

1999 DRAFTING REQUEST

Bill

Received: 12/21/98

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 - Expand protections for local governmental units (brownfields committee)

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 01/5/99	chanaman 01/8/99	martykr 01/8/99	_____	lrb_docadmin 01/8/99		S&L
/2	traderc 02/3/99	gilfokm 02/3/99	hhagen 02/3/99	_____	lrb_docadmin 02/3/99		S&L

FE Sent For:

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/1	traderc 01/5/99	chanaman 01/8/99	martykr 01/8/99	_____	lrb_docadmin 01/8/99		S&L

CH 2/3 *CH 1/2/3*

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1?	traderc	CMM 1/6 /i	Km 1/4	<u>DF</u> <u>1/8</u>			
FE Sent For:		1-1-7-99 Kmg					

<END>

1. No person may make in any application, record, report, plan or other documents submitted to the department, any statement, representation or certification known to that person to be false or misleading.
2. Any person who violates this sub (1) shall be fined not less than \$10 and no more than \$10,000.
3. Any monetary compensation paid for violations under sub (1) will be deposited into the Dry Cleaner Environmental Fund.

Waste Management - DNR

1. Landfill Siting Committee Membership (See Attachment C)
 - Amend landfill siting law to state that a host community is entitled to appoint a majority of members on any siting committee regardless of how it is formed. As such, the town, city or village in which the landfill is proposed to be located may appoint 4 members or 2 more members than the total number of members on the committee, whichever is greater.

Recycling

1. Repeal Recycling Market Development Board Grant starting FY 2000.
2. For municipalities who have less than 33% of eligible expenses in determining their recycling grant award, provide a grant that equals to 33% of eligible expenses or \$8 per capita, whichever is less. (Reference: s287.23 (5)(c)(5)).
3. Repeal current law that requires responsible units to implement a system of volume-based fee by January 1, 2000. (Reference: 287.23(5s)(b))
4. Change the sunset date for grant awards from year 2000 to year 2001. (Reference 287.23 (7))

Brownfields Study Group

Incentives for Local Government

1. Allow Transfer of Tax Delinquent Brownfields Properties to Cities (Reference: LRB 1005)
 - Modify our previous request to require a county, after receiving a written request from the affected municipality, to either take a tax deed and ownership to a property that is subject to a tax certificate or transfer ownership of that property to the requested municipality with no consideration.
2. Expand Protections for Local Units of Government that Involuntarily Acquire Contaminated Property
 - ✓ ➤ Expand municipality liability exemptions to properties acquired with stewardship funds. Municipalities would be required to enter into a negotiated agreement with DNR to ensure all cleanup conditions are met.

- Include community development authority in the definition of local units of governments under current law.
- Exempt municipalities from federal hazardous waste requirements through an exemption from state requirements (as suggested by Becky Tradewell).
- Exempt lenders and local units of governments from the requirement to clean up federally defined underground storage tanks through an exemption from state requirements (as suggested by Becky Tradewell).

3. Provide Funding for Neighborhood Revitalization Brownfields Projects

- Create a biennial appropriation from the Environmental Fund with an annual amount of \$1 million to provide site assessment grants.
- Authorize DNR to administer the grants. These grants are to assist municipalities with costs related to phase I and II of the environmental assessment, demolition, and the removal of abandoned containers and asbestos.
- Limit the amount of grants that can be received by any community to 15% of the available funding.
- Require a 20% local match.
- Require that if a land recycling loan is received by the grantee to redevelop that same piece of land that the grant was used on, the municipality must repay in full the site assessment grant from the loan.
- Allow requests for land recycling loans on projects to include the amount of the assessment grant.
- Limit eligibility to local units of governments.

Liability

1. Potential impact associated with 1) expanding the eligibility of voluntary parties, 2) exemption from liability for off-site contamination, 3) allowing the use of interim liability exemptions, and 4) issuing Certificate of Completion for sites using natural attenuation as a final remedy in their cleanup efforts.

- In conjunction with the biennial report, DNR must submit a status report to the Governor, the Legislature, and DOA that includes the following information:
 1. Number of active sites associated with the use of each process identified above.
 2. Number of Certificates of Completion issued using the first and last processes identified above.
 3. Number of sites with failed remedial options **or** where additional contamination was found after the Certificate of Completion was issued.
 4. Number of sites where contamination migrated to an off-site property after the Certification of Completion has been issued.
 5. Number of priority sites using the Environmental Fund to conduct cleanup and costs of responding to these sites.
 6. Number of sites where additional contamination was discovered between the end of a site investigation and the start of remediation activities (i.e., discuss the effectiveness of the interim liability program).

1. LUGs: Acquisition of brownfields property using Stewardship funds

Background

Many brownfields properties are located along river or lake fronts, due to the historic reliance of industry on ready sources of surface waters. Thus, many municipalities have discovered that the revitalization of their waterfronts may involve the acquisition and cleanup of contaminated properties. The Stewardship Program was modified in 1997 to give "greater weight" to projects involving brownfields.

In particular, nonprofit conservation organizations and local governments may be eligible to apply under the urban green space,

urban river restoration, or trail acquisition categories for grants to acquire brownfields properties.

Many local units of government applying for Stewardship funds would like to take advantage of the Spill Law's protections for involuntary acquisition, particularly for acquiring the property through condemnation. However, the Stewardship program is legally prohibited from granting funds if the property is acquired through condemnation.

Proposal

Modify s.292.11(9)(e), Wis. Stats., to include an exemption for local units of government that acquire a property using Stewardship funds, under Ch. 23, Wis. Stats. Conditions of gaining and maintaining that exemption include all those existing conditions in s.292.11(9)(e), Wis. Stats. In addition, the local unit of government would be required to enter into a negotiated agreement with the DNR, in accordance with s.292.11(7)(d)1., Wis. Stats., to ensure that the conditions in s.292.11(9)(c) Wis. Stats., particularly subdivision 4, are met once the LUG acquires the property. This may require the local unit of government to investigate and clean up portions of the property to ensure that the use of the property is not inconsistent with any contamination remaining at the property.

A related cross-reference to applicable sections of the Stewardship law may need to be made, if entering into an agreement or contract with DNR is a condition of being eligible for Stewardship funds.

Comments

Type of Change: Statutory change to s.292.11(9)(e), Wis. Stats.

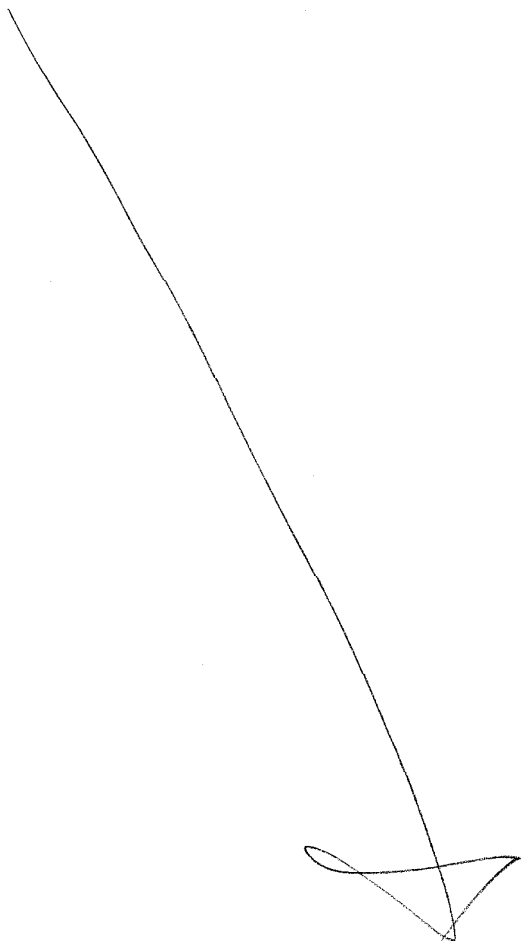
Resources: None

using funds under
20.866(2) (t2)

5. LUGs: Definition of Local Unit of Government

Background

The definition of Local Unit of Government in s.292.11(9)(e), Wis. Stats., clarifies what entities are eligible for the exemption from the Spill Law. Currently, that definition includes: municipalities, redevelopment authorities, public bodies designated under s.66.431, Wis. Stats., and housing authorities.



Proposal

Include "community development authority" in the definition of LUG in s.292.11(9)(e)1, Wis. Stats.

Comments

Type of Change: Statutory

Resources: None

2. LUGs: Clarify state and federal hazardous waste authority

Background

Great progress has been made in the last five years to relieve the concerns of local units of government over the involuntary acquisition of contaminated properties. With the clear exemptions from having to conduct an investigation and cleanup under the state's Spill Law or the federal Superfund law, local governments have begun to take proactive steps to acquire, and in some cases clean up, brownfields properties.

However, many local governments are still hesitant to acquire brownfields, particularly those where the state or federal government's Hazardous Waste Program may have legal authority to compel a cleanup due to past activities at the properties. The state and federal hazardous waste authorities apply not only to the

operator of a hazardous waste facility, but also to any "owner." It is estimated that there are 1,500 tax delinquent brownfields properties in Wisconsin, and a large percent are estimated to be former hazardous waste facilities, such as old foundries, electroplating shops, waste oil facilities, and other heavy industrial use properties.

While the federal Superfund program has passed legislation to clearly exempt municipalities from liability if they involuntarily acquire a property, the federal Hazardous Waste Program has shown little or no interest in this area. Discussions with EPA's Region V office in Chicago have resulted in little substantial progress on this challenge - whether real or perceived - to brownfields redevelopment.

Proposal

Section 292.11(9)(e)1n. is created to read as follows:

292.11(n)(9)(e)1n.

Except as provided in section 292.15(7), a local governmental unit is exempt from the provisions of sections 291.25(1) to (5), 291.29, and 291.37 and rules promulgated under those provisions, with respect to the existence of a hazardous substance on the property, if it acquires the property under a method described in subd. 1m and if all of the following occur at any time before or after the date of acquisition:

1. An environmental investigation of the property is conducted that is approved by the Department which includes assessing the nature and extent, if any, of hazardous waste releases on the property since eighteen months after October 21, 1976.
2. The hazardous waste releases identified in the environmental investigation governed by subd. 1 are cleaned up by restoring the environment to the extent practicable and minimizing the harmful effects from a discharge of the hazardous waste in accordance with the rules promulgated by the Department and any contract entered into under those rules.
3. The local governmental unit obtains a certificate of completion from the Department that the property which has been identified to be the subject of a hazardous waste release since eighteen months after October 21, 1976 has been satisfactorily restored to the extent practicable, and that the harmful effects from said release of hazardous waste has been minimized.
4. The local governmental unit maintains and monitors the property as required under rules promulgated by the Department and any contract entered into under those rules.
5. The local unit of government does not engage in activities that are inconsistent with the maintenance of the property.
6. The local unit of government has not obtained a certification under subd. 3 by fraud or misrepresentation, by the knowing failure to disclose material information under circumstances in which the local unit of government knew or should have known about more discharges of hazardous waste since eighteen months after October 21, 1976 than were revealed by the investigation conducted under subd. 1.
7. The local governmental unit did not cause the release of any hazardous waste identified on

the property.

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

292.11(9)(e)1m. (intro) a local governmental unit is exempt from subsections (3), (4) and (7)(b) and (c), sections 289.05(1), (2), (3), and (4), 289.42(1), 289.67, and 292.31(8) with respect to property acquired by local governmental unit if any of the following applies:

Comments

DNR Comments:

1. The proposed State statutory exemption cannot affect the liability under Federal law of Local Governmental Units that acquire hazardous waste treatment, storage or disposal sites, so this perceived problem with redeveloping Brownfields will remain, to a certain extent.
2. Although the Department and Brownfields Group agree on the need for a conditional hazardous waste exemption for Local Governmental Units acquiring property involuntarily, the specific wording of the statutory revision is important. To reduce the risk that EPA might view the exemption as making Wisconsin's Hazardous Waste Program less than equivalent to EPA's, the Department recommends the following wording, which is based on the current exemption for Voluntary Parties:

Section 292.11 (9) (e) 1n. and (12) (c) are created to read:

292.11 (9) (e) 1n. Except as provided in sub. (12) (c), a local governmental unit is exempt from the provisions of sections 291.25(1) to (5), 291.29 and 291.37, stats., and rules promulgated under those provisions, with respect to the existence of a hazardous waste on the property, if it acquires the property under a method described in subd. 1m. and if all of the following occur at any time before or after the date of acquisition:

1. An environmental investigation of the property is conducted that is approved by the department which includes identifying any hazardous waste releases which occurred on the property.
2. The hazardous waste releases identified in the environmental investigation governed by subd. 1. are cleaned up by restoring the environment to the extent practicable and minimizing the harmful effects from a discharge of the hazardous waste in accordance with the rules promulgated by the department and any contract entered into under those rules.
3. The local governmental unit obtains a certificate of completion from the department that the property which has been identified to be the subject of a hazardous waste release has been satisfactorily restored to the extent practicable, and that the harmful effects from the release of hazardous waste have been minimized.
4. The local governmental unit maintains and monitors the property as required under rules promulgated by the department and any contract entered into under those rules.
5. The local governmental unit does not engage in activities that are inconsistent with the maintenance of the property.
6. The local governmental unit has not obtained a certification under subd. 3. By fraud or misrepresentation, by the knowing failure to disclose material information under circumstances in which the local governmental unit knew or should have known about more discharges of hazardous waste than were revealed by the investigation conducted under subd. 1.
7. The local governmental unit did not cause the release of any hazardous waste identified on the property.

(12) (c) Subsection (9) (e) 1n. does not apply to any of the following:

1. A hazardous waste treatment, storage or disposal facility that first begins operation after the date on which the local governmental unit acquired the property.
2. A licensed hazardous waste treatment, storage or disposal facility operated on the property before the date on which the local governmental unit acquired the property and that is operated after the date on which the local governmental unit acquired the property.
3. Any hazardous waste disposal facility that has been issued a license under s. 144.441 (2), 1995 stats., or s. 289.41 (1m), or rules promulgated under those sections, for a period of long-term care following closure of the facility.

We believe that we have substantive agreement on this proposed language.

3. The following should also be included in the statutes as an exemption from this exemption, similar to the voluntary party liability exemption:

Section 292.11(9)(e)6 is created as follows:

6. Subdivision 1m does not apply to a municipal waste landfill, as defined in s.289.01(22), or to an approved facility. We believe that we have substantial agreement on this proposed language.

4. We recommend that the following language be discussed and considered for inclusion in Section 292.11(9)(e)7.

7. Subdivision 1m. does not apply if the local governmental unit fails to comply with a condition of a plan approval, order or exemption under ch 289 relating to monitoring or long-term care of the property acquired.

The discussion regarding the inclusion of an exemption for solid waste facilities occurred very late in the process. We would like the opportunity to discuss the merits of including such language in the proposed statutory changes.

Type of Change: Statutory

Resources: None

4. LUGs: Eliminate Requirement to Conduct Cleanup of Federally-defined Underground Storage Tanks

Background

Local units of government that acquire properties involuntarily, as detailed in s.292.11(9)(e), Wis. Stats., are exempt from having to investigate or clean up such a property, unless the discharge is from an underground storage tank regulated by

federal law. Many municipalities would like this "exception" removed so that they are exempt from addressing discharges from state-defined – as well as federally-defined – underground storage tanks (USTs).

Proposal

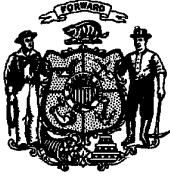
Repeal s.292.11(9)(e)(3), Wis. Stats.

Comments

DNR Comments: No federal UST exemption exists for LUGs that acquire property involuntarily.

Type of Change: Statutory

Resources: None



State of Wisconsin
1999 - 2000 LEGISLATURE

LRB-1419/1

RCT.....

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DOA:.....Wong - Expand protections for local governmental units
(brownfields committee)

FOR 1999-01 BUDGET - NOT READY FOR INTRODUCTION

Note

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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. 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. "Local governmental unit" is defined to include a city, village, town, county, redevelopment authority and housing authority.

add
supers

This bill expands the local governmental unit exemption from clean-up requirements so that it applies to land acquired with funds from this state's stewardship fund program. The bill expands the definition of "local governmental unit" to include a community development authority. Under current law, the local governmental exemption from clean up requirements is not available if the discharge is from an underground petroleum storage tank. This bill eliminates that limitation.

*

This bill also exempts a local governmental unit that has acquired property in one of the specified ways from certain requirements relating to hazardous waste if

unit

the hazardous waste is cleaned up, DNR approves the cleanup and other conditions are satisfied.

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

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

1 SECTION 1. 292.11 (9) (e) 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), a community development

5 authority or a housing authority.

6 History: 1995 a. 227 ss. 700, 703 to 707, 710, 993; 1997 a. 27, 35. SECTION 2. 292.11 (9) (e) 1m. f. of the statutes is created to read:

7 292.11 (9) (e) 1m. f. The local governmental unit acquired the property using

8 funds appropriated under s. 20.866 (2) (tz).

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

10 SECTION 4. 292.11 (9) (e) 6. of the statutes is created to read:

11 292.11 (9) (e) 6. Subdivision 1m. does not apply to property described in subd.

12 1m. f. unless the local governmental unit enters into an agreement with the

13 department to ensure that the conditions in subds. 2. and 4. are satisfied.

14 SECTION 5. 292.24 of the statutes is created to read:

15 **292.24 Responsibility of local governmental units; hazardous waste.**

16 (1) DEFINITION. In this section, "local governmental unit" has the meaning given in

17 s. 292.11 (9) (e) 1.

18 (2) EXEMPTION FROM LIABILITY. Except as provided in sub. (3), a local

19 governmental unit is exempt from ss. 291.25 (1) to (5), 291.29 and 291.37, and rules

1 promulgated under those provisions, with respect to the existence of a hazardous
2 waste on property acquired in a way described in s. 292.11 (9) (e) 1[✓] if all of the
3 following occur at any time before or after the date of acquisition:

4 (a) An environmental investigation of the property is conducted that is
5 approved by the department and that identifies any hazardous waste discharges
6 that occurred on the property.

7 (b) The hazardous waste discharges identified by the investigation under par.
8 (a) are cleaned up by restoring the environment to the extent practicable with respect
9 to the discharges and minimizing the harmful effects from the discharges in
10 accordance with rules promulgated by the department and any contract entered into
11 under those rules.

12 (c) The local governmental unit obtains a certificate of completion from the
13 department ^{stating} that the property has been satisfactorily restored to the extent
14 practicable with respect to the hazardous waste discharges and that the harmful
15 effects from the discharges have been minimized.

16 (d) The local governmental unit maintains and monitors the property as
17 required under rules promulgated by the department and any contract entered into
18 under those rules.

19 (e) The local governmental unit does not engage in activities that are
20 inconsistent with the maintenance of the property.

21 (f) The local governmental unit has not obtained the certification under par. (c)
22 by fraud or misrepresentation, by the knowing failure to disclose material
23 information or under circumstances in which the local governmental unit knew or
24 should have known about more discharges of hazardous waste than were revealed
25 by the investigation conducted under par. (a) ⁽¹⁾.

1 (g) The local governmental unit did not cause the discharge of any hazardous
2 waste identified on the property.

3 (3) APPLICABILITY. Subsection (2) does not apply to any of the following:

4 (a) A hazardous waste treatment, storage or disposal facility that first begins
5 operation after the date on which the local governmental unit acquired the property.

6 (b) A licensed hazardous waste treatment, storage or disposal facility operated
7 on the property before the date on which the local governmental unit acquired the
8 property and that is operated after the date on which the local governmental unit
9 acquired the property.

10 (c) Any hazardous waste disposal facility that has been issued a license under
11 s. 144.441 (2), 1995 stats., or s. 289.41 (1^m), or rules promulgated under those
12 sections, for a period of long-term care following closure of the facility.

13 (END)

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

LRB-1419/1dn

RCT:.....

completing

Manye:

Your instructions indicate that the draft should exempt municipalities from federal hazardous waste requirements through an exemption from state requirements. The instructions indicate that I suggested this. This state cannot exempt anyone from any applicable federal law. I am sorry if something that I said misled you about this matter. The conditional exemption from state hazardous waste requirements in this draft is based on language proposed by DNR in the brownfields committee report. It is designed to avoid problems with EPA determining that this state's hazardous waste program is less than equivalent to the federal program.

Please note that ^{LRB}99-0257/2 includes ^{one}some of the same provisions as this draft but it also adds another method of acquiring property to the local governmental unit exemption. *and makes other changes in s. 292.11(9)*

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

*RCT
Managing Attorney*

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

LRB-1419/1dn
RCT:cmh&kmg:km

January 8, 1999

Manyee:

Your instructions indicate that the draft should exempt municipalities from federal hazardous waste requirements through an exemption from state requirements. The instructions indicate that I suggested this. This state cannot exempt anyone from any applicable federal law. I am sorry if something that I said misled you about this matter. The conditional exemption from state hazardous waste requirements in this draft is based on language proposed by DNR in the brownfields committee report. It is designed to avoid problems with EPA determining that this state's hazardous waste program is less than equivalent to the federal program.

Please note that LRB-0257/2 includes one of the same provisions as this draft but it also adds another method of acquiring property to the local governmental unit exemption and makes other changes in s. 292.11 (9).

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

Rebecca C. Tradewell
Managing Attorney
266-7290



State of Wisconsin
1999 - 2000 LEGISLATURE

today

LRB-1419/2 2

RCT:cmh&kmg:km
draft
run

DOA:.....Wong - Expand protections for local governmental units
(brownfields committee)

FOR 1999-01 BUDGET — NOT READY FOR INTRODUCTION

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Scott

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. "Local governmental unit" is defined to include a city, village, town, county, redevelopment authority and housing authority.

This bill expands the local governmental unit exemption from clean-up requirements so that it applies to land acquired with funds from this state's stewardship program. The bill expands the definition of "local governmental unit" to include a community development authority. Under current law, the local governmental unit exemption from clean-up requirements is not available if the discharge is from an underground petroleum storage tank. This bill eliminates that limitation.

This bill also exempts a local governmental unit that has acquired property in one of the specified ways from certain requirements relating to hazardous waste if the hazardous waste is cleaned up, DNR approves the cleanup and other conditions are satisfied.

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

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

1 **SECTION 1.** 292.11 (9) (e) 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), a community development
 authority or a housing authority.

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

6 292.11 (9) (e) 1m. f. The local governmental unit acquired the property using
7 funds appropriated under s. 20.866 (2) (tz).
8

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

10 **SECTION 4.** 292.11 (9) (e) ^{7.}~~6.~~ of the statutes is created to read:

11 292.11 (9) (e) ^{7.}~~6.~~ Subdivision 1m. does not apply to property described in subd.
12 1m. f. unless the local governmental unit enters into an agreement with the
13 department to ensure that the conditions in subds. 2. and 4. are satisfied.

14 **SECTION 5.** 292.24 of the statutes is created to read:

15 **292.24 Responsibility of local governmental units; hazardous waste.**

16 **(1) DEFINITION.** In this section, "local governmental unit" has the meaning given in
17 s. 292.11 (9) (e) 1.

18 **(2) EXEMPTION FROM LIABILITY.** Except as provided in sub. (3), a local
19 governmental unit is exempt from ss. 291.25 (1) to (5), 291.29 and 291.37, and rules

1 promulgated under those provisions, with respect to the existence of a hazardous
2 waste on property acquired in a way^{or for a purpose} described in s. 292.11 (9) (e) 1m., if all of the
3 following occur at any time before or after the date of acquisition:

4 (a) An environmental investigation of the property is conducted that is
5 approved by the department and that identifies any hazardous waste discharges
6 that occurred on the property.

7 (b) The hazardous waste discharges identified by the investigation under par.
8 (a) are cleaned up by restoring the environment to the extent practicable with respect
9 to the discharges and minimizing the harmful effects from the discharges in
10 accordance with rules promulgated by the department and any contract entered into
11 under those rules.

12 (c) The local governmental unit obtains a certificate of completion from the
13 department stating that the property has been satisfactorily restored to the extent
14 practicable with respect to the hazardous waste discharges and that the harmful
15 effects from the discharges have been minimized.

16 (d) The local governmental unit maintains and monitors the property as
17 required under rules promulgated by the department and any contract entered into
18 under those rules.

19 (e) The local governmental unit does not engage in activities that are
20 inconsistent with the maintenance of the property.

21 (f) The local governmental unit has not obtained the certification under par. (c)
22 by fraud or misrepresentation, by the knowing failure to disclose material
23 information or under circumstances in which the local governmental unit knew or
24 should have known about more discharges of hazardous waste than were revealed
25 by the investigation conducted under par. (a).

1999-2000 DRAFTING INSERT
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB
1419/2

Insert ✓
A

292.11 (a)(e) 1.
Δ Δ Δ

****NOTE: This is reconciled s. 1. This SECTION has been affected by drafts with the following LRB numbers: -0257, -1419 and -1422.

Insert
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292.11 (a)(e) 2.
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****NOTE: This is reconciled s. 1. This SECTION has been affected by drafts with the following LRB numbers: -0257 and -1419. *keep*

(END OF INSERT)

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

LRB -1419/2

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Ret: Kmg:

Manjee:

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.~~

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

LRB-1419/2dn
RCT:kmg:hmh

Wednesday, 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.

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State of Wisconsin
1999 - 2000 LEGISLATURE

LRB-1419/2
RCT:cmh&kmg:hmh

DOA:.....Wong - Expand protections for local governmental units
(brownfields committee)

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. "Local governmental unit" is defined to include a city, village, town, county, redevelopment authority and housing authority.

This bill expands the local governmental unit exemption from clean-up requirements so that it applies to land acquired with funds from this state's stewardship program. The bill expands the definition of "local governmental unit" to include a community development authority. Under current law, the local governmental unit exemption from clean-up requirements is not available if the discharge is from an underground petroleum storage tank. This bill eliminates that limitation.

This bill also exempts a local governmental unit that has acquired property in one of the specified ways from certain requirements relating to hazardous waste if the hazardous waste is cleaned up, DNR approves the cleanup and other conditions are satisfied.

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

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

1 **SECTION 1.** 292.11 (9) (e) 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), a community development
5 authority or a housing authority.

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

6 **SECTION 2.** 292.11 (9) (e) 1m. f. of the statutes is created to read:

7 292.11 (9) (e) 1m. f. The local governmental unit acquired the property using
8 funds appropriated under s. 20.866 (2) (tz).

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

10 **SECTION 4.** 292.11 (9) (e) 7. of the statutes is created to read:

11 292.11 (9) (e) 7. Subdivision 1m. does not apply to property described in subd.
12 1m. f. unless the local governmental unit enters into an agreement with the
13 department to ensure that the conditions in subds. 2. and 4. are satisfied.

 ****NOTE: This is reconciled s. 292.11 (9) (e) 7. This SECTION has been affected by
 drafts with the following LRB numbers: -0257 and -1419.

14 **SECTION 5.** 292.24 of the statutes is created to read:

15 **292.24 Responsibility of local governmental units; hazardous waste.**

16 (1) DEFINITION. In this section, “local governmental unit” has the meaning given in
17 s. 292.11 (9) (e) 1.

1 (2) EXEMPTION FROM LIABILITY. Except as provided in sub. (3), a local
2 governmental unit is exempt from ss. 291.25 (1) to (5), 291.29 and 291.37, and rules
3 promulgated under those provisions, with respect to the existence of a hazardous
4 waste on property acquired in a way or for a purpose described in s. 292.11 (9) (e) 1m.,
5 if all of the following occur at any time before or after the date of acquisition:

6 (a) An environmental investigation of the property is conducted that is
7 approved by the department and that identifies any hazardous waste discharges
8 that occurred on the property.

9 (b) The hazardous waste discharges identified by the investigation under par.
10 (a) are cleaned up by restoring the environment to the extent practicable with respect
11 to the discharges and minimizing the harmful effects from the discharges in
12 accordance with rules promulgated by the department and any contract entered into
13 under those rules.

14 (c) The local governmental unit obtains a certificate of completion from the
15 department stating that the property has been satisfactorily restored to the extent
16 practicable with respect to the hazardous waste discharges and that the harmful
17 effects from the discharges have been minimized.

18 (d) The local governmental unit maintains and monitors the property as
19 required under rules promulgated by the department and any contract entered into
20 under those rules.

21 (e) The local governmental unit does not engage in activities that are
22 inconsistent with the maintenance of the property.

23 (f) The local governmental unit has not obtained the certification under par. (c)
24 by fraud or misrepresentation, by the knowing failure to disclose material
25 information or under circumstances in which the local governmental unit knew or

1 should have known about more discharges of hazardous waste than were revealed
2 by the investigation conducted under par. (a).

3 (g) The local governmental unit did not cause the discharge of any hazardous
4 waste identified on the property.

5 **(3) APPLICABILITY.** Subsection (2) does not apply to any of the following:

6 (a) A hazardous waste treatment, storage or disposal facility that first begins
7 operation after the date on which the local governmental unit acquired the property.

8 (b) A licensed hazardous waste treatment, storage or disposal facility operated
9 on the property before the date on which the local governmental unit acquired the
10 property and that is operated after the date on which the local governmental unit
11 acquired the property.

12 (c) Any hazardous waste disposal facility that has been issued a license under
13 s. 144.441 (2), 1995 stats., or s. 289.41 (1m), or rules promulgated under those
14 sections, for a period of long-term care following closure of the facility.

15 **(END)**