

1999 DRAFTING REQUEST

Assembly Amendment (AA-AB133)

Received: **05/27/99**

Received By: **traderc**

Wanted: **Soon**

Identical to LRB:

For: **Legislative Fiscal Bureau**

By/Representing: **Bonderud**

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

Drafter: **traderc**

May Contact:

Alt. Drafters:

Subject: **Environment - env. cleanup**

Extra Copies:

Pre Topic:

LFB:.....Bonderud -

Topic:

DNR brownfields changes other than SUDZ

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 06/2/99	chanaman 06/4/99		_____			
/1			jfrantze 06/6/99	_____	lrb_docadmin 06/7/99		
/2	traderc 06/9/99	chanaman 06/9/99	kfollet 06/10/99	_____	lrb_docadmin 06/10/99		

FE Sent For:

<END>

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FE Sent For:

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Legislative Fiscal Bureau

One East Main, Suite 301 • Madison, WI 53703 • (608) 266-3847 • Fax: (608) 267-6873

Date: May 27, 1999

DELIVER TO: **Becky Tradewell**Addressee Fax #: **4-8522**

Addressee Phone #: 6-7290

of Pages, Including Cover: **15**Sender's Initials: **kb**From: **Kendra Bonderud**

Here are the motions from yesterday for drafting. You will probably have a few questions after you look through them. Here are a few notes to be aware of:

Motion #949, Brownfields: My LFB colleagues will contact their LRB counterparts directly regarding parts B-C, so you will only need to concern yourself with A and H. Under A.4(d), I talked with Barry Ashenfelter of Sen. Burke's office, and have a phone message in to Mark Thimke to ask what cross-reference he felt was needed. Otherwise, I am not sure at the moment how (d) differs from what is in the bill. Under A.7, note that the additional study would not include WHEDA. Under A.9, I will call you later, probably on Friday, to let you know the specific changes to make in the hazardous waste generator fee, s. 289.67(2) for the base rate and/or per ton rate. The language in section H is somewhat broad. It should include a new appropriation from the environmental management account of the environmental fund for the pilot program described there.

Motion #948, Land recycling loan for Kenosha. This motion gives Kenosha \$3,000,000 off the top of the \$20,000,000 available for land recycling loans. However, if Kenosha and DNR and DOA do not enter into a financial assistance agreement by June 30, 2000, Kenosha would no longer have access to the funds and the money would again be available to the regular program.

Motion #934, PCB public meeting: I will call you after I clarify whether the DNR agreement with EPA is for concentrations over 50 ppm or for equal to or over 50 ppm. If the federal agreement is for over 50 ppm, then I will need to have you draft this motion as "equal to or less than 50 ppm" instead of how it is worded.

JFC Approved
5/26/99 16-0

Senator Burke
Representative Duff

NATURAL RESOURCES -- AIR, WASTE AND CONTAMINATED LAND
COMMERCE
SHARED REVENUE AND PROPERTY TAXATION
GENERAL FUND TAXES

Brownfields Initiatives
[Papers #712 thru #716]

Motion:

Move to make the following changes related to brownfields programs:

A. DNR -- Air, Waste and Contaminated Land

Move to approve the Governor's recommendations contained in Legislative Fiscal Bureau Papers #712 through #716 and Legislative Fiscal Bureau Summary pages 457 through 466, items #9, 10 and 12 through 21, with the following modifications:

1. *Site Assessment Grants.* LFB Paper #712. Adopt Alternative 2.b, 3.d and 3.e. Further, provide \$1,450,000 SEG in 1999-00 in a biennial appropriation (no funding would be provided in 2000-01).

2. *Brownfields Staff.* LFB Paper #713. Adopt Alternative 2.c. (3.0 PR hydrogeologist positions): Provide the 2.0 SEG project positions under Alternative 1 as permanent. In addition, provide \$291,600 SEG in 1999-00 and \$351,000 SEG in 2000-01 with 6.0 SEG hydrogeologist positions and provide \$97,200 PR in 1999-00 and \$117,000 PR in 2000-01 with 2.0 PR hydrogeologist positions. This would provide a total of 13.0 hydrogeologist positions to DNR.

✓ 3. *Local Government Liability Exemption.* LFB Paper #714. Adopt Alternative 2.

✓ 4. *Local Government Cost Recovery.* LFB Paper #715. Adopt Alternative 2. In addition: (a) specify that the local government may recover costs from the person from whom the local government acquired the property, if no responsible party is known or financially able to pay for all or a portion of those costs; (b) require that the person that last possessed the property before the local government acquired the property to pay any costs not recoverable from the persons that caused the discharge of the hazardous substance; (c) specify that local governments may not recover attorney's fees; and (d) clarify that a local government can not recover costs if the responsible person has received an exemption from liability under the spills law from DNR.

✓ 5. *Voluntary Party Liability Exemption.* LFB Paper #716. Adopt Alternatives 2.a

July
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draft

through 2.e. In addition, specify that: (a) Alternatives 2.b. through 2.e. apply in situations where a voluntary party seeks an exemption under the interim liability provisions (but not under a voluntary party liability exemption that is not an interim liability exemption); and (b) the deletion of the authority of DNR to require the voluntary party to obtain insurance to cover the costs of the cleanup would still allow DNR to require insurance under the interim liability and natural attenuation at groundwater standards exceedence liability exemptions.

✓6. *Use of Natural Attenuation at Voluntary Party Sites.* [LFB Summary p. 464, #18] In addition to approving the Governor's recommendation: (a) allow the certificates of completion to be used for groundwater contamination "originating from" in addition to "on" the property; and (b) provide that if DNR requires a voluntary party who obtains a certificate of completion under the natural attenuation provision to obtain insurance, the only party named as the insured is the state, not the voluntary party and the state.

✓7. *Study of Potential Sources of Funding for Future Cleanup Costs.* [LFB Summary p. 466, #21] In addition to approving the Governor's recommendation, direct DNR, DOA, Commerce, DOR, DOT ^{and} ~~and~~ ~~WHEDA~~ to submit an annual consolidated report on June 30 of each year to the Joint Committee on Finance and the appropriate standing committees of the Legislature that evaluates the effectiveness of the state's brownfields initiatives.

Paul-
sep.
draft

8. *Vehicle Environmental Impact Fee.* Repeal the June 30, 2001 sunset on the \$5 per vehicle environmental impact fee. In addition, increase the fee from \$5 to \$6 on the first day of the second month after the effective date of the bill. This would generate additional revenues of approximately \$800,000 in 1999-00 and \$1,400,000 in 2000-01, which would be deposited in the environmental management account of the environmental fund.

✓9. *Hazardous Waste Generator Fee.* Increase the amount of the hazardous waste generator fee (\$125 base fee plus \$12 per ton of hazardous waste) by an amount necessary to generate revenues of \$250,000 annually, effective with the fees assessed in May, 2000. The fees are deposited in the environmental management account of the environmental fund.

✓10. *Local Government Negotiation and Cost Recovery Process.* Direct DNR to submit proposed statutory changes to the Legislature no later than January 1, 2001, that make the local government negotiation and cost recovery process more efficient and clear, as follows: (a) develop a more efficient method of providing notice to all parties; (b) clarify liability provisions; (c) clarify sections related to identification of responsible parties; (d) provide local governments with a clear way to handle information discovered late in the process; (e) require that involved parties be required to state the basis of their objection and the allocation of costs before seeking umpire review; (f) cull the list of potential umpires so it contains environmental experts; and (g) give parties a specific time frame to make comments on the remedy.

✓11. *Area-Wide Environmental Characterization.* Provide \$50,000 SEG annually from the environmental management account of the environmental fund and direct DNR to create a bibliography of available information on a geographic basis that identifies all sources of general

and site specific groundwater information. Direct DNR to include physical and chemical groundwater and soil data in existing geographic information systems.

B. Commerce

1. *Brownfields Grant Program.* Provide an additional \$800,000 SEG in 1999-00 and \$1,400,000 SEG in 2000-01 for the existing brownfields grant program. (Revenue would be provided from the \$1 per vehicle increase in the vehicle environmental impact fee.) In addition, make the following changes to the current Commerce brownfields grant program: (a) require Commerce to award one-half of the annual brownfields grant funding for projects, such as recreational or housing development, that are scored without considering the number of jobs created by the project; (b) authorize Commerce to award grant funding for projects that address area-wide groundwater contamination; (c) require grant applicants to document that they were unable to secure funding that was sufficient to support the project from another source; and (d) specify that grant recipients could be awarded other state grants or loans if they were eligible.

2. *Community Development Block Grant Program.* Direct the Department of Commerce to expand the CDBG - Blight Elimination and Brownfields Remediation program to fund redevelopment planning and projects that have a taxable value end use.

C. Wisconsin Housing and Economic Development Authority

1. *WHEDA Loan Guarantees.* [LFB Paper #1036] In addition to adopting Alternative A.1.c. eliminate the brownfields loan guarantee program and direct WHEDA to transfer the remaining \$2,000,000 for the program from the Wisconsin development reserve fund to the environmental fund.

D. Department of Transportation

1. *DOT Brownfields Funds.* Require the Department of Transportation to market the following programs to ensure optimum utilization to assist the cleanup and redevelopment of brownfield properties: (a) local transportation facility improvement assistance; (b) transportation enhancements; (c) transportation facilities economic assistance and development; and (d) transportation infrastructure loans.

E. General Fund Taxes

1. *Remediation Tax Credits.* Delete the requirement that 25% of all development zone tax credits claimed must be based on creating or retaining full time jobs for development zone environmental remediation tax credits claimed in development and enterprise development zones. Provide that environmental remediation tax credits claimed in development and enterprise development zones would not have to be based on activities that created or caused to create jobs.

Tradewell, Becky

From: Bonderud, Kendra
Sent: Friday, May 28, 1999 5:08 PM
To: Tradewell, Becky
Subject: Draft for hazardous waste generator fee

Becky -

The numbers I would like you to use when you draft the section of motion #949 related to the hazardous waste generator fee are:

Base fee increase from \$125 to \$210

Per ton fee increase from \$12 to \$20

Maximum fee increase from \$10,000 to \$17,000

Thanks.

If you have any drafting questions over the weekend, I will probably not be in on Saturday, but probably will be in Sunday and Monday.

Kendra Bonderud
Legislative Fiscal Bureau
(608) 266-3847
Kendra.Bonderud@legis.state.wi.us



Legislative Fiscal Bureau

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May 26, 1999

Joint Committee on Finance

Paper #714

Brownfields -- Local Government Liability Exemption (DNR -- Air, Waste and Contaminated Land)

[LFB 1999-01 Budget Summary: Page 460, #14(h)]

CURRENT LAW

A local government is not liable for cleanup under the hazardous substances spills law if the local government acquired the property in certain ways.

GOVERNOR

Exempt a local government from the following requirements for property acquired under the local government liability exemption: (1) licensing requirements for the treatment, storage and disposal of hazardous waste on the property; (2) closure and long-term care plan requirements for unlicensed hazardous waste facilities; and (3) requirements to take corrective action to protect human health or the environment from any spill, leak or other release into the environment of a hazardous substance at a facility that stores, treats or disposes of hazardous waste.

The exemption from the hazardous waste statutes would be available only if 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 DNR and that identifies any hazardous waste discharges that occurred on the property; (2) the hazardous waste discharges identified by the investigation are cleaned up by restoring the environment and minimizing the harmful effects from the discharges in accordance with DNR rules and any contract entered into under those rules; (3) the local government obtains certification from DNR that the property has been satisfactorily restored and that the harmful effects from the discharges have been minimized; (4) the local government maintains and monitors the property as required by DNR; (5) the local government does not engage in activities that are inconsistent with the maintenance of the property; (6) the local government has not obtained the DNR certification by fraudulent

methods; and (7) the local government did not cause the discharge of any hazardous waste identified on the property.

The exemption from hazardous waste statutes would not apply to: (1) a new hazardous waste treatment, storage or disposal facility that first begins operation after the date of acquisition by the local government; (2) a licensed hazardous waste treatment, storage or disposal facility that operated on the property before the date of acquisition of the property by the local government and which continues to operate after the date of acquisition by the local government; and (3) any hazardous waste disposal facility that has been issued a license for a period of long-term care following closure of the facility.

DISCUSSION POINTS

1. The budget provision incorporates the December, 1998, report recommendations of the Brownfields Study Group, a group of state agency, local government, industry and environmental interests convened by DNR in accordance with the 1997-99 biennial budget act to study brownfields issues. The Study Group believes that the exemption would assist some local governments that want to acquire brownfields that may be subject to state or federal hazardous waste regulations.

2. An April 27, 1999, letter from the Brownfields Study Group to the Joint Committee on Finance recommended that two changes be made to the provision to maintain equivalency with federal Resource Conservation and Recovery Act and U.S. Environmental Protection Agency regulations. Some DNR staff have indicated that the change may be necessary to conform with federal requirements. The recommended changes are to: (a) require the local government to obtain "approval" instead of "certification" from DNR that the property has been cleaned up; and (b) provide the liability exemption with respect to "hazardous waste discharges" instead of "hazardous waste" on the property.

ALTERNATIVES TO BILL

1. Approve the Governor's recommendation to exempt local governments from certain hazardous waste statutory requirements if certain investigation and cleanup activities occur.

2. Approve the Governor's recommendation as modified to: (a) require the local government to obtain "approval" instead of "certification" from DNR that the property has been cleaned up; and (b) provide the liability exemption with respect to "hazardous waste discharges" instead of "hazardous waste" on the property.

3. Maintain current law.

Prepared by: Kendra Bonderud



Legislative Fiscal Bureau

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May 26, 1999

Joint Committee on Finance

Paper #715

Brownfields -- Local Government Cost Recovery (DNR -- Air, Waste and Contaminated Land)

[LFB 1999-01 Budget Summary: Page 461, #15]

CURRENT LAW

Persons who possess or control a hazardous substance that is discharged or who cause the discharge of a hazardous substance are required to restore the environment to the extent practicable and to minimize the harmful effects of the discharge on the environment, unless the person is exempt under one of several liability exemptions. Local governments are authorized to negotiate with parties responsible for environmental pollution to share the costs of remedial action on environmentally contaminated land owned by the local government.

GOVERNOR

Authorize a local government to take action to recover costs it incurs in cleaning up a property on which a hazardous substance has been discharged if the local government acquired the property in one of several ways provided for under the local government liability exemption provisions, such as through tax delinquency proceedings and condemnation.

Responsible Person. The local government would be authorized to recover the costs from a responsible person who possessed or controlled the hazardous substance at the time that the local government acquired the property or from a person who caused the discharge of the hazardous substance. A local government could not recover costs if the responsible person qualifies for an exemption under one of the following exemptions from liability under the spills law: (a) a local government; (b) off-site discharges; (c) a voluntary party; (d) a narrowly defined closed landfill acquired by a municipality; (e) a person who conducts an investigation; and (f) a lender.

Recoverable Costs. The local government could recover the following reasonable and necessary costs that it incurs for all of the following: (a) investigating environmental contamination on the property and planning remedial activities; (b) conducting remedial activities to restore the property for its intended future use; (c) administering the investigation or remedial activities; and (d) bringing the cost recovery action, including costs, disbursements, engineering fees and reasonable attorney fees. Recoverable costs would be reduced by the fair market value of the property after completion of the remedial activities. Recoverable costs would not be reduced by the amount of any state or federal moneys received by the local government.

Repayment of State Assistance. If a local government that recovers costs received any state funds for (a), (b) or (c) above, other than funds received under the state-funded response programs under the hazardous substances spills and environmental repair statute, the local government would be required to reimburse the state an amount that is the same proportion to the total recovered costs as the amount received from the state is to the total recoverable costs, as adjusted under the fair market value provision. Any reimbursements to the state would be deposited in the general fund.

Exception. A local government could not recover costs for remedial activities conducted on all or part of the property after DNR, Commerce or DATCP indicated that no further remedial activities are necessary on the property or portion of the property for that discharge.

Time Limit. A cost recovery action by the local government would have to be started within six years after the date that the local government completes the remedial activities.

DISCUSSION POINTS

1. The budget provision incorporates the December, 1998, recommendations of the Brownfields Study Group, a group of state agency, local government, industry and environmental interests convened by DNR in accordance with the 1997-99 biennial budget act to study brownfields issues. However, the Study Group report included the objections of some members of the Study Group who did not represent municipalities. These members opposed creating a cause of action available only to municipalities.

2. The bill would provide local governments with an additional tool to recover monies spent on investigating and remediating brownfields properties. Local governments could use the cost recovery procedures instead of or in addition to, the existing negotiation and cost recovery procedures, under which local governments and parties responsible for environmental pollution would share in the costs of remedial action on environmentally contaminated land owned by the local government.

3. Local governments could use the cost recovery procedures to recover any of its remedial action costs from one or more responsible parties. The local government would not be required to apportion costs among responsible parties as is required in the negotiation and cost

recovery program. An alternative to the bill would be to specify that the local government could not recover costs from a responsible party in excess of the responsible party's proportion of the environmental pollution at the site.

4. An April 27, 1999, letter from the non-state agency members of the Brownfields Study Group to the Joint Committee on Finance indicated that there continues to be disagreement among Study Group members about the local government cost recovery provision in the bill, and that members are working to reach agreements on potential changes. An alternative would be to remove the provision from the bill and resolve the policy differences in future legislation.

ALTERNATIVES TO BILL

1. Approve the Governor's recommendation to: (a) authorize a local government to take action to recover costs it incurs in cleaning up a property on which a hazardous substance has been discharged under specified circumstances; (b) authorize a local government to recover the costs from the responsible person; (c) authorize a local government to recover specified reasonable and necessary costs for specific investigation and cleanup activities; (d) require the local government to reimburse the state if it recovers costs received from state programs other than state-funded response programs; (e) prohibit a local government from recovering costs for remedial activities conducted after DNR, Commerce or DATCP indicate that no further remedial activities are necessary on the property; and (f) require any cost recovery action by the local government to be started within six years after the local government completes the remedial activities.

2. Approve the Governor's recommendation and, in addition, specify that the local government could not recover costs from a responsible party in excess of the responsible party's proportion of the environmental pollution at the site.

3. Maintain current law.

Prepared by: Kendra Bonderud



Legislative Fiscal Bureau

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May 26, 1999

Joint Committee on Finance

Paper #716

Brownfields -- Voluntary Party Liability Exemption (DNR -- Air, Waste and Contaminated Land)

[LFB 1999-01 Budget Summary: Page 462, #16]

CURRENT LAW

A voluntary party is defined as any person who did not intentionally or recklessly cause the release of a hazardous substance on a property. A voluntary party is exempt from liability under the hazardous substances spills law and certain hazardous substance discharge and solid and hazardous waste statutory requirements if: (a) an environmental investigation of the property is conducted and DNR approves it; (b) the property is cleaned up by restoring the environment and minimizing the harmful effects from a release of a hazardous substance in accordance with DNR rules and any contract entered into under those rules; (c) the voluntary party obtains certification from DNR that the property has been satisfactorily restored and that the harmful effects from a release of a hazardous substance have been minimized; (d) the voluntary party maintains and monitors the property as required by DNR; (e) the voluntary party does not engage in activities that are inconsistent with the maintenance of the property; and (f) the voluntary party has not obtained the DNR certification by fraudulent methods.

GOVERNOR

a. Specify that the voluntary party exemption from the spills law applies only to the release of a hazardous substance which occurred prior to the date that the environmental investigation of the property was approved by DNR. Currently, the exemptions apply to all hazardous substances on the property, regardless of whether the hazardous substances were released before or after the requirements are met.

b. Change the definition of "voluntary party" to mean a person who submits an application to obtain a voluntary party exemption and who pays the required fees to offset DNR

costs for providing the voluntary party exemption certification and delete the current definition of a person who did not intentionally or recklessly cause the release of a hazardous substance.

c. Add, as a condition a voluntary party must meet to obtain the current exemption from solid and hazardous waste statutes, that if DNR requires, the voluntary party must obtain insurance to cover the costs of cleanup, in case it is discovered, after DNR issues a certification of completion of cleanup, that the cleanup fails to fully restore the environment or minimize the harmful effects from a discharge, or that the hazardous substance that is the subject of the cleanup is more extensive than known before DNR issues the certificate of completion, and that the insurance complies with DNR rules and names the voluntary party and the state as insureds.

d. Provide interim liability protections by exempting a voluntary party from the same solid and hazardous waste statutes as under the voluntary party liability exemption with respect to certain additional hazardous substances discharges discovered after the environmental investigation is approved under certain situations. To be exempt, all of the following would have to apply: (1) an initial environmental investigation of the property is conducted and approved by DNR; (2) if required by DNR, the voluntary party enters into an agreement with DNR under which the voluntary party agrees to conduct a cleanup approved by DNR; (3) the voluntary party obtains insurance to cover the cost of a cleanup of hazardous substance discharges that occurred before DNR approved the investigation and that are discovered while conducting the cleanup, the insurance complies with DNR rules and the insurance names the voluntary party and the state as insureds; (4) a hazardous substance discharge that occurred before the investigation is completed is discovered after the investigation is approved and before the cleanup is completed; and (5) a second environmental investigation of the property is conducted and is approved by DNR.

e. If DNR requires a voluntary party to obtain insurance, DNR would first have to promulgate rules with which the insurance must comply. The insurance would have to name the voluntary party and the state as insureds. The Department would be authorized to contract with an insurer to provide the required insurance and could require voluntary parties to obtain coverage under the contract.

f. Delete the authority of DNR to issue prospective purchaser assurance letters certifying that a prospective purchaser is entitled to voluntary party exemption.

DISCUSSION POINTS

1. The provision of the bill incorporates many of the December, 1998, recommendations of the Brownfields Study Group, a group of state agency, local government, industry and environmental interests convened by DNR in accordance with the 1997-99 biennial budget act to study brownfields issues.

2. The current definition of a voluntary party as someone who did not "recklessly or intentionally" cause the contamination may discourage some property owners from participating in the voluntary party process, because they may have concerns that DNR might determine that they

were "reckless or intentional" in discharging hazardous substances (and therefore, ineligible to be a voluntary party). The Study Group recommended the proposed definition in order to provide a much broader definition so that anyone who pays the fees, and cleans up the property would be eligible for a voluntary party liability exemption.

3. Under current law and the bill, a voluntary party would be exempt from future liability to cleanup the contamination after DNR certifies that the cleanup is complete. The bill would allow DNR to require a voluntary party to obtain insurance to cover the costs of additional cleanup in the event it is discovered after DNR issues a certification of completion of cleanup, that the cleanup was not complete. It could be argued that the insurance would protect the taxpayers of the state who would have to fund the cleanup if DNR determines that contamination is harmful enough to require state resources. It could also be argued that an additional insurance requirement reduces the value to the property owner of a state certification of completion. The insurance was not a recommendation of the Brownfields Study Group, and an April 27, 1999, letter from the non-agency members of the Brownfields Study Group to the Joint Committee on Finance, recommended that the provision be removed from the bill.

4. The Brownfields Study Group had recommended that interim liability protection be created to provide liability protection for contamination not discovered in the approved site investigation but discovered before the remediation is completed. The interim liability provisions are summarized as item (d) under the Governor's recommendation. In its April 27, 1999, letter to the Committee, the Study Group recommended the following changes to the interim liability provision: (a) delete the requirement that a second environmental investigation be conducted and approved by DNR before the voluntary party could receive interim liability protection; (b) specify that if DNR requires the voluntary party to enter into an agreement with the Department, the voluntary party must complete the agreed upon cleanup activities approved by DNR, in addition to agreeing to conduct a cleanup; (c) require that the environmental investigation of the property also include an investigation of any hazardous substance discharges that have originated on or from the property; and (d) specify that when a voluntary party seeking an interim liability exemption obtains insurance to cover the costs of cleanup of contamination discovered while conducting the cleanup, that DNR would be allowed to contract with an insurer to provide insurance.

5. The requirement for a second environmental investigation to be conducted in order to obtain an interim liability exemption was included in the bill to provide some additional assurance to the state that the property had been completely investigated before the voluntary party could obtain an exemption from liability for the hazardous substance discharge. The effect of the Brownfields Study Group recommendations would be to exempt a voluntary party from liability under certain solid and hazardous waste statutes for any contamination from a hazardous substance discharge that occurred before the investigation is completed but is discovered after the investigation is approved and before the cleanup is completed. While it is not known how often past contamination is discovered after the investigation is completed and during the course of the cleanup activities, DNR staff indicate it is not a rare occurrence. If additional contamination is discovered during the cleanup, the voluntary party would not be liable for cleanup costs. If a cleanup were to occur, it could potentially be accomplished by use of the insurance required of the

voluntary party, or by the state-funded cleanup appropriation from the environmental fund.

6. DNR indicated in the December, 1998, Brownfields Study Group report that making determinations under the current "reckless or intentional" eligibility criteria has resulted in increased workload for DNR staff. The Department also commented that under the proposed broader definition, it would need three hydrogeologists to review additional liability exemption requests. DNR also indicated that it would require five additional staff to implement the interim liability provisions. The Department did not include a request for additional staff for these purposes in its biennial budget request and has not recommended changes to the bill. Any increase in voluntary party requests under the broader definition would generate additional program revenue fees for remediated property programs, which would offset the costs of DNR staff. The Department could seek additional program revenue staffing through separate legislation or a s. 16.505 passive review request to the Joint Committee on Finance if backlogs develop.

ALTERNATIVES

1. Approve the Governor's recommendation to: (a) specify that the voluntary party exemption from the spills law applies only to the release of a hazardous substance which occurred prior to the date that the environmental investigation of the property was approved by DNR; (b) change the definition of "voluntary party" to mean a person who submits an application to obtain a voluntary party exemption and who pays the required fees to offset DNR costs for providing the voluntary party exemption certification; (c) add, as a condition a voluntary party must meet to obtain the current exemption from solid and hazardous waste statutes, that if DNR requires, the voluntary party must obtain insurance to cover the costs of cleanup, in case it is discovered, after DNR issues a certification of completion of cleanup, that the cleanup fails to fully restore the environment or minimize the harmful effects from a discharge, or that the hazardous substance that is the subject of the cleanup is more extensive than known before DNR issues the certificate of completion, and that the insurance complies with DNR rules and names the voluntary party and the state as insureds; (d) exempt a voluntary party from the same solid and hazardous waste statutes as under the voluntary party liability exemption with respect to certain additional hazardous substances discharges discovered after the environmental investigation is approved under certain situations; (e) require DNR to promulgate rules if it requires a voluntary party to obtain insurance, and require the insurance to name the voluntary party and the state as insureds; (f) authorize DNR to contract with an insurer to provide the required insurance and to require voluntary parties to obtain coverage under the contract; and (g) delete the authority of DNR to issue prospective purchaser assurance letters certifying that a prospective purchaser is entitled to voluntary party exemption.

2. Approve the Governor's recommendation as modified in one or more of the following ways:

✓ a. Delete the addition of the authority of DNR to require the voluntary party to obtain insurance to cover the costs of cleanup, the requirement that DNR promulgate rules to provide the insurance and the authority for DNR to contract with an insurer to provide insurance.

✓ b. Delete the requirement that a second environmental investigation be conducted and approved by DNR before the voluntary party could receive interim liability protection.

✓ c. Require that if DNR requires the voluntary party to enter into an agreement with the Department, the voluntary party must complete the agreed upon cleanup activities approved by DNR, in addition to agreeing to conduct a cleanup.

✓ d. Require that the environmental investigation of the property also include an investigation of any hazardous substance discharges that have originated on or from the property.

✓ e. Specify that when a voluntary party seeking an interim liability exemption obtains insurance to cover the costs of cleanup of contamination discovered while conducting the cleanup, that DNR would be allowed to contract with an insurer to provide insurance.

3. Maintain current law.

Prepared by: Kendra Bonderud

1999

Date (time) needed SOON

LRB b. 0437, 1

**LFB BUDGET AMENDMENT
[ONLY FOR LFB]**

RET : CMH : _____

See form **AMENDMENTS — COMPONENTS & ITEMS.**

DNote

**LFB AMENDMENT
TO 1999 ASSEMBLY BILL 133 AND 1999 SENATE BILL 45**

>>FOR JT. FIN. SUB. — NOT FOR INTRODUCTION<<

At the locations indicated, amend the bill as follows:

#. Page , line :

#. Page , line :

#. Page , line :

#. Page , line :

#. Page , line :

#. Page , line :



Part 11

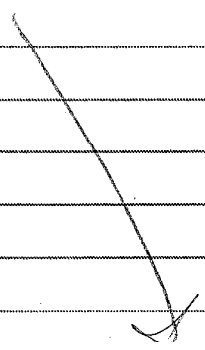
60437/1

#. Page 484, line 16: after that line insert: ✓

^B
"Section 660p. CR; 23.09 (22) ✓

^{cs} ^(B) ⁽¹⁵⁾ Information
23.09(22) to be included in geographic information

systems. The department shall include physical and chemical
information about groundwater and soil in its geographic
information systems. ✓"



part 9

60437/1

#. Page 1170, line 10: after that line insert:

Section ^{2569g} 289.67 (2) (b) ^{1. and 2.} of the statutes ^{are} amended to read:

~~289.67 (2) (b), The annual environmental repair fee under par. (a) shall be assessed as follows:~~

no 9

→ 1. A generator of hazardous waste shall pay a base fee of ^{\$210} ~~\$125~~ if the generator has generated more than zero pounds in that particular year, plus ^{\$20} ~~\$12~~ per ton of hazardous waste generated during the reporting year.

2. No generator may pay a fee that is greater than ^{\$17,000} ~~\$10,000~~.

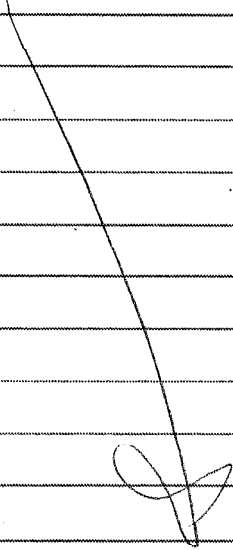
History: 1995 a. 227 s. 601 to 604, 991; 1997 a. 27.



point 5

100437/1

#. Page 1174, line 6[✓] delete lines 6[✓] to 14[✓].



[Handwritten signature]

print 6

Page 1174, line 17: after "on" insert "or originating from".

Page 1175, line 22: delete that line and substitute
"by the department and names this state as the insured."

#. Page 1178, line 5: delete the material beginning with "and" and ending with "approved" on line 6.

#. Page 1178, line 7: delete that line and substitute:

" 1. An environmental investigation of the property and of any discharges of hazardous substances originating from the property is conducted and is "

#. Page 1178, line 17: after that line insert:

⑨ " 3m. If the department requires the voluntary party to enter into an agreement under subd. 2., the voluntary party conducts the agreed upon cleanup. "

#. Page 1178, line 21: delete lines 21 and 22.

#. Page 1178, line 24: delete " or 5. "

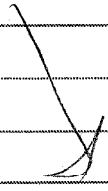
#. Page 1178, line 2: delete " or 5. "

points 5

60437/1

#. Page 1180, line 4: delete "(a)?" or (ae) 3m." and substitute "(ae) 3m. or (at) 3.".

#. Page 1180, line 5: delete "(a)?" or (ae) 3m." and substitute "(ae) 3m. or (at) 3.".

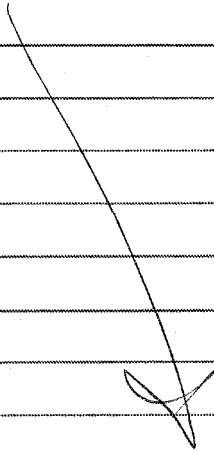


point 3.

60437/1

✓ ✓ ✓ ✓
Page 1182, line 7: after "waste" insert "discharge".

✓ ✓ ✓ a ✓
Page 1182, line 17: delete "certificate of completion"
and substitute "an approval".



point 7

B 0437/1

#. Page 1184, line 13: after that line insert:

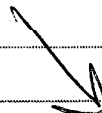
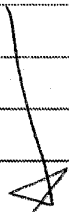
" Section 2611d. CR; 292.255

⑬ 292.255 Report on brownfield efforts. On or before June

30 annually, the department of natural resources, the department of administration, the department of commerce and the department of transportation shall submit a report to the appropriate standing committee of the legislature under s. 13.172(3) and to the joint committee on finance

evaluating the effectiveness of this state's efforts to remedy the contamination of, and ^{to} redevelop, brown fields, as defined in s. 560.60 ~~et seq.~~ ".

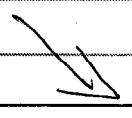
(lv)



pt. 4

✓ ✓
Page 1185, line 18: delete lines 18 and 19 and substitute " under this section, including costs, disbursements and engineering fees but excluding attorney fees."

✓
Page 1185, line 24: after that line insert:
" (d) 1. In an action under this section, the liability of a responsible person described in sub. (3) (a) 2. is limited to the amount that bears the same (total) proportion to the costs under par. (a), adjusted as provided in par. (b), as the amount of the ~~responsible person's contribution to the~~ environmental pollution on the property from the discharge caused by the responsible person bears all of the to environmental pollution on the property from discharges of hazardous substances.



2. In an action under this section, the liability of a responsible person described in sub. (3)(a) 1. is limited to the amount of the total costs under par. (a), adjusted as provided in par. (b), that the local governmental unit is unable to recover from responsible parties described in sub. (3)(a) 2."



Point 10

1999

LRB 60437 1 1

Nonstat File Sequence: **AAA**

NONSTAT SESSLAW

1. In the component bar:

For the action phrase, execute: create → action: → *NS: → nonstat

For the budget action phrase, execute: create → action: → *NS: → 91XX

For a subsection, execute: create → text: → *NS: → sub

For a paragraph, execute: create → text: → *NS: → par

For a subdivision, execute: create → text: → *NS: → subd

For a subdivision paragraph, execute: create → text: → *NS: → subpar

2. Nonstatutory subunits are numbered automatically if "(#1)", "(#a)", etc., is filled in. Below, for the budget, fill in the 9100 department code; and fill in "___" or "()" only if a "frozen" number is needed.

#. Page 1413, line 16: after that line insert:

SECTION # [91 ___]. Nonstatutory provisions, ...

..... letter "g" (6g)

(#1) (6g) local governmental units negotiation and cost recovery process. No later than January 1, 2001, the department of natural resources shall submit to the legislature, in the manner provided under section 13.172(2) of the statutes, proposed legislation to make the process for local governmental unit negotiation and cost recovery more efficient and clear. The department shall propose legislation that includes provisions that do all of the following:

- (a) Provide a more efficient method of providing notice to all parties.

(b) Clarify the liability provisions.

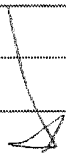
(c) Clarify the provisions related to the identification of responsible parties.

(d) Provide local governmental units with a clear method of dealing with information discovered late in the negotiation and cost recovery process.

(e) Require responsible parties to state the basis for their objection to a local governmental unit's offer to settle before seeking designation of an umpire.

(f) Require potential umpires to be environmental experts.

(g) Require an umpire to submit a proposal recommendation ^{under section 292.35(6)(a) of the statute} and give the parties a period for making comments before the umpire finalizes the recommendation.



point 11

1999

Nonstat File Sequence: **AAA**

LRB 60437 1 1

____:____:____

NONSTAT SESSLAW

1. In the component bar:

For the action phrase, execute: create → action: → *NS: → nonstat

For the budget action phrase, execute: create → action: → *NS: → 91XX

For a subsection, execute: create → text: → *NS: → sub

For a paragraph, execute: create → text: → *NS: → par

For a subdivision, execute: create → text: → *NS: → subd

For a subdivision paragraph, execute: create → text: → *NS: → subpar

2. Nonstatutory subunits are numbered automatically if "(#1)", "(#a)", etc., is filled in. Below, for the budget, fill in the 9100 department code; and fill in "____" or "()" only if a "frozen" number is needed.

SECTION # **[91** **]**. **Nonstatutory provisions; ...**

(#1) (6h) Bibliography of groundwater information.

During the 1999-2001 fiscal biennium, the department of natural resources shall create a bibliography of information, on a geographic basis, that identifies all sources of general and site-specific information about groundwater."



page 9

1999

Nonstat File Sequence: **EEE**

LRB 60437 11

RT : _____

INITIAL APPLICABILITY

- In the component bar:
 For the action phrase, execute: create → action: → *NS: → inappl
 For the budget action phrase, execute: create → action: → *NS: → 93XX
 For the text, execute: create → text: → *NS: → inappl
- Nonstatutory subunits are numbered automatically if "(#1)", "(#2)", etc., is filled in. Below, for the budget, fill in the 9300 department code; and fill in "____" or "()" only if a "frozen" number is needed.

→ #. Page 1454, line 20: after that line insert:

SECTION # 93 **Initial applicability;**

..... (CS)

"(N) (K) Hazardous waste generator fee.....

..... The treatment of section# ..

..... 289.67.(2)(b). 1. and 2.

..... of the statutes first applies to fees assessed on May 1, 2000. "

(End)

- In the component bar:
 For the action phrase, execute: create → action: → *NS: → inappl
 For the text, execute: create → text: → *NS: → inapplA
- Nonstatutory subunits are numbered automatically if "(#1)", "(#2)", etc., is filled in. Below, fill in "____" or "()" only if a "frozen" number is needed.

SECTION # _____ **Initial applicability;**

(#1) () This act first applies to

DNote

b0437/ldn
R.C.T.

cm 17

Kendra Bondepud:

This is a first crack at the big brown fields draft. It is intended to include all of part A of motion # 949 except point 7, which Ivy is drafting, and point 8, which Paul is drafting.

The draft does not include any language for point 4 (d).

Regarding point 6, the Brown Fields Study Group recommended changes to p. 1175, lines 1 and 3. Should I add those changes to this draft? Point 6 said to have only the state named as the insured.

Should that change also be made for interim liability?

(91) On point 10, I wasn't sure what was meant by "call the list of potential umpires". See the language in par. (F) of the first non-statutory provision. Also,

DN, p 2

RET.

the last item in point 10 seemed unclear given
the time limits that currently exist in s. 292.35(2c)
(b) and (6) (b). See the language in par. (g) of
that nonstatutory provision.

As always, don't hesitate to call with questions.

RET

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

LRBb0437/1dn
RCT:cmh:jf

June 4, 1999

Kendra Bonderud:

This is a first crack at the big brownfields draft. It is intended to include all of part A of motion #949 except point 1, which Ivy is drafting, and point 8, which Paul is drafting.

The draft does not include any language for point 4 (d).

Regarding point 6, the Brownfields Study Group recommended changes to p. 1175, lines 1 and 3. Should I add those changes to this draft? Point 6 said to have only the state named as the insured. Should that change also be made for interim liability?

On point 10, I wasn't sure what was meant by "cull the list of potential umpires". See the language in par. (f) of the first nonstatutory provision. Also, the last item in point 10 seemed unclear given the time limits that currently exist in s. 292.35 (2r) (b) and (6) (b). See the language in par. (g) of that nonstatutory provision.

As always, don't hesitate to call with questions.

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

Tradewell, Becky

From: Bonderud, Kendra
Sent: Tuesday, June 08, 1999 7:20 PM
To: Tradewell, Becky
Subject: LRB drafts

I reviewed LRBb0437/1 and request a small redraft. On page 3, lines 3-9 should also include the Department of Revenue as one of the agencies submitting the report. The rest of the draft is fine, including how you drafted points 6 and 10.

I reviewed LRBb0438/P1 and it looks fine. Ron Shanovich told me that he talked to his LRB contact about development zones. I hope that you or your colleague now have the information you need to include the development zones portion of the SUDZ program and turn this /P1 into a /1. If you need more information for this draft, please let me know.

Kendra Bonderud
Legislative Fiscal Bureau
(608) 266-3847
Kendra.Bonderud@legis.state.wi.us



State of Wisconsin
1999 - 2000 LEGISLATURE

SOON

LRBb0437/2²

RCT:cmh:jf

redraft
make
run

LFB:.....Bonderud - DNR brownfields changes other than SUDZ

FOR 1999-01 BUDGET - NOT READY FOR INTRODUCTION

LFB AMENDMENT

TO 1999 ASSEMBLY BILL 133 AND 1999 SENATE BILL 45

See p. 3

1 At the locations indicated, amend the bill as follows:

2 **1.** Page 484, line 16: after that line insert:

3 "SECTION 660p. 23.09 (22) of the statutes is created to read:

4 23.09 (22) INFORMATION TO BE INCLUDED IN GEOGRAPHIC INFORMATION SYSTEMS.

5 The department shall include physical and chemical information about groundwater
6 and soil in its geographic information systems."

7 **2.** Page 1170, line 10: after that line insert:

8 "SECTION 2569g. 289.67 (2) (b) 1. and 2. of the statutes are amended to read:

9 289.67 (2) (b) 1. A generator of hazardous waste shall pay a base fee of \$125
10 \$210 if the generator has generated more than zero pounds in that particular year,
11 plus \$12 \$20 per ton of hazardous waste generated during the reporting year.

- 1 2. No generator may pay a fee that is greater than \$10,000 \$17,000.”
- 2 **3.** Page 1174, line 6: delete lines 6 to 14.
- 3 **4.** Page 1174, line 17: after “on” insert “or originating from”.
- 4 **5.** Page 1175, line 22: delete that line and substitute “by the department and
5 names this state as the insured.”.
- 6 **6.** Page 1178, line 5: delete the material beginning with “and” and ending with
7 “approved” on line 6.
- 8 **7.** Page 1178, line 7: delete that line and substitute:
9 “1. An environmental investigation of the property and of any discharges of
10 hazardous substances originating from the property is conducted and is”.
- 11 **8.** Page 1178, line 17: after that line insert:
12 “3m. If the department requires the voluntary party to enter into an agreement
13 under subd. 2., the voluntary party conducts the agreed upon cleanup.”.
- 14 **9.** Page 1178, line 21: delete lines 21 and 22.
- 15 **10.** Page 1178, line 24: delete “or 5.”.
- 16 **11.** Page 1179, line 2: delete “or 5”.
- 17 **12.** Page 1180, line 4: delete “(a) 7. or (ae) 3m.” and substitute “(ae) 3m. or (at)
18 3.”.
- 19 **13.** Page 1180, line 5: delete “(a) 7. or (ae) 3m.” and substitute “(ae) 3m. or (at)
20 3.”.
- 21 **14.** Page 1182, line 7: after “waste” insert “discharge”.
- 22 **15.** Page 1182, line 17: delete “a certificate of completion” and substitute “an
23 approval”.

1 **16.** Page 1184, line 13: after that line insert:

2 “**SECTION 2611d.** 292.255 of the statutes is created to read:

3 **292.255 Report on brownfield efforts.** On or before June 30 annually, the
4 department of natural resources, the department of administration, the department
5 of commerce, ^{and the department of revenue} and the department of transportation shall submit a report to the
6 appropriate standing committees of the legislature under s. 13.172 (3) and to the
7 joint committee on finance evaluating the effectiveness of this state’s efforts to
8 remedy the contamination of, and to redevelop, brownfields, as defined in s. 560.60
9 (1v).”

10 **17.** Page 1185, line 18: delete lines 18 and 19 and substitute “under this
11 section, including costs, disbursements and engineering fees but excluding attorney
12 fees.”

13 **18.** Page 1185, line 24: after that line insert:

14 “(d) 1. In an action under this section, the liability of a responsible person
15 described in sub. (3) (a) 2. is limited to the amount that bears the same proportion
16 to the total costs under par. (a), adjusted as provided in par. (b), as the amount of the
17 environmental pollution on the property from the discharge caused by the
18 responsible person bears to all of the environmental pollution on the property from
19 discharges of hazardous substances.

20 2. In an action under this section, the liability of a responsible person described
21 in sub. (3) (a) 1. is limited to the amount of the total costs under par. (a), adjusted as
22 provided in par. (b), that the local governmental unit is unable to recover from
23 responsible parties described in sub. (3) (a) 2.”

24 **19.** Page 1413, line 16: after that line insert:

1 “(6g) LOCAL GOVERNMENTAL UNIT NEGOTIATION AND COST RECOVERY PROCESS. No
2 later than January 1, 2001, the department of natural resources shall submit to the
3 legislature, in the manner provided under section 13.172 (2) of the statutes, proposed
4 legislation to make the process for local governmental unit negotiation and cost
5 recovery under section 292.35 of the statutes more efficient and clear. The
6 department shall propose legislation that includes provisions that do all of the
7 following:

8 (a) Provide a more efficient method of providing notice to all parties.

9 (b) Clarify the liability provisions.

10 (c) Clarify the provisions related to the identification of responsible parties.

11 (d) Provide local governmental units with a clear method of dealing with
12 information discovered late in the negotiation and cost recovery process.

13 (e) Require responsible parties to state the basis for their objection to a local
14 governmental unit’s offer to settle before seeking designation of an umpire.

15 (f) Require potential umpires to be environmental experts.

16 (g) Require an umpire to submit a proposed recommendation under section
17 292.35 (6) (a) of the statutes and give the parties a period for making comments
18 before the umpire finalizes the recommendation.

19 (6h) BIBLIOGRAPHY OF GROUNDWATER INFORMATION. During the 1999–2001 fiscal
20 biennium, the department of natural resources shall create a bibliography of
21 information, on a geographic basis, that identifies all sources of general and
22 site-specific information about groundwater.”.

23 **20.** Page 1454, line 20: after that line insert:



State of Wisconsin
1999 - 2000 LEGISLATURE

LRBb0437/2
RCT:cmh:kjf

LFB:.....Bonderud - DNR brownfields changes other than SUDZ

FOR 1999-01 BUDGET — NOT READY FOR INTRODUCTION

LFB AMENDMENT

TO 1999 ASSEMBLY BILL 133 AND 1999 SENATE BILL 45

1 At the locations indicated, amend the bill as follows:

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3 “SECTION 660p. 23.09 (22) of the statutes is created to read:

4 23.09 (22) INFORMATION TO BE INCLUDED IN GEOGRAPHIC INFORMATION SYSTEMS.

5 The department shall include physical and chemical information about groundwater
6 and soil in its geographic information systems.”

7 **2.** Page 1170, line 10: after that line insert:

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11 plus ~~\$12~~ \$20 per ton of hazardous waste generated during the reporting year.

- 1 2. No generator may pay a fee that is greater than ~~\$10,000~~ \$17,000.".
- 2 **3.** Page 1174, line 6: delete lines 6 to 14.
- 3 **4.** Page 1174, line 17: after "on" insert "or originating from".
- 4 **5.** Page 1175, line 22: delete that line and substitute "by the department and
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- 6 **6.** Page 1178, line 5: delete the material beginning with "and" and ending with
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2 “**SECTION 2611d.** 292.255 of the statutes is created to read:

3 **292.255 Report on brownfield efforts.** On or before June 30 annually, the
4 department of natural resources, the department of administration, the department
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6 submit a report to the appropriate standing committees of the legislature under s.
7 13.172 (3) and to the joint committee on finance evaluating the effectiveness of this
8 state’s efforts to remedy the contamination of, and to redevelop, brownfields, as
9 defined in s. 560.60 (1v).”

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14 “(d) 1. In an action under this section, the liability of a responsible person
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17 environmental pollution on the property from the discharge caused by the
18 responsible person bears to all of the environmental pollution on the property from
19 discharges of hazardous substances.

20 2. In an action under this section, the liability of a responsible person described
21 in sub. (3) (a) 1. is limited to the amount of the total costs under par. (a), adjusted as
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23 responsible parties described in sub. (3) (a) 2.”

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2 later than January 1, 2001, the department of natural resources shall submit to the
3 legislature, in the manner provided under section 13.172 (2) of the statutes, proposed
4 legislation to make the process for local governmental unit negotiation and cost
5 recovery under section 292.35 of the statutes more efficient and clear. The
6 department shall propose legislation that includes provisions that do all of the
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8 (a) Provide a more efficient method of providing notice to all parties.

9 (b) Clarify the liability provisions.

10 (c) Clarify the provisions related to the identification of responsible parties.

11 (d) Provide local governmental units with a clear method of dealing with
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13 (e) Require responsible parties to state the basis for their objection to a local
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15 (f) Require potential umpires to be environmental experts.

16 (g) Require an umpire to submit a proposed recommendation under section
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19 (6h) BIBLIOGRAPHY OF GROUNDWATER INFORMATION. During the 1999–2001 fiscal
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21 information, on a geographic basis, that identifies all sources of general and
22 site-specific information about groundwater.”.

23 **20.** Page 1454, line 20: after that line insert:

