

1999 DRAFTING REQUEST

Bill

Received: **11/19/98**

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:

Alt. Drafters:

Subject: **Environment - env. cleanup**

Extra Copies:

Topic:

DOA:.....Wong - Strengthen ability of local government to recover environmental costs

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>
/P1	traderc 12/14/98	chanaman 12/15/98	martykr 12/16/98	_____	lrb_docadmin 12/16/98		
/P2	traderc 01/8/99	chanaman 01/8/99	jfrantze 01/8/99	_____	lrb_docadmin 01/8/99		S&L
/1	traderc 01/19/99	chanaman 01/19/99	hhagen 01/19/99	_____	lrb_docadmin 01/19/99		S&L

FE Sent For:

<END>

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/P1	traderc 12/14/98	chanaman 12/15/98	martykr 12/16/98	_____	lrb_docadmin 12/16/98		

FE Sent For:

1P2 1/8 JLG 12/1/98 JB RP
 Please submit 1P2
 <END>
 1/8

1999 DRAFTING REQUEST

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1?	traderc	cmh 12/15 /p1	12/15	12/15			

FE Sent For: /p1 12/15 jlg

<END>

CORRESPONDENCE MEMORANDUM

**STATE OF WISCONSIN
Department of Administration**

Date: November 13, 1998
To: Steve Miller, Chief
Legislative Reference Bureau
From: Manyee Wong *mw*
State Budget Analyst
Subject: Drafting Instructions for 1999-01 Budget

Please draft the following for the Governor's 1999-01 budget. Excerpts from the pending Brownfields Study Group report related to the requested items are attached.

- *Allow Transfer of Tax Delinquent Brownfields Properties to Cities*

prop. tax
Provide cities with greater flexibility in acquiring tax delinquent properties from county governments. If a county does not take a tax deed to a property that is subject to a tax certificate after two years, the county must take a tax deed on the property and transfer ownership of that property to the municipality where the property is located within 9 months after receiving a written request from that municipality.

- *Modify Land Recycling Loan Program*

RET -0936
Amend the Land Recycling Loan Program to expand the definition of local units to include redevelopment authorities and housing authorities and reduce the interest rate to 0%.

- *Strengthen Ability of Municipality to Recover Environmental Costs*

RET?
Provide local governments with a tool to recover investigation and remediation costs of brownfield properties. Under this statute, local governments may initiate a civil action to recover damages from responsible parties for environmental remediation activities.

- *Clarify Blight Elimination And Slum Clearance Authority*

MES
Provide local governments more authority and protection in dealing with blighted brownfields properties. The Blight Area Law and the Blight Elimination and Slum Clearance Act should be amended to include "environmental pollution" in the definition of blighted area and blighted property.



State of Wisconsin
1999 - 2000 LEGISLATURE

LRB-0958/P1

RCT:.....

SOON

cmv
+
jlg

DOA:.....Wong - Strengthen ability of local government to recover environmental costs

FOR 1999-01 BUDGET — NOT READY FOR INTRODUCTION

DNote

1 AN ACT ^{long for cat.} ...; relating to: the budget. ✓

Analysis by the Legislative Reference Bureau

This is a preliminary draft. An analysis will be provided on a later version.

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

2 SECTION 1. 292.33 of the statutes is created to read:

3 **292.33 Local government ~~cost~~ cost recovery cause of action. (1)**

4 DEFINITION. ✓ In this section "local governmental unit" has the meaning given in s.
5 ✓ 292.11 (9) (e) 1.

6 (2) CAUSE OF ACTION. ✓ A local governmental unit may recover costs as provided
7 in sub. (4) ✓ from a responsible person described in sub. (3) ✓ if the costs are incurred in
8 connection with a property acquired in a way described in s. 292.11 (9) (e) 1m. on
9 which a hazardous substance has been discharged.

1 (3) RESPONSIBLE PERSONS. A local governmental unit may initiate an action
2 under sub. (2) against any of the following:

3 (a) A person who, at the time that the local governmental unit acquired the
4 property, possessed or controlled the hazardous substance that was discharged on
5 the property.

6 (b) A person who caused the discharge of the hazardous substance on the
7 property.

8 (4) RECOVERABLE COSTS. (a) Except as provided in par. (b), in an action under
9 this section a local governmental unit may recover the reasonable and necessary
10 costs that it incurs for all of the following:

11 1. Investigating environmental contamination on the property and planning
12 remedial action described in subd. 2.

13 2. Conducting remedial action to restore the property for its intended future
14 use.

15 3. Administering the activities under subds. 1. and 2. and bringing the action
16 under this section, including costs, disbursements, engineering fees and,
17 notwithstanding s. 814.04 (1), reasonable attorney fees.

18 (b) The costs determined under par. (a) shall be reduced by the fair market
19 value of the property after completion of the actions under par. (a) 2.

20 (c) Recoverable costs under this subsection may not be reduced by the amount
21 of any state or federal ^{moneys} ~~monies~~ received by the local governmental unit for any of the
22 activities under par. (a).

23 (5) REPAYING STATE ASSISTANCE. If a local governmental unit that recovers costs
24 under this section received money from this state for any of the activities under sub.

25 (4) (a) the local governmental unit shall reimburse to the state an amount that bears

1 the same proportion to the total amount recovered under this section as the amount
2 received from the state bears to the total costs under sub. (4) (a) adjusted as provided
3 in sub. (4) (b).

4 (6) LIMITATION OF ACTION. An action under this section shall be commenced
5 within 6 years after the date that the local governmental unit completes the action
6 under sub. (4) (a) 2. or be barred.

7

(END) ✓

DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-0958/P1dn

RCT:.....

*cmf
+
jlg*

This is a preliminary version of the proposal to strengthen the ability of municipalities to recover environmental costs, which is from the draft of the DNR Brownfields Study Committee report. Please review this draft carefully to ensure that it complies with the intent of the proposal. The proposal required a local governmental unit to reimburse to the state "any state grant funds recovered under this section". I think that it would be difficult to tell which of the funds recovered are state funds and which are not. Therefore, this draft requires repayment of a proportion of the recovery equal to the proportion of the costs that the state provided. Should the draft include a similar provision on repaying federal funding?

The legislature created s. 292.35 of the statutes several years ago to provide a method for local governmental units to recover costs of investigation and cleanup of contaminated properties owned by local governmental units. That statute requires a negotiation process before a local governmental unit may resort to suing in court. I believe that the intent was to attempt to resolve controversies about paying these costs without resort to lawsuits. This draft allows a local governmental unit to proceed directly to court, although not with respect to as many types of property as are covered by s. 292.35.

There are other differences between s. 292.35 and proposed s. 292.33, created in this draft. For example, a local unit of government may pursue more types of "responsible parties" under s. 292.35. Section 292.35 establishes a method for apportioning the costs among responsible parties and, generally, limits the amount that each party may be required to pay to the amount for which it is responsible. This proposal does not contain such provisions. I assume that a local governmental unit would be able to recover all of its costs from one party. I am not certain that it makes sense to have two statutes on basically the same subject with such inconsistent provisions.

This proposal makes liable the persons to whom the spills law applies in s. 292.11 (3) and (7) (b). However, there are a large number of exemptions from the spills law and there are no exemptions from the liability in this proposal. A person who is not liable under the spills law may be liable under this proposal. For example, if a local governmental unit acquired a property in one of the ways described in s. 292.11 (9) (e) 1m. and the property was affected by contamination from an off site source, the person from whom the property was acquired might be exempt from liability under s. 292.13 but be liable to the local governmental unit under this proposal.

Please contact me with any questions or redraft instructions. I will have to do a redraft before this draft can be included in the budget bill.

Rebecca C. Tradewell
Managing Attorney
266-7290

DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-0958/P1dn
RCT:cmh&jlg:km

December 16, 1998

This is a preliminary version of the proposal to strengthen the ability of municipalities to recover environmental costs, which is from the draft of the DNR Brownfields Study Committee report. Please review this draft carefully to ensure that it complies with the intent of the proposal. The proposal required a local governmental unit to reimburse to the state "any state grant funds recovered under this section". I think that it would be difficult to tell which of the funds recovered are state funds and which are not. Therefore, this draft requires repayment of a proportion of the recovery equal to the proportion of the costs that the state provided. Should the draft include a similar provision on repaying federal funding?

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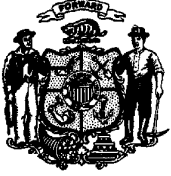
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Rebecca C. Tradewell
Managing Attorney
266-7290

Per Mandy - People should not be liable if they
are exempt under spills law.

RET



State of Wisconsin
1999 - 2000 LEGISLATURE

soon

LRB-0958/P~~1~~²
RCT:cmh&jlg:km
↑↑ redraft
stay make
run

DOA:.....Wong - Strengthen ability of local government to recover environmental costs

FOR 1999-01 BUDGET — NOT READY FOR INTRODUCTION

✓
Note

1 AN ACT ^{danger cut} (...; relating to: the budget.

✓
Analysis
insert

Analysis by the Legislative Reference Bureau

~~This is a preliminary draft. An analysis will be provided on a later version.~~

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

2 SECTION 1. 292.33 of the statutes is created to read:

3 **292.33 Local government cost recovery cause of action. (1) DEFINITION.**

4 In this section "local governmental unit" has the meaning given in s. 292.11 (9) (e)

5 1.

6 (2) CAUSE OF ACTION. A local governmental unit may recover costs as provided
7 in sub. (4) from a responsible person described in sub. (3) if the costs are incurred in

8 connection with a property acquired ^{as provided} in a way described in s. 292.11 (9) (e) 1m. on

9 which a hazardous substance has been discharged.

recover costs in

(a) Except as provided in par. (b),
recover costs in

1 (3) RESPONSIBLE PERSONS. A local governmental unit may ~~initiate~~ ^{recover costs in} an action
2 under sub. (2) ~~against~~ ^{this section from} any of the following:

3 1. (a) A person who, at the time that the local governmental unit acquired the
4 property, possessed or controlled the hazardous substance that was discharged on
5 the property.

6 2. (b) A person who caused the discharge of the hazardous substance on the
7 property.

Input
2-7

8 (4) RECOVERABLE COSTS. (a) Except as provided in par. (b), in an action under
9 this section a local governmental unit may recover the reasonable and necessary
10 costs that it incurs for all of the following:

11 1. Investigating environmental contamination on the property and planning
12 remedial ~~action~~ ^{activities} described in subd. 2.

13 2. Conducting remedial ~~action~~ ^{activities} to restore the property for its intended future
14 use.

15 3. Administering the activities under subds. 1. and 2. and bringing the action
16 under this section, including costs, disbursements, engineering fees and,
17 notwithstanding s. 814.04 (1), reasonable attorney fees.

18 (b) The costs determined under par. (a) shall be reduced by the fair market
19 value of the property after completion of the ~~action~~ ^{activities} under par. (a) 2.

20 (c) Recoverable costs under this subsection may not be reduced by the amount
21 of any state or federal moneys received by the local governmental unit for any of the
22 activities under par. (a).

23 (5) REPAYING STATE ASSISTANCE. If a local governmental unit that recovers costs
24 under this section received money from this state for any of the activities under sub.

25 (4) (a), the local governmental unit shall reimburse to the state an amount that bears

1 the same proportion to the total amount recovered under this section as the amount
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5 within 6 years after the date that the local governmental unit completes the ^{activities} ~~action~~
6 under sub. (4) (a) 2. or be barred.

7 (END)

Analysis insert

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. A person who owns property on which a hazardous substance has been discharged is considered to possess or control the hazardous substance. There are several exceptions to the cleanup requirement.

*
*

This bill authorizes a local governmental unit to recover costs of cleaning up a property on which a hazardous substance has been discharged if the local governmental unit acquired the property in one of several specified ways, including through tax delinquency proceedings and condemnation. The local governmental unit may recover the costs from a person who possessed or controlled the hazardous substance at the time that the local governmental unit acquired the property or who caused the discharge of the hazardous substance, unless the person is exempt from the requirement to clean up the property under current law.

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

insert hyphen

it incurs in

¶ (b) A local governmental unit may not recover costs in an action under sub. (2) from a person described in par. (a) if the person qualifies for an exemption under s. 292.11(9)(e), 292.13, 292.15, 292.16, 292.19 or 292.21 with respect to the discharge that is the subject of the action.

(END OF INSERT)

DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU

2
LRB-0958/Pjdn
RCT:cmh&jlg:km

V/
stamp

~~December 16, 1998~~ *new date*

Change!

As you requested, this redraft prevents a person from being liable to a local governmental unit if the person is exempt from the spills laws

redraft

*
*
*

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④
I have not provided a copy of this draft to DWR.

Please contact me with any questions or redraft instructions. ~~I will have to do a redraft before this draft can be included in the budget bill.~~

→ no

④

Rebecca C. Tradewell
Managing Attorney
266-7290

DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-0958/P2dn
RCT:cmh&jlg:jf

January 8, 1999

Manyee:

This is a redraft of the proposal to strengthen the ability of municipalities to recover environmental costs. As you requested, this redraft prevents a person from being liable to a local governmental unit if the person is exempt from the spills law. Please review this draft carefully to ensure that it complies with the intent of the proposal.

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I have not provided a copy of this draft to DNR. Please contact me with any questions or redraft instructions.

Rebecca C. Tradewell
Managing Attorney
266-7290

Tradewell, Becky

From: Wong, Manyee [Manyee.Wong@doa.state.wi.us]
Sent: Tuesday, January 19, 1999 8:39 AM
To: Tradewell, Becky
Subject: FW: LRB Draft: 99-0958/P2

Hi Becky,

I received some comments from Darsi at DNR regarding draft 0958. I will fax her memo to you. Please incorporate her comments into the draft. Thanks.

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

> From: Schmiedicke, David
> Sent: Monday, January 18, 1999 4:42 PM
> To: Wong, Manyee
> Subject: RE: LRB Draft: 99-0958/P2

> Keep it in the budget and incorporate Darsi's comments. Thanks.

> David P. Schmiedicke
> Wisconsin Department of Administration
> Voice -- (608) 266-1040
> FAX -- (608) 267-0372
> E-Mail -- david.schmiedicke@doa.state.wi.us

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

> From: Wong, Manyee
> Sent: Saturday, January 16, 1999 8:21 PM
> To: Schmiedicke, David
> Subject: RE: LRB Draft: 99-0958/P2

> Hi Dave,

> Have you had a chance to look through Darsi's comments on this draft? Do
> we still want to keep it in the budget? Also, if we keep it in the
> budget, do we want to limit the type of cost a municipality could recover
> as Darsi requested in her memo? They seem legitimate.

> Thanks.

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

> From: Schmiedicke, David
> Sent: Friday, January 08, 1999 3:00 PM
> To: Wong, Manyee
> Subject: FW: LRB Draft: 99-0958/P2

> Manyee: Becky makes some very good points regarding existing law.
> Please raise these points with Darsi. Unless this can be resolved
> quickly, I'm leaning toward leaving it out of the budget. Let me know
> what you discover. Thanks.

> David P. Schmiedicke
> Wisconsin Department of Administration
> Voice -- (608) 266-1040
> FAX -- (608) 267-0372
> E-Mail -- david.schmiedicke@doa.state.wi.us

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

> From: Frantzen, Jean [SMTP:Jean.Frantzen@legis.state.wi.us]
> Sent: Friday, January 08, 1999 2:54 PM

> To: 'manyee.wong@doa.state.wi.us'
> Cc: 'david.schmiedicke@doa.state.wi.us';
> 'vicky.labelle@doa.state.wi.us'; Hubli, Scott; Haugen, Caroline
> Subject: LRB Draft: 99-0958/P2

>
> Following is the PDF version of draft 99-0958/P2.
>

> << File: 99-0958/P2 >> << File: 99-0958/P2dn >>

CORRESPONDENCE/MEMORANDUM

State of Wisconsin

Bucky Tradewell

DATE: January 6, 1999

FILE REF: LRB-0958/P1dn

TO: Rebecca Tradewell- LRB

FROM: Darsi Foss- RR/3

SUBJECT: Response to Dec. 16, 1998, drafter's note LRB-0958/P1dn re: ability of local governmental unit to recover environmental costs

- ✓ 1. With respect to s. 292.33(5) - "Repaying State Assistance," the proportional reimbursement scheme is fine. However, could we clarify that it is state grant money, and not Environmental Fund money, that is referenced in this subsection? The authority to file a superior lien to recover Environmental Fund expenditures is the means by which the state can recover those costs. It should be noted that the language in paragraph 5 of this memo, if incorporated into the draft, will limit the number of instances where cost recovery is pursued by municipalities at sites where Environmental Funds have been spent.
2. Section 292.35 has only been used on a few occasions since its enactment. Moreover, it has only been used at landfills, where a great number of PRPs are involved. The authority granted to municipalities to sue non-cooperative parties is provided for in s. 292.35 to encourage cooperation with the process. The primary objection voiced by many parties on the study group was that s. 292.35 is too complicated and time consuming to be useful except for properties with a large number of viable RPs. Section 292.33 was proposed by the study group to give municipalities the ability to take the initiative in cleaning up and redeveloping properties and to recover costs from a single RP or multiple RPs after the cleanup is completed.
3. Again, s. 292.35 has only proven useful in limited circumstances. Section 292.33 is intended as a tool for use by municipalities to recover their out-of-pocket costs after they have completed a cleanup.
- ✓ 4. Could you please re-write the draft of s. 292.33 so that persons who are exempt from liability to the DNR under the spills law are also exempt from liability to a municipality under this section? Would it be possible to amend s. 292.33(3) so that a person is a responsible person "unless otherwise exempt from the spill law under ch. 292?"
5. The original draft of this section contained in the study group report contained language that would prevent a municipality from recovering money for further cleanup of a property or portion of a property that was already the subject of a cleanup approved by DNR, Commerce, or DATCP. Could the next draft of this section contain this provision?
6. Lastly, one of the DNR comments in the Study Group Report was that a municipality should not be allowed to take a property that was previously cleaned up to industrial standards, and then clean it up to residential standards and recover those costs from an RP. With DOA's concurrence, could the next draft of s. 292.33 reflect that concern?



*From brownfield
study committee
report*

Issue: Strengthen Ability of Municipality to Recover Environmental Costs

Background

In Wisconsin, the state estimates that there are 8,000 brownfields properties that require some degree of investigation and cleanup. The state has actively promoted the critical role that local governments must play in their own communities if these properties are to be returned to productive use. While grants and loans are available for many projects, state and federal brownfields funds will not come close to covering the costs local governments

will need to invest in cleaning up these properties. Thus, it is recognized that local governments need a clear tool to recover the monies spent on investigating and remediating brownfields properties, especially from a financially viable party that either caused the contamination, or should have taken action to clean up the property prior to the local government acquiring the property.

Proposal

Create s.292.12 of the statutes to read:

292.12 Remediated property; municipal cause of action.

- (1) **CAUSE OF ACTION.** A local unit of government, as defined in s.292.11(9)(e)1. may initiate a civil action to recover damages from one or more persons responsible under sub.(2), for environmental remediation activities for property acquired in any of the ways identified in s.292.11(9)(e)1m.
- (2) **PERSONS RESPONSIBLE.** The action under sub. (1) may be initiated against one or more of the following persons:
 - (a) A person who, at the time the property is acquired by the local unit of government, possesses or controls the hazardous substance that was discharged on the property; and
 - (b) A person who causes or caused the discharge of a hazardous substance on the property.
- (3) **DAMAGES.**
 - (a) The damages recoverable in an action initiated under this section are the reasonable and necessary costs incurred by the local unit of government for its environmental response activities for a property or portions of a property not previously the subject of a cleanup approved by the DNR, the Department of Commerce or the Department of Agriculture, Trade and Consumer Protection, considering the intended development and use of the property. Costs shall include administrative and legal expenses related to the remediation activities. Certification of costs shall be prima facie evidence that such costs are reasonable and necessary.
 - (b) Damages shall be reduced by the fair market value of the property after completion of the remediation activities.

(4) FEDERAL AND STATE ASSISTANCE.

- (a) Damages shall not be reduced by the amount of any federal or state monies under this section. The local unit of government shall reimburse to the state any state grant funds recovered under this section and any other state funds expended regarding the property after deducting reasonable costs for collection.
 - (b) Any expenditures made by the DNR under s.292.11 or 292.31(1), (3) or (7) shall constitute a lien on the property, superior to other liens, as provided in s.292.81, and superior to damages under par. (a).
- (5) COURT COSTS. The local unit of government upon a recovery under this section shall be entitled to costs, disbursements and expenses of the action, necessary to prepare for or participate in actual or anticipated court proceedings.
- (6) LIMITATION OF ACTION. An action under this section shall be commenced within six (6) years after the date of completion of environmental remediation activities for the property by the local unit of government.

Comments

DNR Comments:

- may want to clarify that if there is a state-approved cleanup based on one type of land use (e.g., industrial), a local government cannot recover environmental costs for cleaning up to a more restrictive standard (e.g., residential cleanup levels);
- may want to require that a local government must conduct environmental response activities in accordance with applicable state and federal environmental laws; and
- may want to expand authority to recover costs of addressing solid wastes, in addition to the proposed ability to recover costs of addressing hazardous substances.

WMC's Comments: WMC opposes the proposed municipal cost recovery provision that is proposed. We do not support creating a cause of action that is only available to municipalities, and we also have issues with the specific language proposed.

Bruce Keyes, Foley and Lardner, Brownfields Study Group Member, Comments: I believe that the same cause of action proposed for the municipality should be available to private parties, such that a cleanup by the municipality serves only as a last resort when the private sector fails.

Type of Change: Statutory

Resources: None



State of Wisconsin
1999 - 2000 LEGISLATURE

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LRB-0958/1

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DOA:.....Wong - Strengthen ability of local government to recover environmental costs

FOR 1999-01 BUDGET — NOT READY FOR INTRODUCTION

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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. A person who owns property on which a hazardous substance has been discharged is considered to possess or control the hazardous substance. There are several exceptions to the clean-up requirement.

This bill authorizes a local governmental unit to recover costs it incurs in cleaning up a property on which a hazardous substance has been discharged if the local governmental unit acquired the property in one of several specified ways, including through tax delinquency proceedings and condemnation. The local governmental unit may recover the costs from a person who possessed or controlled the hazardous substance at the time that the local governmental unit acquired the property or who caused the discharge of the hazardous substance, unless the person is exempt from the requirement to clean up the property under current law.

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

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

1 **SECTION 1.** 292.33 of the statutes is created to read:

2 **292.33 Local government cost recovery cause of action. (1) DEFINITION.**

3 In this section "local governmental unit" has the meaning given in s. 292.11 (9) (e)

4 1.

5 (2) **CAUSE OF ACTION.** *Except as provided in sub. (6), a* local governmental unit may recover costs as provided

6 in sub. (4) from a responsible person described in sub. (3) if the costs are incurred in
7 connection with a property acquired as provided in s. 292.11 (9) (e) 1m. on which a
8 hazardous substance has been discharged.

9 (3) **RESPONSIBLE PERSONS.** (a) Except as provided in par. (b), a local
10 governmental unit may recover costs in an action under this section from any of the
11 following:

12 1. A person who, at the time that the local governmental unit acquired the
13 property, possessed or controlled the hazardous substance that was discharged on
14 the property.

15 2. A person who caused the discharge of the hazardous substance on the
16 property.

17 (b) A local governmental unit may not recover costs in an action under sub. (2)
18 from a person described in par. (a) if the person qualifies for an exemption under s.
19 292.11 (9) (e), 292.13, 292.15, 292.16, 292.19 or 292.21 with respect to the discharge
20 that is the subject of the action.

1 (4) RECOVERABLE COSTS. (a) Except as provided in par. (b), in an action under
2 this section a local governmental unit may recover the reasonable and necessary
3 costs that it incurs for all of the following:

4 1. Investigating environmental contamination on the property and planning
5 remedial activities described in subd. 2.

6 2. Conducting remedial activities to restore the property for its intended future
7 use.

8 3. Administering the activities under subds. 1. and 2. and bringing the action
9 under this section, including costs, disbursements, engineering fees and,
10 notwithstanding s. 814.04 (1), reasonable attorney fees.

11 (b) The costs determined under par. (a) shall be reduced by the fair market
12 value of the property after completion of the activities under par. (a) 2.

13 (c) Recoverable costs under this subsection may not be reduced by the amount
14 of any state or federal moneys received by the local governmental unit for any of the
15 activities under par. (a).

16 (5) REPAYING STATE ASSISTANCE. If a local governmental unit that recovers costs
17 under this section received money from this state for any of the activities under sub. [✓] [✓]
, other than under s. 292.11 (?) or 292.31 (1), (3) or (?)

18 (4) (a), the local governmental unit shall reimburse to the state an amount that bears
19 the same proportion to the total amount recovered under this section as the amount
, other than under s. 292.11 (?) or 292.31 (1), (3) or (?)
20 received from the state bears to the total costs under sub. (4) (a) adjusted as provided

21 in sub. (4) (b).

✓
✓
Insert
3-21

22 (6) LIMITATION OF ACTION. An action under this section shall be commenced
23 within 6 years after the date that the local governmental unit completes the
24 activities under sub. (4) (a) 2. or be barred.

25

(END) ✓

Insert 3-21

(b) (1) (c) Exception. A local governmental unit may not recover costs under this section for remedial activities conducted on a property or portion of a property of the department of natural resources, the department of commerce or the department of agriculture, trade and consumer protection ^{with respect to a discharge after} has approved a ~~discharge~~ of the remedial activities ~~on the property or portion of the property~~ ~~conducted with respect to that discharge~~ indicated that no further remedial activities are necessary on the property or portion of the property with respect to the discharge.

DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-0958/1dn

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Manyee:

This redraft is based on the comments of Darci Foss in her memo dated January 6, 1999 (which I received on January 19). Please note that Darci was commenting on the first version (/P1) of this draft. The second version (/P2) incorporated the change that she requests in her point 4.

In point 1, Darci asks that the draft only require the repayment of state grant money. I think that it may not always be clear which money received from the state is a grant and which is something else. See the changes to proposed s. 292.33 (5) for the approach that I took to this issue.

As requested in point 5 of the memo, this draft prevents the use of the cost recovery statute for any further cleanup conducted after DNR, DATCP or the department of commerce has approved a cleanup. Therefore, it is unnecessary to specify that the statute may not be used for cleaning a property to residential standards after one of those agencies has approved a cleanup to industrial standards.

If you have any questions about this draft, please contact me.

Rebecca C. Tradewell
Managing Attorney
266-7290

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

LRB-0958/1dn
RCT:cmh&jlg:hmh

Tuesday, January 19, 1999

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7 (3) if the costs are incurred in connection with a property acquired as provided in s.
8 292.11 (9) (e) 1m. on which a hazardous substance has been discharged.

9 (3) RESPONSIBLE PERSONS. (a) Except as provided in par. (b), a local
10 governmental unit may recover costs in an action under this section from any of the
11 following:

12 1. A person who, at the time that the local governmental unit acquired the
13 property, possessed or controlled the hazardous substance that was discharged on
14 the property.

15 2. A person who caused the discharge of the hazardous substance on the
16 property.

17 (b) A local governmental unit may not recover costs in an action under sub. (2)
18 from a person described in par. (a) if the person qualifies for an exemption under s.
19 292.11 (9) (e), 292.13, 292.15, 292.16, 292.19 or 292.21 with respect to the discharge
20 that is the subject of the action.

1 (4) RECOVERABLE COSTS. (a) Except as provided in par. (b), in an action under
2 this section a local governmental unit may recover the reasonable and necessary
3 costs that it incurs for all of the following:

4 1. Investigating environmental contamination on the property and planning
5 remedial activities described in subd. 2.

6 2. Conducting remedial activities to restore the property for its intended future
7 use.

8 3. Administering the activities under subds. 1. and 2. and bringing the action
9 under this section, including costs, disbursements, engineering fees and,
10 notwithstanding s. 814.04 (1), reasonable attorney fees.

11 (b) The costs determined under par. (a) shall be reduced by the fair market
12 value of the property after completion of the activities under par. (a) 2.

13 (c) Recoverable costs under this subsection may not be reduced by the amount
14 of any state or federal moneys received by the local governmental unit for any of the
15 activities under par. (a).

16 (5) REPAYING STATE ASSISTANCE. If a local governmental unit that recovers costs
17 under this section received money from this state, other than under s. 292.11 (7) or
18 292.31 (1), (3) or (7), for any of the activities under sub. (4) (a), the local governmental
19 unit shall reimburse to the state an amount that bears the same proportion to the
20 total amount recovered under this section as the amount received from the state,
21 other than under s. 292.11 (7) or 292.31 (1), (3) or (7), bears to the total costs under
22 sub. (4) (a) adjusted as provided in sub. (4) (b).

23 (6) EXCEPTION. A local governmental unit may not recover costs under this
24 section for remedial activities conducted on a property or portion of a property with
25 respect to a discharge after the department of natural resources, the department of

1 commerce or the department of agriculture, trade and consumer protection has
2 indicated that no further remedial activities are necessary on the property or portion
3 of the property with respect to the discharge.

4 (7) LIMITATION OF ACTION. An action under this section shall be commenced
5 within 6 years after the date that the local governmental unit completes the
6 activities under sub. (4) (a) 2. or be barred.

7 (END)