

2001 DRAFTING REQUEST

Bill

Received: 12/04/2000

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Wanted: As time pcrmits

Identical to LRB:

For: Administration-Budget 6-7597

By/Representing: Wong

This file may be shown to any legislator: NO

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Subject: Environment - env. cleanup

Extra Copies:

Pre Topic:

DOA:.....Wong -

Topic:

Eliminate interim liability exemption

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>
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FE Sent For:

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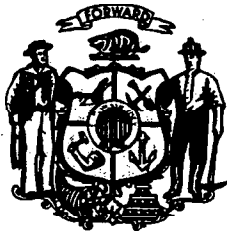
See Attached

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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.

State Removal of Interim Liability Protection Language (2001-2002)

Background

This issue was included in the first Brownfields Study Group Report (please see pp. 62-63, *1999 Brownfields Study Group Final Report*). Under the Voluntary Party Liability Exemption (VPLE) process, s. 292.15, Wis. Stats., the DNR provides a party with a Certificate of Completion (COC) after they have successfully remediated the property. However, prior to the 1999-2001 State Biennial Budget the liability exemption process did not provide "interim" liability protection during the period between the approval of the investigation and the issuance of a COC.

Voluntary parties, therefore, were not protected from liability by the State of Wisconsin for additional contamination that could be discovered during the remediation. During the discussion by the 1998 Study Group, some members expressed concern that this lack of interim protection created an impediment for redevelopment in cases where the remediation takes several years to complete.

The first Study Group recommended that a statutory liability protection be created, and the 1999-2001 State Budget (s. 292.15(at), Wis. Stats.) addressed this issue. Under this statute, qualified parties can obtain interim liability protection where the DNR has approved a site investigation and those parties have agreed to implement a remediation approved by the department. The statute also states that parties would need to obtain environmental insurance to cover the cost to investigate and cleanup any contamination that may be discovered in the course of conducting the cleanup of the property. (for more information about environmental insurance, please see the Appendices????).

Proposal

The Study Group recommends the repeal of s. 292.15(2)(at), Wis. Stats., and removal of any other references to this statutory section.

There is currently a greater availability of insurance products and more flexibility insurance products than when the first Brownfields Study Group met in 1998. The Study Group believes that, since there are currently private insurance products available to address this interim risk, it is unnecessary for there to be an interim liability protection provided by state statute. A bureaucratic regulatory solution should be avoided when a private solution is available.

In addition, the Group also believes it is an unnecessary expenditure of effort for the state to implement this insurance program given that it may not be utilized and individuals can address this risk without state involvement.

Type of Change

Statutory

Resources

None

Comments



State of Wisconsin
2001 - 2002 LEGISLATURE

50 ON

LRB-1309/1

RCT:.....

JLD

DOA:.....Wong - Eliminate interim liability exemption

FOR 2001-03 BUDGET - NOT READY FOR INTRODUCTION

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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. Under current law, a person, called a voluntary party, is exempt from absolute requirements to restore the environment and minimize the harmful effects of the discharge, and from the requirements of other laws relating to hazardous substances, if an environmental investigation of the property is conducted, the property is cleaned up, DNR certifies that the cleanup restored the environment and minimized the harmful effects of the discharge, and the voluntary party maintains and monitors the property as required by DNR. This exemption applies if later changes to the law would impose greater responsibilities on the voluntary party or if it is discovered that the cleanup failed to fully restore the environment or to minimize the harmful effects of the discharge.

*

Also, under current law, a voluntary party is exempt from liability with respect to the existence of a hazardous substance on property if the hazardous substance is discovered in the course of a cleanup and if the voluntary party has obtained insurance to cover the costs of cleaning up hazardous substances discovered in the course of the cleanup. This bill eliminates this exemption from liability.

For further information see the *state* 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.** 292.15 (2) (at) ^X of the statutes is repealed.

2 **SECTION 2.** 292.15 (2) (c) ^X of the statutes is amended to read:

3 292.15 (2) (c) *Prohibition on action.* The department of justice may not
4 commence an action under 42 USC 9607 against any voluntary party meeting the
5 criteria of this subsection to recover costs for which the voluntary party is exempt
6 under pars. (a), (ae), (ag), (am), ~~(at)~~[✓] and (b).

7 History: 1993 a. 453; 1995 a. 225; 1995 a. 227 s. 712, 714, 715; ~~1997~~^X a. 27, 237; 1999 a. 9, 185.

7 **SECTION 3.** 292.15 (2) (e) of the statutes is amended to read:

8 292.15 (2) (e) *Contract with insurer.* If the department requires insurance
9 under par. (ae) 3m. ~~or (at) 3.~~[✓], the department may contract with an insurer to provide
10 insurance required under par. (ae) 3m. ~~or (at) 3.~~[✓] and may require voluntary parties
11 to obtain coverage under the contract.

12 History: 1993 a. 453; 1995 a. 225; 1995 a. 227 s. 712, 714, 715; ~~1997~~^X a. 27, 237; 1999 a. 9, 185.

12 **SECTION 4.** 292.15 (6) (a) of the statutes is renumbered 292.15 (6).[✓]

13 **SECTION 5.** 292.15 (6) (b) ^X of the statutes is repealed.

14

(END)



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