

2001 DRAFTING REQUEST**Bill**Received: **12/04/2000**Received By: **traderc**Wanted: **As time permits**

Identical to LRB:

For: **Administration-Budget 6-7597**By/Representing: **Wong**This file may be shown to any legislator: **NO**Drafter: **traderc**

May Contact:

Alt. Drafters:

Subject: **Environment - env. cleanup**

Extra Copies:

Pre Topic:

DOA:.....Wong -

Topic:

Local governmental liability exemption, solid waste laws

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 12/18/2000 | gilfokm 12/18/2000 | pgreensl 12/20/2000 | | lrb_docadmin 12/20/2000 | | S&L |
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FE Sent For:

<END>

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| /2 | traderc 01/12/2001 | gilfokm 01/12/2001 13 hmk 1/17/01 | pgreensl 01/14/2001 YH ps | YH PS/HH | lrb_docadmin 01/14/2001 | | S&L |

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| /1 | traderc 12/18/2000 | gilfokm 12/18/2000 | pgreensl 12/20/2000 | PG 1/12 PDS | lrb_docadmin 12/20/2000 | | S&L |

FE Sent For:

1/2-1/12-01 King

1/2 PG.

<END>

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| 1? | traderc | 1-12/18 kmg 18 | 12/19 pgr | 12/20 P8/AD | | | |

FE Sent For:

<END>

TOMMY G. THOMPSON
GOVERNOR

GEORGE LIGHTBOURN
SECRETARY



Division of Executive Budget and Finance
Post Office Box 7864
Madison, WI 53707-7864
Voice (608) 266-1736
Fax (608) 267-0372
TTY (608) 267-9629

Date: November 29, 2000
To: Steve Miller, LRB
From: Manyee Wong, DOA
266-7595
Subject: Brownfields Statutory Language

I'm forwarding statutory language requests based on the Brownfields Study Group recommendations for inclusion in the budget. Attached is a draft of the Brownfields Study Group Report.

- ✓ 1. **Stewardship Liability Exemption:** Substitute statutory reference to the stewardship appropriation under the LGU liability exemption provision with the phrase stewardship program funds.

Reason for change: 1999 Wisconsin Act 9 allowed LGUs to qualify for liability exemption if they purchased a property using stewardship funds. However, s. 292.11(9)(e)1m.f., Wis. Stats., referenced the incorrect appropriation.

- ✓ 2. **Solid Waste Liability Exemption:** Expand the voluntary party solid waste liability exemption to include local government units.
- ✓ 3. **Interim Liability Protection:** Remove the interim liability protection exemption from current law.
- ✓ 4. **Off-site liability exemption:** Expand off-site liability exemption coverage to soil and sediments.
- ✓ 5. **Voluntary Party Liability Exemption:** Clarify that liability exemptions continue to apply to a voluntary party who no longer owns the property, even if the current property owner fails to maintain and monitor the property in accordance with DNR rules.
- ✓ 6. **Use of Natural Attenuation:** Require the voluntary party using natural attenuation as a remedial strategy to provide DNR, the responsible party, the insurance company, or any authorized representative access to the property in order to determine whether natural attenuation has failed and to conduct cleanup if necessary.
- ✓ 7. **Environmental Remediation Tax Increment Financing (ER TIF):** Make technical changes to various definitions under the provision:

- a. Create a definition for "environmental remediation tax incremental tax district" similar to the definition of regular TIFs
- b. Change the definitions of "environmental remediation tax increment", "environmental remediation tax increment base", and "taxable property" as suggested by DOR.
- c. Modify certain provisions of the program to ensure eligible application to both contiguous parcels and individual parcel of property.
- d. Require that a certified audit be done once after the final expenditure is completed.
- e. Change the application due date for environmental remediation tax increment base certification from April 1st to December 31st of the year the ER TIF is created.

Note: For a, b, and c, please refer to LRB 4239/2 created under the 1999 legislative session.

- ✓ 8. Negotiated Sale in Lieu of Bidding: Allow a county or a city to transfer tax delinquent properties it owns without using the competitive bid process if the purchaser agrees to conduct a site assessment and cleanup the property in accordance with DNR rules.
- ✓ 9. Assign Judgement of a Tax Deed: Allow a county to transfer a tax deed to an individual at the time of judgement if the individual agrees to conduct a site assessment and cleanup the property.
- ✓ 10. Liens and Back Taxes: Exclude EPA and DNR liens and back taxes from eligibility under the grant.
- ✓ 11. Vehicle Environmental Impact Fee - Extend the repeal date to June 30, 2003.
- ✓ 12. Land Recycling Loan Program: Allow the Land Recycling Loan Program to be used on contiguous parcels of properties so as to better address cleanup of area-wide groundwater contamination.

Issue: Expand Liability Exemptions For Local Governments

Background

Current liability protections for local governments are very important for brownfields redevelopment. Before the liability exemptions for local governmental units (LGUs) were created, LGUs that acquired contaminated property were considered "responsible parties" under Wisconsin's Hazardous Substance Discharge Law, ch. 292, Wis. Stats. (also known as the Spill Law), because they "possessed" or "controlled" the contaminated property.

As a result of these concerns, the Spill Law was amended to create specific exemptions from liability for LGUs in certain situations. These exemptions are found in s. 292.11(9)(e), Wis. Stats. Local governments can qualify for this exemption if they acquire a property in one of a number of ways listed in the statute. There are several improvements that can be made to make the LGU exemption a more effective tool for brownfields cleanup and redevelopment.

Stewardship Grants and Brownfields

The 1999-2001 Biennial Budget allowed LGUs to qualify for the liability exemption for property they purchased using a DNR Stewardship Grant. This change was made so that local governments can use these grants to convert brownfield properties into parks and open space, and at the same time qualify for the LGU exemption.

One reason for this change was that LGUs who are awarded Stewardship grants cannot use condemnation, a type of acquisition eligible for the exemption, to acquire the property. This section, s. 292.11(9)(e)1m.f., Wis. Stats., references the appropriations for the old Stewardship program (1990-2000) and not the new program (Stewardship 2000) that was created in the last budget.

2 **Solid and Hazardous Waste Issues**

The LGU exemption only exempts local governments from liability they could face under the Spill Law. Local governments are still concerned about liability if they take title to property that they could potentially be exposed to under hazardous waste and solid waste laws. If a local government qualifies for the LGU exemption, the DNR could not require the LGU to investigate and cleanup the property under the authority of the Spill Law, but the DNR could potentially use its authority under state solid waste laws to require the LGU to take actions.

While the DNR does not typically use this authority to force local governments to take actions at brownfields sites, this potential liability may be a disincentive for local governments to take over properties and may hinder a community's efforts at brownfields cleanup and redevelopment. A similar issue is related to potential liability under the hazardous waste regulations. However, hazardous waste liability is complicated by federal waste laws.

LGUs Negating An Exemption

Under s. 292.11(9)(e)2.a., Wis. Stats., a local government could lose the liability exemption for a discharge that occurs as a result of an action taken by the local government. This section would apply if the local government caused the original contamination. For example, if the discharge is from a leaking underground storage tank operated by the city at the city garage, then the LGU would not qualify for this exemption and they would be considered responsible under the Spill Law.

Furthermore, if an LGU takes action at a site and exacerbates a discharge, that action would also be considered causing a discharge of a hazardous substance, and the LGU could lose the LGU exemption for the discharge they exacerbate. For example, if an LGU removes the pavement on a property which is serving as a cap over contaminated soil, that action could result in increased infiltration and cause an increase in the discharge of the contamination into the groundwater.

Proposal

Based on the above issues discussed in the Liability Subcommittee, the Study Group proposes the following.

• **Stewardship** – amend the LGU exemption [s. 292.11(9)(e)1m.f., Wis.Stats.] to eliminate reference to specific appropriations and add “the local governmental unit acquired the property using Stewardship program funds.”

2 • **Solid Waste Liability** – amend the law to extend the language in the LGU exemption [s. 292.11(9)(e), Wis. Stats.] to exempt the LGU from the same solid waste laws included in the Voluntary Party Liability Exemption listed in s. 292.15(2)(a), Wis. Stats; this would extend the exemption to cover the provisions of ss. 289.05 (1), (2), (3) and (4), 289.42(1), 289.67, Wis. Stats., and any rules promulgated under those provisions.

This exemption from solid waste laws should be limited so that it does not apply to any municipal waste landfills (as defined in s. 289.01(22), Stats.) or to any approved facilities (as defined in s. 289.01(3), Stats.). This is the same exclusion that is contained in the Voluntary Party Liability Exemption (s. 292.15(2)(d), Stats.). As a result, the exemption would only apply to historic fill sites. The exemptions from solids waste laws should also not apply to any facility that was owned or operated by the LGU.

The intent of the recommendation is that all the requirements and limitations contained in the existing LGU exemption statute (ss. 292.11(9)(e)1 through 7, Stats.) would continue to apply. Specifically, an LGU that acquires a historic fill site would still be subject to s. 292.11(9)(e)4, Stats., which applies when the LGU intends to use or redevelop the property subject to the exemption. This section states that the LGU exemption does not apply if the LGU does not take actions that the DNR determines are necessary to address threats to public health or safety. Also, this extension of the LGU exemption would only apply to the LGU and would not be transferable to future owners. Furthermore, if there was a discharge of a hazardous substance at a historic fill site acquired by an LGU, this exemption would not limit the DNR authority to require (under authority under the Hazardous Substance Discharge Law - s. 292.11, Wis. Stats.) any party who caused the discharge to take actions to respond to that discharge.

In addition to this statutory change, as part of the waste streamlining effort described on page ??? in Chapter ???, the DNR should continue its efforts to clarify the options related to development on all types of solid waste sites.

- **Hazardous Waste Liability** – the Study Group supports the efforts undertaken by the DNR as part of the waste streamlining effort described in the issue "Waste Regulatory Issues at Brownfields Sites", in Appendix ???, page ????
- **Interpretation of Exemption** – The Study Group recommends that DNR staff issue a written clarification that an LGU who causes or exacerbates a hazardous substance discharge would



State of Wisconsin
2001 - 2002 LEGISLATURE

LRB-1308/1

RCT: King

SOON

DOA:.....Wong – Local governmental liability exemption, solid waste laws

FOR 2001-03 BUDGET — NOT READY FOR INTRODUCTION

1

*DON'T
GEN. CAT.*
AN ACT ...; relating to: the budget.

Analysis by the Legislative Reference Bureau

ENVIRONMENT

HAZARDOUS SUBSTANCES AND ENVIRONMENTAL CLEANUP

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

This bill provides that a local governmental unit that is exempt from the clean-up requirements for a property is also exempt from solid waste management standards and other legal requirements relating to solid waste for that property.

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:

2

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

SECTION 1

✓
✓
✓

1 292.11 (9) (e) 1m. (intro.) Except as provided in subds. 2., 4., 6. and 7., a local
2 governmental unit is exempt from subs. (3), (4),[✓] and (7) (b) and (c) ^{and} ss. 289.05, 289.42
3 (1), and 289.67, and rules promulgated under those provisions, with respect to
4 discharges of hazardous substances on or originating from property acquired by the
5 local government unit before, on or after October 29, 1999, if any of the following
6 applies:

7 **History:** 1995 a. 227 ss. 700, 703 to 707, 710, 993; 1997 a. 21, 35; 1999 a. 9; 1999 a. 150 s. 672.

(END)

DATE: January 10, 2001

TO: Lance Potter, MB/5

FROM: Michael Prager, RR/3

SUBJECT: Comments on Proposed Statutory Language Changes – Solid Waste Exemptions for Local Governments – LRB – 1308/1

As you requested, I have reviewed the proposed language for statutory changes related to the liability exemptions for local governments (LRB – 1308/1). I have taken into consideration the comments from Kevin Kessler, of the Waste Bureau, in developing this memo. It is our understanding that the intent of this bill draft is to adopt the recommendations of the Brownfields Study Group on this issue. However, the DNR believes that there are a number of substantive differences between what was intended by the Brownfields Study Group and how the bill draft was written. These differences are:

1. Scope of exemption applies to more solid waste facilities than intended.

There were some specific types of solid waste facilities that we not to be covered by the local governmental unit exemption. These limitations are not currently represented in the bill draft. Specifically, the exemption should not apply to any municipal waste landfills (as defined in s. 289.01(22), Stats.) or any approved facilities (as defined in s 289.01(03), Stats.). The proposed statutory language should be revised to specifically exclude these types of facilities from the type of sites eligible for the local government exemption.

The recommendation also indicated that solid waste facilities owned and operated by a local government should not be covered by this exemption. While not explicitly addressed by the statutory language, the DNR would like it clarified that local governments that owned or operated a solid waste facility – irregardless of whether a discharge occurred – would not be eligible for the LGU exemption.

2. Solid waste facilities may not have a discharge of a hazardous substance.

The statutory exemption as drafted appears to only apply to solid waste facilities where there is a discharge of a hazardous substance. This was not the intent of the Brownfields Study Group. The groups also wanted the exemption to apply to properties with historic fill or waste disposal activities, regardless of whether or not a discharge has occurred. We recommend that the language be modified to provide the exemption to specific solid waste facilities (as stated in issue #1), that do or do not have discharges of hazardous substances.

3. Erroneous exemption from paying tipping fees.

The proposed statutory changes apparently exempts an LGU from paying tipping fees from solid waste generated from properties at which the LGU exemption applies. DNR does not believe that this is the intent of the Brownfields Study Group. The reference to s. 292.67, Stats., relates to environmental repair fees and surcharges. The intent of the exemption was to relieve a LGU of unknown liabilities at the property. However, if they demolition a building or dispose of contaminated soils, they should have to pay the appropriate fees.

Thank you for your time and efforts. Please call if you have any questions about these comments.

Cc:

Darsi Foss, RR/3
Judy Ohm, LS/5
Chuck Leveque, LS/5
Kevin Kessler, WM/3
Sue Bangert, WM/3

Tradewell, Becky

From: Wong, Manyee
Sent: Friday, January 12, 2001 11:23 AM
To: Tradewell, Becky
Subject: FW: Comments on LRB 1308/1

Hi Becky,

These are comments from the DNR legal staff. I think they are pretty much the same as Darsi's comments in the prior email, so there is really nothing new. But I thought I pass these comments on to you for review just in case.

Thanks.
Manyee

-----Original Message-----

From: Ohm, Judith M
Sent: Thursday, January 11, 2001 4:21 PM
To: Wong, Manyee; Felker-Donsing, Susan
Cc: Kessler, Kevin K; Leveque, Charles; Bangert, Suzanne A; Potter, Lance; Prager, Michael A; Foss, Darsi J
Subject: RE: Comments on LRB 1308/1

Manyee,

Here are some additional comments from Legal Services regarding LRB-1308:

1. It seems as though Becky Tradewell will amend the draft to state that the exemption does not apply to municipal waste landfills and approved facilities. This will comply with the intent of the Brownfields Study Group Report (Report). The Report also indicates that the exemption should not apply to any facility that was owned or operated by the LGU.

2. Becky correctly points out that the Report does not clearly convey the intent that the exemption should apply without regard to whether a discharge occurred. However, as Darsi points out, the intent of the BSG was that the LGU be exempt from certain solid waste laws if the LGU acquires the property in the manner outlined in s. 292.11(9)(e)1m, regardless of whether a discharge occurred. Perhaps, a new section could be created in ch. 292, similar to s. 292.24, which exempts LGU's from liability under certain hazardous waste laws if they comply with the conditions listed in the statute. In this case, the conditions would be that the LGU must acquire the property in a manner listed under s. 292.11(9)(e)1m, and the exemption would have the same exclusions as those under s. 292.11(9)(e)2, 4, 6 and 7. As noted, the exemption would not be applicable to any municipal waste landfill, approved facility or any facility owned or operated by the LGU.

3. As for the solid waste laws from which the LGU would be exempt, the Report does list ss. 289.05, 289.42 and 289.67, as Becky notes. However, this was apparently an error in the Report, since the intent was not to exempt LGUs from the tipping fees under s. 289.67. Also, I am not sure that the exemption would need to apply to s. 289.42, since this statute governs the certification of persons operating facilities, and the exemption would only apply to historic fill sites, not to currently operating facilities.

Feel free to call if you have any questions.

Judy
Judith M. Ohm
Bureau of Legal Services
(608) 266-9972
ohmj@dnr.state.wi.us

From: Felker-Donsing, Susan
Sent: Thursday, January 11, 2001 3:25 PM
To: Wong, Manyee
Cc: Kessler, Kevin K; Ohm, Judith M; Leveque, Charles; Bangert, Suzanne A; Potter, Lance; Prager, Michael A; Foss, Darsi J
Subject: RE: Comments on LRB 1308/1

Manyee, here is DNR's response to Becky's comments and questions. Darsi Foss prepared the response, after talking with the chair of the Brownfields Study subcommittee that worked on this topic. See her comments in green below. Please let me know if you need anything more from us on this issue. --Susan

From: Foss, Darsi J
Sent: Thursday, January 11, 2001 2:59 PM
To: Felker-Donsing, Susan
Cc: Kessler, Kevin K; Ohm, Judith M; Leveque, Charles; Bangert, Suzanne A; Potter, Lance; Prager, Michael A
Subject: RE: Comments on LRB 1308/1

Since this needs to go out quick, here are the quick responses to Becky's questions in the "Green bold" text below.
thanks

From: Felker-Donsing, Susan
Sent: Thursday, January 11, 2001 1:50 PM
To: Foss, Darsi J
Cc: Kessler, Kevin K; Ohm, Judith M; Leveque, Charles; Bangert, Suzanne A; Potter, Lance; Prager, Michael A
Subject: FW: Comments on LRB 1308/1

Darsi, can you respond to Becky Tradewell's comments/questions on the feedback we gave DOA on LRB 1308? Please get our comments back to Manyee, copy Lance and me in on the messages, and let me know if you'd like to discuss.--Susan-----

From: Wong, Manyee
Sent: Thursday, January 11, 2001 12:15 PM
To: Felker-Donsing, Susan
Subject: RE: Comments on LRB 1308/1, 1311/1, & 1312/1

Hi Susan,

Please have program folks respond to the questions below. Thanks.

Manyee

-----Original Message-----

From: Tradewell, Becky
Sent: Thursday, January 11, 2001 8:41 AM
To: Wong, Manyee
Subject: RE: Comments on LRB 1308/1, 1311/1, & 1312/1

With respect to LRB-1308: After looking at the original request I realize that in my haste I missed the instruction to limit the exemption so that it does not apply to landfills and approved facilities. **THanks**

However, I see nothing that would have conveyed the intent that the exemption apply without regard to whether a discharge occurred. **I agree that it was not clearly stated in the report - either to be inclusive of all historic waste sites or just those historic waste sites with discharges.**

The instructions were to expand the exemption in the spills law. Being an exemption to the spills law, which applies were a hazardous substance has been discharged, the expanded exemption still exempts local governmental units from liability with respect to discharges. **Becky, I spoke with the Chairperson of the Liability subgroup. I ran the issue by him. He said it was the intent - though not clearly articulated in the Report - that the LGU be exempt from certain solid waste provisions, regardless of whether there is a discharge of a hazardous substance. That is consistent with my understanding as well. This is the way we would like to go with this exemption. If it needs to be a separate exemption, we support that. We don't always have the time to figure out how this will be incorporated into the statute at the time we write the report, so we miss these things. Sorry.**

Also, the instructions say to exempt the LGU from the same solid waste laws that are listed in s. 292.15 (2) (a) and specifically list s. 289.67. The appearance of that cross-reference in the draft is because of the instructions, although now it seems that DNR cannot understand why the cross-reference is there.

Do the Brownfields Study Group want to exempt s. 289.67 or not? I also spoke to the Chairperson about the tipping fee exemption. He agrees with the DNR that this was not the intent of the BF Study group to exempt LGUs from the tipping fees. Please remove this statutory reference.

If this draft is to provide an exemption from solid waste laws at properties that have had no discharge of hazardous substances, it would not be proper to expand the spills law exemption. Is this what DNR wants?

DNR and the Study Group would like an LGU exemption for certain types of solid waste facilities, regardless of whether there is a discharge of a hazardous substance. If it is LRB's recommendation that this should be a separate exemption, we support that.

**Thank you for your assistance.
Darsi Foss**

Becky

-----Original Message-----

From: Wong, Manyee
Sent: Wednesday, January 10, 2001 6:03 PM
To: Tradewell, Becky
Subject: FW: Comments on LRB 1308/1, 1311/1, & 1312/1

Hi Becky,

Please review DNR's comments and make any appropriate changes. Thanks.

-----Original Message-----

From: Potter, Lance
Sent: Wednesday, January 10, 2001 4:18 PM
To: Wong, Manyee
Cc: Ebersberger, Eric K; Felker-Donsing, Susan
Subject: Comments on LRB 1308/1, 1311/1, & 1312/1

Manyee,

Here are comments by the program staff on statutory language - LRB 1308, 1311, and 1312:

<< File: LGU and SW 1308-1 >>

<< File: 1311&12 VPLE.doc >>

Because you are working under a tight deadline, I wanted to send the comments as soon as I had them. However - I just left you a voice mail about this - please keep in mind that legal services has not seen this language. I am requesting that legal services staff get in touch with Eric E. or Susan tomorrow (1/11) if they have additional comments.

Thanks,

Lance



State of Wisconsin
2001 - 2002 LEGISLATURE

LRB-1308#2

RCT:kmg:pg

SOON

rmv

DOA:.....Wong – Local governmental liability exemption, solid waste laws
FOR 2001-03 BUDGET — NOT READY FOR INTRODUCTION

(note)

1 AN ACT ^{DON'T DEN. CAT.} relating to: the budget.

analysis insert

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 property acquired in specified ways, such as through tax delinquency proceedings and condemnation.

This bill provides that a local governmental unit ~~that is exempt from the clean-up requirements for a property~~ is also exempt from solid waste management standards and other legal requirements relating to solid waste for ~~that property~~.

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:

Insert 1-2
2

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

1 292.11 (9) (e) 1m. (intro.) Except as provided in subds. 2., 4., 6., and 7., a local
2 governmental unit is exempt from subs. (3), (4), and (7) (b) and (c) and ss. 289.05,
3 289.42 (1), and 289.67, and rules promulgated under those provisions, with respect
4 to discharges of hazardous substances on or originating from property acquired by
5 the local government unit before, on or after October 29, 1999, if any of the following
6 applies:

7
(END)

Analysis insert

~~Not~~ that was acquired in a way that would qualify for the exemption from clean-up requirements, except that the exemption from solid waste requirements does not apply to a solid waste facility that was operated by the local governmental unit or owned by the local governmental unit while it was operated or to landfills

Insert 1-2

SECTION 1. 292.23 of the statutes is created to read:

292.23 Responsibility of local governmental units; solid waste. (1)

DEFINITION. In this section, "local governmental unit" means a municipality, a redevelopment authority created under s. 66.1333, a public body designated by a municipality under s. 66.1337 (4), a community development authority, or a housing authority.

(2) EXEMPTION FROM LIABILITY. Except as provided in sub. (3), a local governmental unit is exempt from s. 289.05, and rules promulgated under that section, with respect to property acquired by the local governmental unit before, on, or after the effective date of this subsection [revisor inserts date], if any of the following applies:

(a) The local governmental unit acquired the property through tax delinquency proceedings or as the result of an order by a bankruptcy court.

(b) The local governmental unit acquired the property from a local governmental unit that is exempt under this subsection with respect to the property.

(c) The local governmental unit acquired the property through ^acondemnation or other proceeding under ch. 32.

(d) The local governmental unit acquired the property for the purpose of slum clearance or blight elimination.

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

(f) The local governmental unit acquired the property using funds appropriated under s. 20.866 (2) (ta) or (tz).

(3) EXCEPTIONS. (a) Subsection (2) does not apply with respect to a discharge of a hazardous substance caused by any of the following:

1. An action taken by the local governmental unit.
2. A failure of the local governmental unit to take appropriate action to restrict access to the property in order to minimize costs or damages that may result from unauthorized persons entering the property.
3. A failure of the local governmental unit or corporation to sample and analyze unidentified substances in containers stored aboveground on the property.
4. A failure of the local governmental unit or corporation to remove and properly dispose of, or to place in a different container and properly store, any hazardous substance stored aboveground on the property in a container that is leaking or is likely to leak.

(b) Subsection (2) does not apply if, after considering the intended development and use of the property, the department determines that action is necessary to reduce to acceptable levels any substantial threat to public health or safety when the property is developed or put to that intended use, the department directs the local governmental unit to take that necessary action, and the local governmental unit does not take that action as directed.

(c) Subsection (2) only applies if the local governmental unit agrees to allow the department, any authorized representatives of the department, any party that possessed or controlled a hazardous substance that was discharged or caused the discharge of a hazardous substance, and any consultant or contractor of such a party to enter the property to take action to respond to the discharge.

(d) Subsection (2) does not apply to property described in sub. (2) (f) unless the local governmental unit enters into an agreement with the department to ensure that the conditions in pars. (b) and (c) are satisfied.

(e) Subsection (2) does not apply to any solid waste facility, as defined in s. 289.01 (35), that was operated by the local governmental unit or was owned by the local governmental unit while it was operated, to a municipal waste landfill, as defined in s. 289.01 (22), or to an approved facility.

DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-1308/2dn

RCT,.....

KMG

Manyee Wong:

This is the redraft of the LGU exemption from solid waste laws. It is based on s. 292.11 (9) (e).

I was not certain how to modify s. 292.11 (9) (e) 2., which relates to ^{S.} discharges, to fit a situation in which a discharge may not be present. See proposed 292.23 (3) (a).

I was also uncertain about the intent behind the instruction to exclude "any facility owned or operated by the LGU." The statute only applies to property owned by the LGU and if the LGU owns the property, it probably owns any facility on the property. The draft excludes "any solid waste facility, as defined in s. 289.01 (35), that was operated by the local governmental unit or was owned by the local governmental unit while it was operated."

If you wish to have DNR review this redraft, please provide it to them. As you know, there is very little time for review.

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

DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-1308/2dn
RCT:kmg:pg

January 12, 2001

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E-mail: becky.tradewell@legis.state.wi.us

Tradewell, Becky

From: Wong, Manyee
Sent: Wednesday, January 17, 2001 9:21 AM
To: Tradewell, Becky
Subject: FW: LRB Draft: 01-1308/2 Local governmental liability exemption, solid waste laws

Final minor change on LRB draft 1308.

-----Original Message-----

From: Potter, Lance
Sent: Wednesday, January 17, 2001 8:30 AM
To: Wong, Manyee
Subject: LRB Draft: 01-1308/2 Local governmental liability exemption, solid waste laws

Manyee,

Here are the comments on LRB 1308/2:

In general, the draft incorporates Judy Ohm's suggestions, and we agree with the changes. As to the question in the Drafter's Note regarding proposed s. 292.33(3)(a), we think it is a good idea to have this section so that there is no confusion regarding the fact that the exemption does not apply if a discharge is caused by some action or inaction by the LGU. This exception to the exemption would exist both under s. 292.11(9)(e) (the exemption from the Spill Law) and s. 292.33 (the exemption from Solid Waste Law). Also, we agree with the proposed language in s. 292.33(3)(e), which says the exemption does not apply to "any solid waste facility that was operated by the LGU or was owned by the LGU while it was operated."

The only change we would suggest is in s. 292.33(3)(d). The cross-reference should be to "pars. (a) and (b)", rather than "pars. (b) and (c)." This would be consistent with the cross-reference in s. 292.11(9)(e)7 to "subds. 2. and 4.".

Thanks for the chance to view all the language again. Let me know if you have questions.

Lance



State of Wisconsin
2001 - 2002 LEGISLATURE

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LRB-1308/3

RCT:kmg:pg
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DOA:.....Wong – Local governmental liability exemption, solid waste laws
FOR 2001-03 BUDGET — NOT READY FOR INTRODUCTION

1 Do not gen
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 property acquired in specified ways, such as through tax delinquency proceedings and condemnation.

This bill provides that a local governmental unit is exempt from solid waste management standards and other legal requirements relating to solid waste for a property that was acquired in a way that would qualify for the exemption from clean-up requirements, except that the exemption from solid waste requirements does not apply to a solid waste facility that was operated by the local governmental unit or owned by the local governmental unit while it was operated or to landfills.

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.** 292.23 of the statutes is created to read:

2 **292.23 Responsibility of local governmental units; solid waste. (1)**

3 DEFINITION. In this section, “local governmental unit” means a municipality, a
4 redevelopment authority created under s. 66.1333, a public body designated by a
5 municipality under s. 66.1337 (4), a community development authority, or a housing
6 authority.

7 **(2) EXEMPTION FROM LIABILITY.** Except as provided in sub. (3), a local
8 governmental unit is exempt from s. 289.05, and rules promulgated under that
9 section, with respect to property acquired by the local governmental unit before, on,
10 or after the effective date of this subsection [revisor inserts date], if any of the
11 following applies:

12 (a) The local governmental unit acquired the property through tax delinquency
13 proceedings or as the result of an order by a bankruptcy court.

14 (b) The local governmental unit acquired the property from a local
15 governmental unit that is exempt under this subsection with respect to the property.

16 (c) The local governmental unit acquired the property through a condemnation
17 or other proceeding under ch. 32.

18 (d) The local governmental unit acquired the property for the purpose of slum
19 clearance or blight elimination.

20 (e) The local governmental unit acquired the property through escheat.

21 (f) The local governmental unit acquired the property using funds appropriated
22 under s. 20.866 (2) (ta) or (tz).

23 **(3) EXCEPTIONS.** (a) Subsection (2) does not apply with respect to a discharge
24 of a hazardous substance caused by any of the following:

25 1. An action taken by the local governmental unit.

1 2. A failure of the local governmental unit to take appropriate action to restrict
2 access to the property in order to minimize costs or damages that may result from
3 unauthorized persons entering the property.

4 3. A failure of the local governmental unit to sample and analyze unidentified
5 substances in containers stored aboveground on the property.

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7 or to place in a different container and properly store, any hazardous substance
8 stored aboveground on the property in a container that is leaking or is likely to leak.

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10 and use of the property, the department determines that action is necessary to reduce
11 to acceptable levels any substantial threat to public health or safety when the
12 property is developed or put to that intended use, the department directs the local
13 governmental unit to take that necessary action, and the local governmental unit
14 does not take that action as directed.

15 (c) Subsection (2) only applies if the local governmental unit agrees to allow the
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17 possessed or controlled a hazardous substance that was discharged or caused the
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22 that the conditions in pars. ^a(~~h~~) and ^b(~~g~~) are satisfied.

23 (e) Subsection (2) does not apply to any solid waste facility, as defined in s.
24 289.01 (35), that was operated by the local governmental unit or was owned by the

1 local governmental unit while it was operated, to a municipal waste landfill, as
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3 (END)



State of Wisconsin
2001 - 2002 LEGISLATURE

LRB-1308/3
RCT:kmg&hnh:pg

DOA:.....Wong – Local governmental liability exemption, solid waste laws
FOR 2001-03 BUDGET — NOT READY FOR INTRODUCTION

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

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SECTION 1

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3 (END)