

ANDRÉ JACQUE

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TO: Members of the Assembly Committee on Environment and Forestry
FROM: Rep. André Jacque
DATE: January 9, 2018
RE: Assembly Bill 720: Innocent Landowner Protection

Chairman Mursau and Committee Members,

Thank you for the opportunity to testify today in support of Assembly Bill 720, strong bi-partisan legislation I have authored with Rep. Taylor and Sen. Risser to address a serious issue facing property owners around the state who have purchased a contaminated property before mandatory disclosure laws and are facing significant financial hardships by being mandated by the DNR to remediate contamination they knew nothing about or had any role in causing. This legislation also assists local governments with the redevelopment of both contaminated properties and those perceived as potentially contaminated when the responsible party has abandoned the property.

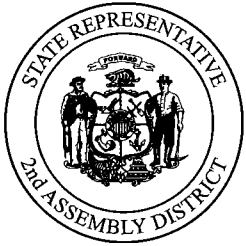
In *State v. Mauthe*, the Wisconsin Supreme Court ruled that the owner of a parcel containing contamination is responsible for remediation, even if that individual is not responsible for the contamination and had no reason to know it existed upon purchasing the property prior to mandatory disclosure laws passed in 1992.

I was made aware of this issue in late 2016 when reading a story following the plight of Ken Koeppler, a constituent of Rep. Taylor's who, unbeknownst to him, purchased a contaminated property before the mandatory disclosure laws and has been forced to spend tens of thousands of dollars to try to remediate the situation.

AB 720 will ensure that individual property owners who had no knowledge of property contamination and no way to find out about contamination are not held liable for contamination remediation efforts.

Another very important aspect of the bill is its ability to significantly assist local economic development efforts by exempting entities that acquire a tax deed from a property contaminated by a hazardous substance, or any person who subsequently acquires the property from the county and meets certain requirements, from responsibility relating to the discharge of the hazardous substance.

One of the largest hurdles to the redevelopment of brownfields and blighted property in our communities, or properties like Mr. Koeppler's, is that before investment in those sites can begin, you have to find someone willing to assume the risk of the full spectrum of they might find on the land, even before the ability to perform a thorough assessment themselves, and to accept the potentially for astronomical costs in so doing. Even when likely that significant contamination would not be found, the mere possibility that more could be discovered than is publicly known is often enough to have a chilling



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effect on the redevelopment of the site, and many times its adjacent properties as well. When the owner of a contaminated, or potentially contaminated, property becomes financially insolvent and stops paying taxes, an eyesore which may or may not be Pandora's Box is dumped in the laps of our communities.

I am aware of real life examples in my area this legislation can help with, like an abandoned gas station in downtown Two Rivers with great commercial potential and a long-shuttered mall in Manitowoc that may be contaminated but who local officials believe has a highest and best future use of being capped and used as a much needed parking lot for the foreseeable future. This legislation ensures that the DNR can still offer grants for cleanup or pursue the parties actually responsible for contamination. But by properly extending a liability exemption for cleanup to those who did not cause the contamination and could not have stopped it, this proposal would grant greater leverage to ensure solvent polluters keep current on their property taxes and grant greater flexibility to local governments in how to fix up these properties.

This common-sense legislation is supported by a number of municipalities, the Wisconsin Economic Development Association, and the Wisconsin Commercial Real Estate Development Association (NAIOP).

Thank you for your consideration of AB 720.

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CHRIS TAYLOR

STATE REPRESENTATIVE ♦ 76th ASSEMBLY DISTRICT

**Testimony of Rep. Chris Taylor
Assembly Bill 720**

January 9, 2017

Chairman Mursau & Members of the Environment & Forestry Committee:

Thank you for holding a public hearing and for the opportunity to testify today in favor of Assembly Bill 720. This legislation creates a narrow exception to Wisconsin's Spill Law to ensure that individual property owners around the state are not forced to clean up contamination they are not responsible for causing, and had no way of knowing about when they purchased the property.

Under current law, the owner of a property containing contamination is responsible for remediation, even if the owner is not responsible for the contamination and had no reason to know it existed upon purchasing the property prior to our 1992 mandatory disclosure laws. Some Wisconsin property owners, one of whom we will hear from today, who purchased contaminated property before mandatory disclosure laws are facing serious financial repercussions by being mandated by the Department of Natural Resources (DNR) to remediate contamination they did not cause and knew nothing about when they purchased the property.

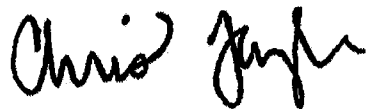
AB 720 is a pretty simple, two page bill. It simply exempts a residential property owner from being forced to remediate contamination if they meet three criteria: 1. They acquired the property prior to Wisconsin's mandatory disclosure law being in effect (Sept. 1, 1992), meaning there was no disclosure that the property was contaminated by toxic or hazardous substances; 2. They can prove that the discharge was caused by another person and the property owner did not know and had no reason to know of the discharge when the owner acquired the property; and 3. The property was not listed in the database of contaminated properties maintained by the DNR.

Today, you will hear the story of Ken Koeppler. In 1987, he bought a residential property that, unbeknownst to him, was contaminated. In 2015, he was informed by the DNR that he would need to take serious remediation efforts because of hazardous soil vapor contamination occurring under his residence. To date, as he will detail, he has spent tens of thousands of dollars trying to clean up his property. There are basically no options for individual, residential property owners like Ken who had unknowingly purchased contaminated properties.

Wisconsin would not be the first state to exempt "innocent contaminators" from remediation laws – there is a federal equivalent to this exception in the Comprehensive Environmental Response, Compensation, and Liability Act (CERLA) and states such as Texas and Arizona have laws protecting innocent buyers from liability if their properties are found to be contaminated. Further, nothing in this bill prohibits the state from pursuing legal remedies against the actual contaminator and pursuing remediation costs from the contaminator.

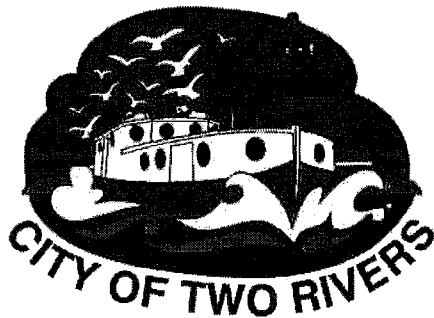
This is common-sense, bipartisan bill, and I'm hopeful you will support it. Thank you.

Sincerely,

A handwritten signature in black ink that reads "Chris Taylor". The signature is written in a cursive style with a large, stylized "C" and "T".

Representative Chris Taylor
76th Assembly District

Council Manager Government Since 1924



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January 9, 2018

Representative Jeffrey Mursau
Committee on Environment and Forestry
State Capitol
PO Box 8953
Madison, WI 53708

RE: AB 720

Dear Chairman Mursau:

We intended to have our Economic Development staff person at today's hearing by your committee, but he is unable to attend, due to illness. Please accept this communication on behalf of the City of Two Rivers, in lieu of testimony

The City of Two Rivers supports AB 720 as legislation that would further enhance the ability of Wisconsin communities to successfully pursue redevelopment of potentially contaminated sites.


We believe that the provision exempting counties and successor owners from responsibility and liability for contamination that may exist on properties acquired through tax deeds could be very beneficial to Two Rivers and other older communities where redevelopment of abandoned sites is a priority.

Just this year, we were working with a developer on a downtown area commercial redevelopment that would have involved several parcels. Key to that site assembly was a parcel that contained a vacant, former gas station/c-store that was (and still is) **7 years tax delinquent**. Because it was a former gas station, our county was unwilling to initiate tax foreclosure on the property, out of concern for potential liability for site contamination. Result: the site remains vacant and severely tax delinquent (to the tune of over \$52,000).

Fear of environmental liability should not forestall Wisconsin counties from pursuing tax foreclosures to either get back taxes paid or, failing that, take title to such properties and facilitate redevelopment by working with their local government partners..

The City of Two Rivers urges your committee to support this bill, which will improve our ability to pursue redevelopment at the local, community level.

Sincerely,


Gregory E. Buckley
City Manager

CC: Representative Andre Jacque

**PREPARED TESTIMONY
OF MARK THIMKE**

January 9, 2018

I am Mark Thimke, and I am appearing in my role as co-chair of the Wisconsin Brownfields Study Group. The Brownfields Study Group was established by the Legislature to review, propose and comment on policies, rules and laws relating to brownfield issues. The Brownfields Study Group appreciated the Committee's prior support of Assembly Bill 179 signed into law in late November.

With respect to Assembly Bill 720, the Brownfields Study Group is concerned from two perspectives – (i) the unintended consequences of “creating brownfields” along with the detrimental affects brownfield properties have in a community and (ii) the issue of who pays.

Underlying both of these concerns is the fact that the environmental contamination exists on the property. And contamination does not go away until it is addressed. Rather, contamination can readily spread and affect other properties, but even if contained to a particular piece of property, the existence in a community of “pockets” of brownfield properties is detrimental to neighborhoods and future redevelopment in these neighborhoods. Without a responsible party to address the contamination, the brownfield site will remain. Thus, we view the likely affect of this bill is potentially creating new sites, as opposed to removing these sites from Wisconsin communities.

Our first concern readily leads to the second; that is, the issue of “who pays.” By exempting the property owner, the results most often will be to shift the “who pays” question back to taxpayers. We recognize the causer is still responsible under the bill, but particularly in old contamination situations, it is more likely than not that even if the causer can be determined, which often is a difficult task, the causer no longer exists. That leaves taxpayers as the most

likely payer for the cleanup. However, no funding is provided under the bill, so the state or municipalities face the very difficult task of finding funds to pay for the environmental remediation. The end result is that cleanup is delayed or may not occur at all, and the property will remain a lingering brownfield site.

If the Legislature desires to address situations where an individual property owner unknowingly acquired contaminated property in the past and cannot pay for the cleanup, an approach the Legislature may want to consider is allocating funds to the state's Environmental Repair Fund with specific criteria for funding such cleanups. The Brownfield Study Group is very willing to make recommendations to the Legislature as to when taxpayer funding may be appropriate for the cleanup. In addition, we would address making sure taxpayers, who pay for the cleanup, receive fair compensation for their contribution to the cleanup effort in the event of an increase in property value.

While the Brownfields Study Group is not supportive of the current bill, we are very willing to be part of the solution and work toward the development of an approach that avoids the "creation" of brownfields sites and that directly considers the equities of taxpayers and property owners in addressing these types of sites.

Thank you for the opportunity to address the Committee, and on behalf of the Brownfields Study Group, we look forward to working with you in 2018 to address the issue raised in this bill.