.11(9)(e)1m. (intro), Stats., indicates a legislative intent to make the availability of the LGU exemption applicable only prospectively to properties acquired by one of the methods enumerated in s. 292.11(9)(e)1m., Stats. Moreover, our attorney would like the statute to be clear that it applies to properties acquired by a LGU in one of the enumerated way regardless of when it was acquired. Apparently, because statutes are presumed to apply prospectively only, an argument could be made that without the "before, on or after" language (especially since it was removed) the legislature intended the exemption to be applicable prospectively only to properties acquired after the effective date of the statute.
 - b.  With respect to s. 292.26, stats., after considering the extent to which the suggested language expands the availability of the civil liability exemption, we would like to withdraw the request to amend the statute.
 - c. Everything else (LRB-0256/1 and LRB-0283/P2) looks fine.

SOON

Redraft
maker
run

DOA:.....Wong - Local governmental exemption from clean-up liability

FOR 1999-01 BUDGET - NOT READY FOR INTRODUCTION

ONote

1

*Don't
Clean Act.*
AN ACT ...; relating to: the budget.

Analysis by the Legislative Reference Bureau

ENVIRONMENT

HAZARDOUS SUBSTANCES AND ENVIRONMENTAL CLEANUP

Current law generally requires a person who possesses or controls a hazardous substance that is discharged or who causes the discharge of a hazardous substance to restore the environment to the extent practicable and to minimize the harmful effects of the discharge on the environment. Current law generally exempts a local governmental unit from these clean-up requirements with respect to hazardous substance discharges on land acquired in specified ways, such as through tax delinquency proceedings and condemnation.

This bill expands the exemption from the clean-up requirements so that it applies to land acquired through escheat and land acquired from another local governmental unit that is entitled to the exemption. Land is acquired through escheat when the owner dies without a will that disposes of the land and without any heir. Under current law, the exemption from the clean-up requirements is not available if the discharge is from an underground petroleum storage tank. This bill eliminates that limitation. This bill also requires local governmental units to agree to provide access to land that is subject to the exemption for the purpose of letting someone else conduct a cleanup of the discharge.

9
FEL

~~Current law exempts a local governmental unit from civil liability related to the discharge of a hazardous substance on land formerly owned by the local~~

governmental unit if the local governmental unit acquired the land in a specified way, if the discharge is discovered after the local governmental unit ceased to own the land and if the discharge was not caused by an activity conducted by the local governmental unit while the local governmental unit owned the land. This bill expands the exemption from civil liability so that it applies to land that was acquired in one of the specified ways whether it is currently or formerly owned by the local governmental unit, as long as the local governmental unit did not cause the discharge.

keep line

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

1 SECTION 1. 292.11 (9) (e) 1. of the statutes is amended to read:

2 292.11 (9) (e) 1. ~~Local~~ In this paragraph, "local governmental unit" means a
3 municipality, a redevelopment authority created under s. 66.431, a public body
4 designated by a municipality under s. 66.435 (4) or a housing authority.

5 SECTION 2. 292.11 (9) (e) 1m. (intro.) of the statutes is amended to read:

6 292.11 (9) (e) 1m. (intro.) ~~A~~ Except as provided in subs. 2., 4. and 6., a local
7 governmental unit is exempt from subs. (3), (4) and (7) (b) and (c) with respect to
8 property acquired by the local government unit before, on or after the effective date
9 of this subdivision ... [revisor inserts date], if any of the following applies:

10 SECTION 3. 292.11 (9) (e) 1m. b. of the statutes is amended to read:

11 292.11 (9) (e) 1m. b. The local governmental unit acquired the property from
12 a local governmental unit that acquired is exempt under this subdivision with
13 respect to the property under a method described in subd. 1m. a.

14 SECTION 4. 292.11 (9) (e) 1m. e. of the statutes is created to read:

15 292.11 (9) (e) 1m. e. The local governmental unit acquired the property through
16 escheat.

17 SECTION 5. 292.11 (9) (e) 1s. of the statutes is amended to read:

1 292.11 (9) (e) 1s. ~~An~~ Except as provided in subs. 2. and 4. to 6., an economic
2 development corporation described in section 501 (c) of the Internal Revenue Code,
3 as defined in s. 71.22 (4), that is exempt from federal taxation under section 501 (a)
4 of the Internal Revenue Code, or an entity wholly owned and operated by such a
5 corporation, is exempt from subs. (3), (4) and (7) (b) and (c) with respect to property
6 acquired before, on or after October 14, 1997, if the property is acquired to further
7 the economic development purposes that qualify the corporation as exempt from
8 federal taxation.

9 **SECTION 6.** 292.11 (9) (e) 3. of the statutes is repealed.

10 **SECTION 7.** 292.11 (9) (e) 5. c. of the statutes is repealed.

11 **SECTION 8.** 292.11 (9) (e) 6. of the statutes is created to read:

12 292.11 (9) (e) 6. Subdivisions 1m. and 1s. only apply if the local governmental
13 unit or the economic development corporation agrees to do all of the following:

14 a. Allow the department, any authorized representatives of the department,
15 any party that possessed or controlled the hazardous substance or caused the
16 discharge of the hazardous substance and any consultant or contractor of such a
17 party to enter the property to take action to respond to the discharge.

18 b. Avoid any interference with action undertaken to respond to the discharge
19 and avoid actions that worsen the discharge.

20 c. Comply with any other condition that the department determines is
21 reasonable and necessary to ensure that the department or other person described
22 in subd. 6. a. can adequately respond to the discharge.

23 **SECTION 9.** 292.15 (4) (intro.) of the statutes is amended to read:

24 292.15 (4) **LIMITED RESPONSIBILITY.** (intro.) The responsibility of a voluntary
25 party under sub. (2) (a) 2. may be monetarily limited by agreement between the

1 voluntary party and the department if the voluntary party purchased the property
2 from a local governmental unit that acquired the property in a way described in s.
3 292.11 (9) (e) 1m. ~~a., b., c. or d.~~ The agreement shall stipulate all of the following:

4 ~~SECTION 10. 292.26 (2) (intro.) of the statutes is amended to read:~~

5 ~~292.26 (2) (intro.) Except as provided in sub. (3), a A local governmental unit~~
6 ~~is immune from civil liability related to the discharge of a hazardous substance on~~
7 ~~or from property owned or controlled, or formerly owned or controlled, by the local~~
8 ~~governmental unit if the property is no longer owned by the local governmental unit~~
9 ~~at the time that the discharge is discovered did not cause the discharge and if any~~
10 ~~of the following applies:~~

11 ~~SECTION 11. 292.26 (3) of the statutes is repealed.~~

12 (END)

- 0257/2cln

RET: King:

Marylee Wang:

This redraft eliminates^{es} the changes to s. 292.26,
as requested by DNR.

RET

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

LRB-0257/2dn
RCT:kmg:hmh

Wednesday, December 9, 1998

Maynee Wong:

This redraft eliminates the changes to s. 292.26, as requested by DNR.

Rebecca C. Tradewell
Assistant Chief Counsel
266-7290

Tradewell, Becky

From: Wong, Manyee [Manyee.Wong@doa.state.wi.us]
Sent: Tuesday, January 12, 1999 2:37 PM
To: Tradewell, Becky
Subject: RE: LRB-0257

Thanks Becky.

I was referring to your questions from LRB-0257/1dn. I see now that in 0257, civil immunity has been deleted. That is what we want. But we still want to eliminate 292.11(9)(e)(6)b and 292.11(9)(e)(6)a from draft 0257. Thanks.

> -----Original Message-----

> From: Tradewell, Becky [SMTP:Becky.Tradewell@legis.state.wi.us]
> Sent: Tuesday, January 12, 1999 10:26 AM
> To: 'Wong, Manyee'
> Subject: RE: LRB-0257

>

> Manyee,

>

> I am sorry, but I do not understand what you want me to do in response to
> your message. I assume that you are referring to the drafter's note to
> LRB-1419/1. LRB-1419/1 and LRB-0257/2 both make changes to s. 292.11 (9).
> Both drafts repeal s. 292.11 (9) (e) 3. The drafts add 2 different
> methods
> of acquiring property to s. 292.11(9) (e) 1m. I was trying to make the
> point that, especially in the brownfields area, there are a number of
> drafts
> that are related and that may or may not be consistent.
> Please note that the latest version of LRB-0257 is a slash /2, which
> deleted
> the changes to s. 292.26. There is no 292.11 (9) (e) (b) and (c).
> LRB-0257/2 does include the creation of s. 292.11 (9) (e) 6., which
> includes
> subdivision paragraphs b. and c. Please let me know what changes, if any,
> you want me to make in LRB-0257/2.
> Thank-you,
> Becky

>

> -----Original Message-----

> From: Wong, Manyee [mailto:Manyee.Wong@doa.state.wi.us]
> Sent: Monday, January 11, 1999 5:10 PM
> To: Tradewell, Becky
> Subject: LRB-0257

>

>

> Hi Becky,

>

> For LRB draft 0257, in response to your question regarding methods of
> acquiring the property, the answer is yes - we do want it to be the same
> as
> s.292.11(9)(e)1m. Also, please eliminate 292.11(9)(e) (b) and (c). Also,
> please take out our request to exempt local units of government from civil
> liability.
> Thanks!



State of Wisconsin
1999 - 2000 LEGISLATURE

SOON

LRB-02577 3
RCT:kmg:hmh

*Redraft
make
run*

DOA:.....Wong - Local governmental exemption from clean-up liability

FOR 1999-01 BUDGET — NOT READY FOR INTRODUCTION

1 *Don't
Gen. Conf.* AN ACT **relating to:** the budget.

Analysis by the Legislative Reference Bureau

ENVIRONMENT

HAZARDOUS SUBSTANCES AND ENVIRONMENTAL CLEANUP

Current law generally requires a person who possesses or controls a hazardous substance that is discharged or who causes the discharge of a hazardous substance to restore the environment to the extent practicable and to minimize the harmful effects of the discharge on the environment. Current law generally exempts a local governmental unit from these clean-up requirements with respect to hazardous substance discharges on land acquired in specified ways, such as through tax delinquency proceedings and condemnation.

This bill expands the exemption from the clean-up requirements so that it applies to land acquired through escheat and land acquired from another local governmental unit that is entitled to the exemption. Land is acquired through escheat when the owner dies without a will that disposes of the land and without any heir. Under current law, the exemption from the clean-up requirements is not available if the discharge is from an underground petroleum storage tank. This bill eliminates that limitation. This bill also requires local governmental units to agree to provide access to land that is subject to the exemption for the purpose of letting someone else conduct a cleanup of the discharge.

For further information see the *local* fiscal estimate, which will be printed as an appendix to this bill.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

1 **SECTION 1.** 292.11 (9) (e) 1. of the statutes is amended to read:

2 292.11 (9) (e) 1. ~~Local~~ In this paragraph, “local governmental unit” means a
3 municipality, a redevelopment authority created under s. 66.431, a public body
4 designated by a municipality under s. 66.435 (4) or a housing authority.

5 **SECTION 2.** 292.11 (9) (e) 1m. (intro.) of the statutes is amended to read:

6 292.11 (9) (e) 1m. (intro.) ~~A~~ Except as provided in subds. 2., 4. and 6., a local
7 governmental unit is exempt from subs. (3), (4) and (7) (b) and (c) with respect to
8 property acquired by the local government unit before, on or after the effective date
9 of this subdivision [revisor inserts date], if any of the following applies:

10 **SECTION 3.** 292.11 (9) (e) 1m. b. of the statutes is amended to read:

11 292.11 (9) (e) 1m. b. The local governmental unit acquired the property from
12 a local governmental unit that ~~acquired~~ is exempt under this subdivision with
13 respect to the property under a method described in subd. 1m. a.

14 **SECTION 4.** 292.11 (9) (e) 1m. e. of the statutes is created to read:

15 292.11 (9) (e) 1m. e. The local governmental unit acquired the property through
16 escheat.

17 **SECTION 5.** 292.11 (9) (e) 1s. of the statutes is amended to read:

18 292.11 (9) (e) 1s. ~~As~~ Except as provided in subds. 2. and 4. to 6., an economic
19 development corporation described in section 501 (c) of the Internal Revenue Code,
20 as defined in s. 71.22 (4), that is exempt from federal taxation under section 501 (a)
21 of the Internal Revenue Code, or an entity wholly owned and operated by such a

1 corporation, is exempt from subs. (3), (4) and (7) (b) and (c) with respect to property
2 acquired before, on or after October 14, 1997, if the property is acquired to further
3 the economic development purposes that qualify the corporation as exempt from
4 federal taxation.

5 **SECTION 6.** 292.11 (9) (e) 3. of the statutes is repealed.

6 **SECTION 7.** 292.11 (9) (e) 5. c. of the statutes is repealed.

7 **SECTION 8.** 292.11 (9) (e) 6. of the statutes is created to read:

8 292.11 (9) (e) 6. Subdivisions 1m. and 1s. only apply if the local governmental
9 unit or the economic development corporation agrees to ~~do all of the following:~~
10 ~~a.~~ Allow the department, any authorized representatives of the department,
11 any party that possessed or controlled the hazardous substance or caused the
12 discharge of the hazardous substance and any consultant or contractor of such a
13 party to enter the property to take action to respond to the discharge.

14 ~~b. Avoid any interference with action undertaken to respond to the discharge
15 and avoid actions that worsen the discharge.~~

16 ~~c. Comply with any other condition that the department determines is
17 reasonable and necessary to ensure that the department or other person described
18 in subd. 6. a. can adequately respond to the discharge.~~

19 **SECTION 9.** 292.15 (4) (intro.) of the statutes is amended to read:

20 292.15 (4) LIMITED RESPONSIBILITY. (intro.) The responsibility of a voluntary
21 party under sub. (2) (a) 2. may be monetarily limited by agreement between the
22 voluntary party and the department if the voluntary party purchased the property
23 from a local governmental unit that acquired the property in a way ^{or for a purpose} described in s.

24 292.11 (9) (e) 1m. a., b., c. or d. The agreement shall stipulate all of the following:

25

(END)



State of Wisconsin
1999 - 2000 LEGISLATURE

LRB-02574 4

RCT:kmg:ijs

today

redraft
make
run

DOA:.....Wong – Local governmental exemption from clean-up liability

FOR 1999-01 BUDGET — NOT READY FOR INTRODUCTION

ONote

1

*Don't
Den Cat.*
AN ACT...; relating to: the budget.

Analysis by the Legislative Reference Bureau

ENVIRONMENT

HAZARDOUS SUBSTANCES AND ENVIRONMENTAL CLEANUP

Current law generally requires a person who possesses or controls a hazardous substance that is discharged or who causes the discharge of a hazardous substance to restore the environment to the extent practicable and to minimize the harmful effects of the discharge on the environment. Current law generally exempts a local governmental unit from these clean-up requirements with respect to hazardous substance discharges on land acquired in specified ways, such as through tax delinquency proceedings and condemnation.

This bill expands the exemption from the clean-up requirements so that it applies to land acquired through escheat and land acquired from another local governmental unit that is entitled to the exemption. Land is acquired through escheat when the owner dies without a will that disposes of the land and without any heir. Under current law, the exemption from the clean-up requirements is not available if the discharge is from an underground petroleum storage tank. This bill eliminates that limitation. This bill also requires local governmental units to agree to provide access to land that is subject to the exemption for the purpose of letting someone else conduct a cleanup of the discharge.

For further information see the *local* fiscal estimate, which will be printed as an appendix to this bill.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

1 ~~SECTION 1. 292.11 (9) (e) 1. of the statutes is amended to read:~~

2 292.11 (9) (e) 1. ~~Local~~ In this paragraph, "local governmental unit" means a
3 municipality, a redevelopment authority created under s. 66.431, a public body
4 designated by a municipality under s. 66.435 (4) or a housing authority.

5 SECTION 2. 292.11 (9) (e) 1m. (intro.) of the statutes is amended to read:

6 292.11 (9) (e) 1m. (intro.) ~~A~~ Except as provided in subds. 2., 4. ^{and 7.} and 6., a local
7 governmental unit is exempt from subs. (3), (4) and (7) (b) and (c) with respect to

8 ^{discharges of hazardous substances or originating from} property acquired by the local government unit before, on or after the effective date

9 of this subdivision [revisor inserts date], if any of the following applies:

✓
Insert
A →

10 SECTION 3. 292.11 (9) (e) 1m. b. of the statutes is amended to read:

11 292.11 (9) (e) 1m. b. The local governmental unit acquired the property from
12 a local governmental unit that acquired is exempt under this subdivision with
13 respect to the property under a method described in subd. 1m. a.

14 SECTION 4. 292.11 (9) (e) 1m. e. of the statutes is created to read:

15 292.11 (9) (e) 1m. e. The local governmental unit acquired the property through
16 escheat.

17 SECTION 5. 292.11 (9) (e) 1s. of the statutes is amended to read:

18 292.11 (9) (e) 1s. ~~An~~ Except as provided in subds. 2. and 4. to 6., an economic
19 development corporation described in section 501 (c) of the Internal Revenue Code,
20 as defined in s. 71.22 (4), that is exempt from federal taxation under section 501 (a)
21 of the Internal Revenue Code, or an entity wholly owned and operated by such a

1 corporation, is exempt from subs. (3), (4) and (7) (b) and (c) with respect to property
2 acquired before, on or after October 14, 1997, if the property is acquired to further
3 the economic development purposes that qualify the corporation as exempt from
4 federal taxation.

5 ~~SECTION 6. 292.11 (9) (e) 3. of the statutes is repealed.~~ ✓

6 SECTION 7. 292.11 (9) (e) 5. c. of the statutes is repealed.

7 SECTION 8. 292.11 (9) (e) 6. of the statutes is created to read:

8 292.11 (9) (e) 6. Subdivisions 1m. and 1s. only apply if the local governmental
9 unit or the economic development corporation agrees to allow the department, any
10 authorized representatives of the department, any party that possessed or controlled
11 the hazardous substance or caused the discharge of the hazardous substance and any
12 consultant or contractor of such a party to enter the property to take action to respond
13 to the discharge.

14 SECTION 9. 292.15 (4) (intro.) of the statutes is amended to read:

15 292.15 (4) LIMITED RESPONSIBILITY. (intro.) The responsibility of a voluntary
16 party under sub. (2) (a) 2. may be monetarily limited by agreement between the
17 voluntary party and the department if the voluntary party purchased the property
18 from a local governmental unit that acquired the property in a way or for a purpose
19 described in s. 292.11 (9) (e) 1m. a., b., c. ~~or d.~~ The agreement shall stipulate all of the
20 following:

21 (END)

1999-2000 DRAFTING INSERT
FROM THE
LEGISLATIVE REFERENCE BUREAU

-0257

LRB
.....

Insert A

292.11(9)(e) Im. (intro.)

****NOTE: This is reconciled s. ^A. This SECTION has been affected by drafts with the following LRB numbers: -0257, 1419 and 1422

****NOTE: This is reconciled s. . This SECTION has been affected by drafts with the following LRB numbers:

****NOTE: This is reconciled s. . This SECTION has been affected by drafts with the following LRB numbers:

****NOTE: This is reconciled s. . This SECTION has been affected by drafts with the following LRB numbers:

****NOTE: This is reconciled s. . This SECTION has been affected by drafts with the following LRB numbers:

****NOTE: This is reconciled s. . This SECTION has been affected by drafts with the following LRB numbers:

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

LRB - 0257/4dn
.....
RET: King:

Change:

0257

1419

1422

This draft reconciles LRB-~~XXXX~~, LRB-~~XXXX~~ and LRB-~~XXXX~~. All of these drafts should continue to appear in the compiled bill. ~~[All of these drafts, except LRB-XXXX, should continue to appear in the compiled bill. LRB-XXXX should be dropped from the compile.]~~

Rebecca C. Tradewell
Managing Attorney
Phone: (608) 266-7290
E-mail: Becky.Tradewell@legis.state.wi.us

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

LRB-0257/4dn
RCT:kmg:ijs

February 3, 1999

Manyee:

This draft reconciles LRB-0257, LRB-1419 and LRB-1422. All of these drafts should continue to appear in the compiled bill.

Rebecca C. Tradewell
Managing Attorney
Phone: (608) 266-7290
E-mail: Becky.Tradewell@legis.state.wi.us



State of Wisconsin
1999 - 2000 LEGISLATURE

LRB-0257/4
RCT:kmg:ijs

DOA:.....Wong - Local governmental exemption from clean-up liability

FOR 1999-01 BUDGET - NOT READY FOR INTRODUCTION

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

Analysis by the Legislative Reference Bureau

ENVIRONMENT

HAZARDOUS SUBSTANCES AND ENVIRONMENTAL CLEANUP

Current law generally requires a person who possesses or controls a hazardous substance that is discharged or who causes the discharge of a hazardous substance to restore the environment to the extent practicable and to minimize the harmful effects of the discharge on the environment. Current law generally exempts a local governmental unit from these clean-up requirements with respect to hazardous substance discharges on land acquired in specified ways, such as through tax delinquency proceedings and condemnation.

This bill expands the exemption from the clean-up requirements so that it applies to land acquired through escheat and land acquired from another local governmental unit that is entitled to the exemption. Land is acquired through escheat when the owner dies without a will that disposes of the land and without any heir. Under current law, the exemption from the clean-up requirements is not available if the discharge is from an underground petroleum storage tank. This bill eliminates that limitation. This bill also requires local governmental units to agree to provide access to land that is subject to the exemption for the purpose of letting someone else conduct a cleanup of the discharge.

For further information see the *local* fiscal estimate, which will be printed as an appendix to this bill.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

1 **SECTION 1.** 292.11 (9) (e) 1m. (intro.) of the statutes is amended to read:

2 292.11 (9) (e) 1m. (intro.) ~~A~~ Except as provided in subds. 2., 4., 6. and 7., a local
3 governmental unit is exempt from subs. (3), (4) and (7) (b) and (c) with respect to
4 discharges of hazardous substances on or originating from property acquired by the
5 local government unit before, on or after the effective date of this subdivision
6 [revisor inserts date], if any of the following applies:

 ****NOTE: This is reconciled s. 292.11 (9) (e) 1m. (intro.). This SECTION has been affected by drafts with the following LRB numbers: LRB-0257, LRB-1419 and LRB-1422.

7 **SECTION 2.** 292.11 (9) (e) 1m. b. of the statutes is amended to read:

8 292.11 (9) (e) 1m. b. The local governmental unit acquired the property from
9 a local governmental unit that ~~acquired~~ is exempt under this subdivision with
10 respect to the property under a method described in subd. 1m. a.

11 **SECTION 3.** 292.11 (9) (e) 1m. e. of the statutes is created to read:

12 292.11 (9) (e) 1m. e. The local governmental unit acquired the property through
13 escheat.

14 **SECTION 4.** 292.11 (9) (e) 1s. of the statutes is amended to read:

15 292.11 (9) (e) 1s. ~~An~~ Except as provided in subds. 2. and 4. to 6., an economic
16 development corporation described in section 501 (c) of the Internal Revenue Code,
17 as defined in s. 71.22 (4), that is exempt from federal taxation under section 501 (a)
18 of the Internal Revenue Code, or an entity wholly owned and operated by such a
19 corporation, is exempt from subs. (3), (4) and (7) (b) and (c) with respect to property

1 acquired before, on or after October 14, 1997, if the property is acquired to further
2 the economic development purposes that qualify the corporation as exempt from
3 federal taxation.

4 **SECTION 5.** 292.11 (9) (e) 5. c. of the statutes is repealed.

5 **SECTION 6.** 292.11 (9) (e) 6. of the statutes is created to read:

6 292.11 (9) (e) 6. Subdivisions 1m. and 1s. only apply if the local governmental
7 unit or the economic development corporation agrees to allow the department, any
8 authorized representatives of the department, any party that possessed or controlled
9 the hazardous substance or caused the discharge of the hazardous substance and any
10 consultant or contractor of such a party to enter the property to take action to respond
11 to the discharge.

12 **SECTION 7.** 292.15 (4) (intro.) of the statutes is amended to read:

13 292.15 (4) LIMITED RESPONSIBILITY. (intro.) The responsibility of a voluntary
14 party under sub. (2) (a) 2. may be monetarily limited by agreement between the
15 voluntary party and the department if the voluntary party purchased the property
16 from a local governmental unit that acquired the property in a way or for a purpose
17 described in s. 292.11 (9) (e) 1m. ~~a., b., c. or d.~~ The agreement shall stipulate all of the
18 following:

19

(END)