

1999 ASSEMBLY BILL 218

March 16, 1999 – Introduced by Representatives KELSO, AINSWORTH, OLSEN, GOETSCH, KAUFERT, KREIBICH and GRONEMUS, cosponsored by Senators GEORGE and ROSENZWEIG. Referred to Joint committee on Audit.

1 **AN ACT** *to repeal* 101.143 (3) (g) 2.; *to renumber* 18.52 (5) (c) and 18.56 (7) and
2 (8); *to renumber and amend* 18.52 (5) (intro.), 18.52 (5) (a), 18.52 (5) (b), 18.53
3 (3), 18.56 (1), 18.56 (2) to (6), 18.56 (9) (intro.), 18.56 (9) (a) to (j), 18.56 (10),
4 18.57 (4), 18.60 (5), 25.47 and 101.143 (4) (cm); *to consolidate, renumber and*
5 *amend* 101.143 (3) (g) (intro.) and 1.; *to amend* 13.485 (2), 18.51, 18.57 (1),
6 18.58 (1), 18.60 (1), 18.60 (2), 18.61 (2), 18.61 (3) (a), 18.61 (3) (b) (intro.), 18.61
7 (3) (b) 1., 18.61 (3) (b) 3., 18.61 (3) (b) 4., 18.61 (3) (c), 18.61 (4), 20.143 (3) (v),
8 45.79 (9) (a), 84.59 (2), 85.52 (5) (c), 101.143 (3) (c) 2., 101.143 (3) (cm), 101.143
9 (3) (d), 101.143 (4) (b) (intro.), 101.143 (4) (d) 2. (intro.) and 281.59 (4) (b); *to*
10 *repeal and recreate* 18.57 (title); and *to create* 18.52 (2m) (intro.), 18.52 (7),
11 18.52 (8), 18.53 (3) (a) and (b), 18.561 (title), 18.561 (1), 18.561 (7) (title), 18.561
12 (8) (title), 18.561 (9) (k), 18.562, 18.60 (5) (a) to (c), 20.143 (3) (s), 20.143 (3) (t),
13 20.143 (3) (u), 20.143 (3) (vb), 25.47 (5), 101.143 (1) (bm), 101.143 (1) (cq),
14 101.143 (2) (h), 101.143 (2) (i), 101.143 (2) (j), 101.143 (2e), 101.143 (3) (cg),

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1 101.143 (3) (cp), 101.143 (3) (cs), 101.143 (3) (cw), 101.143 (4) (c) 10., 101.143
2 (4) (c) 11., 101.143 (4) (c) 12., 101.143 (4) (cm) 2., 101.143 (9m) and 101.143 (11)
3 of the statutes; **relating to:** the petroleum storage remedial action program;
4 authorizing revenue obligations to fund payment of claims under the petroleum
5 storage remedial action program; authorizing a new type of revenue obligation;
6 granting revenue bonding authority; granting rule-making authority; and
7 making appropriations.

Analysis by the Legislative Reference Bureau

Under current law, the department of commerce administers a program to reimburse owners of certain petroleum product storage tanks for a portion of the costs of cleaning up discharges from those tanks. This program is commonly known as PECFA. This bill makes numerous changes concerning PECFA and concerning the issuance of revenue obligations by this state.

Revenue obligations

This bill authorizes the issuance of revenue obligations, to be paid from revenues deposited in the petroleum inspection fund, to fund the payment of claims under the PECFA program. Revenue obligations issued under this bill may not exceed \$450,000,000 in principal amount. In addition to this limit on principal amount, the bill authorizes the issuance of revenue obligations to fund or refund these outstanding revenue obligations, to pay issuance or administrative expenses, to make deposits to reserve funds or to pay accrued or capitalized interest. The building commission may pledge any portion of revenues received from the proceeds of the obligations or the petroleum inspection fund to secure revenue obligations issued under this bill. The building commission may issue the revenue obligations when it reasonably appears to the building commission that the obligations can be fully paid on a timely basis from the petroleum inspection fund. The bill provides a so-called “moral obligation pledge” which applies if the legislature reduces the rate of the petroleum inspection fee. If the rate is reduced and there are insufficient funds in the petroleum inspection fund to pay the principal and interest on the revenue obligations, the legislature expresses its expectation and aspiration that it would make an appropriation from the general fund sufficient to pay the principal and interest on the obligations.

Under current law, the state may issue “revenue obligations” for certain specified purposes. In general, a revenue obligation is an obligation that is: 1) incurred to purchase, acquire, lease, construct, improve, operate or manage a revenue-producing enterprise; and 2) repayable solely from, and secured solely by, the property or income from the revenue-producing enterprise.

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This bill broadens the definition of revenue obligation to allow revenue bonding in situations which would not meet the current law definition of revenue obligation. Under the bill, revenue obligations consist of two different types: enterprise obligations and special fund obligations. The first type of revenue obligation, called an enterprise obligation, includes all obligations authorized under current law; i.e., obligations that are incurred to purchase, acquire, lease, construct, improve, operate or manage a revenue-producing enterprise and are repayable solely from, and secured solely by, the property or income from that revenue-producing enterprise. The definition of enterprise obligation under the bill is broader than the current law definition of revenue obligation in that it eliminates the requirement that the bond be repayable *solely* from, and be *solely* secured by, property or income from the revenue-producing enterprise.

The second type of revenue obligation, a special fund obligation, is created by the bill. Special fund obligations are an undertaking by the state to repay a certain amount of borrowed money that is payable from a special fund consisting of fees, penalties or excise taxes. The bill uses this second type of revenue obligation to authorize the revenue obligation bonding for the PECFA program.

PECFA administration and reimbursement

This bill requires the department of commerce, in consultation with the department of natural resources (DNR), to promulgate rules specifying a method for determining the risk to public health, safety and welfare and to the environment posed by discharges of petroleum products. Under the bill, to be eligible for PECFA reimbursement, the owner of a petroleum product storage tank may not begin a cleanup without the approval of the department of commerce and DNR. The department of commerce and DNR will jointly determine the appropriate date to begin a cleanup based on the determination of the risk posed by a discharge and on the availability of funds to make PECFA reimbursements. The requirement for approval to begin a cleanup does not apply to emergency cleanups authorized by DNR or to cleanups of discharges from home heating oil tanks, small farm tanks and school district heating oil tanks.

Under current law, DNR generally may order a responsible person to conduct a cleanup of a hazardous substance that has been discharged into the environment and may oversee the cleanup. However, under current law, the department of commerce may order and oversee cleanups of certain discharges from petroleum product storage tanks. The department of commerce has authority over cleanups if the site of the discharge is classified as low or medium priority based on the threat that the discharge poses to public health, safety and welfare and to the environment and if the site is not contaminated by nonpetroleum hazardous substances. Current law requires DNR and the department of commerce to enter into a memorandum of understanding that establishes procedures and standards for determining whether a site is high, medium or low priority. Under this state's groundwater law, DNR and the department of health and family services set enforcement standards which represent a concentration of a pollutant in groundwater. If an activity or facility causes the concentration of a pollutant in groundwater to reach or exceed the enforcement standard, the state agency that regulates the activity or facility must,

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generally, prohibit the activity or practice that uses or produces the pollutant and implement remedial action.

This bill requires the department of commerce to determine the least costly method of conducting a cleanup and achieving compliance with enforcement standards for PECFA sites that are classified as low or medium priority. The bill requires the department of commerce and DNR jointly to determine the least costly method of conducting a cleanup and achieving compliance with enforcement standards for PECFA sites that are classified as high priority. The bill limits the amount of reimbursement under PECFA to the amount necessary to implement the least costly method of conducting the cleanup and achieving compliance with enforcement standards. The bill requires the departments to consider whether natural attenuation can be used for each cleanup. Natural attenuation is the naturally occurring reduction in the amount and concentration of a substance in the environment.

This bill generally requires the department of commerce to use a competitive public bidding process to help to determine the least costly method of conducting a cleanup if the estimated cost to complete an investigation, clean-up plan and cleanup exceeds \$60,000. The bill provides an exemption from the bidding requirement for certain sites with groundwater contamination near wells and allows DNR to waive the bidding requirement.

This bill requires the department of commerce to conduct an annual review of ongoing PECFA cleanups at low and medium priority sites and the department of commerce and DNR to conduct an annual review of ongoing PECFA cleanups at high priority sites. As part of an annual review, the departments must determine the least costly method of completing the cleanup and achieving compliance with enforcement standards. The bill limits the amount of reimbursement under PECFA for costs incurred after the annual review to the amount necessary to complete the cleanup and achieve compliance with enforcement standards using the least costly method.

Current law authorizes the department of commerce to establish a schedule of usual and customary costs for items eligible for PECFA reimbursement. If the department of commerce establishes a usual and customary cost for an item, PECFA reimbursement for that item is limited to the usual and customary cost. This bill requires the department of commerce to establish a schedule of usual and customary costs for items that are commonly included in PECFA claims. The bill requires the department of commerce to use the schedule to determine eligible costs for cleanups for which a public bidding process is not used. This requirement applies until June 30, 2001.

Under PECFA, the owner of a petroleum product storage tank may receive an award for the amount by which the cost of the cleanup exceeds a deductible amount, up to a specified maximum. Currently, the PECFA deductible for underground tanks is generally \$2,500 plus 5% of eligible costs, but not more than \$7,500, except that the deductible for heating oil tanks owned by school districts and technical college districts is 25% of eligible costs.

This bill reduces the PECFA deductible for certain underground petroleum storage tanks. Under the bill, the deductible for underground tanks, other than

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school district and technical college district heating oil tanks, is generally 2% of the first \$40,000 of eligible costs, plus 10% of the next \$20,000 of eligible costs, plus 15% of the amount by which eligible costs exceed \$60,000, but the maximum deductible remains \$7,500.

This bill requires the department of commerce, in consultation with DNR, to promulgate rules specifying the conditions under which the two departments must issue approvals of cleanups under PECFA. The bill also requires the department of commerce, in consultation with DNR, to promulgate rules specifying information that must be submitted under PECFA, review procedures that must be followed by employees of the department of commerce and DNR and training requirements for those employees.

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.** 13.485 (2) of the statutes is amended to read:

2 13.485 (2) The building commission may, under s. ~~18.56~~ 18.561 (5) and (9) (j)
3 or 18.562 (3) and (5) (e), deposit in a separate and distinct fund, outside the state
4 treasury, in an account maintained by a trustee, fees and charges derived from the
5 facilities or from agreements entered into under sub. (4). The fees and charges
6 deposited are the trustee's moneys in accordance with the agreement between this
7 state and the trustee or in accordance with the resolution pledging the fees and
8 charges to the repayment of revenue obligations issued under this section.

9 **SECTION 2.** 18.51 of the statutes is amended to read:

10 **18.51 Provisions applicable.** The following sections apply to this
11 subchapter, except that all references to "public debt" or "debt" are deemed shall be
12 read to refer to a "revenue obligation" and all references to "evidences of
13 indebtedness" shall be read to refer to "evidences of revenue obligations": ss. 18.02,
14 18.03, 18.06 (8), 18.07, 18.10 (1), (2), (4) to (9) and (11) and 18.17.

15 **SECTION 3.** 18.52 (2m) (intro.) of the statutes is created to read:

ASSEMBLY BILL 218**SECTION 3**

1 18.52 **(2m)** (intro.) “Enterprise obligation” means every undertaking by the
2 state to repay a certain amount of borrowed money that is all of the following:

3 **SECTION 4.** 18.52 (5) (intro.) of the statutes is renumbered 18.52 (5) and
4 amended to read:

5 18.52 **(5)** “Revenue obligation” means every ~~undertaking by the state to repay~~
6 ~~a certain amount of borrowed money which is:~~ an enterprise obligation or a special
7 fund obligation. A revenue obligation may be both an enterprise obligation and a
8 special fund obligation.

9 **SECTION 5.** 18.52 (5) (a) of the statutes is renumbered 18.52 (2m) (a) and
10 amended to read:

11 18.52 **(2m)** (a) Created for the purpose of purchasing, acquiring, leasing,
12 constructing, extending, expanding, adding to, improving, conducting, controlling,
13 operating or managing a revenue-producing enterprise or program;.

14 **SECTION 6.** 18.52 (5) (b) of the statutes is renumbered 18.52 (2m) (b) and
15 amended to read:

16 18.52 **(2m)** (b) Payable ~~solely~~ from and secured ~~solely~~ by the property or income
17 or both of the enterprise or program; ~~and.~~

18 **SECTION 7.** 18.52 (5) (c) of the statutes is renumbered 18.52 (2m) (c).

19 **SECTION 8.** 18.52 (7) of the statutes is created to read:

20 18.52 **(7)** “Special fund obligation” means every undertaking by the state to
21 repay a certain amount of borrowed money that is all of the following:

22 (a) Payable from a special fund consisting of fees, penalties or excise taxes.

23 (b) Not public debt under s. 18.01 (4).

24 **SECTION 9.** 18.52 (8) of the statutes is created to read:

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1 18.52 **(8)** “Special fund program” means a state program or purpose with
2 respect to which the legislature has determined that financing with special fund
3 obligations is appropriate and will serve a public purpose.

4 **SECTION 10.** 18.53 (3) of the statutes is renumbered 18.53 (3) (intro.) and
5 amended to read:

6 18.53 **(3)** (intro.) The commission shall authorize money to be borrowed and
7 evidences of revenue obligation to be issued therefor ~~up to the amounts specified by~~
8 ~~the legislature to purchase, acquire, lease, construct, extend, expand, add to,~~
9 ~~improve, conduct, control, operate or manage such revenue-producing enterprises~~
10 ~~or programs as are specified by the legislature as the funds are required.~~ The
11 requirements for funds shall be established by the state department or agency head
12 carrying out program responsibilities for which the revenue obligations have been
13 authorized by the legislature, but shall not exceed the following:

14 **SECTION 11.** 18.53 (3) (a) and (b) of the statutes are created to read:

15 18.53 **(3)** (a) In the case of enterprise obligations, the amounts specified by the
16 legislature to purchase, acquire, lease, construct, extend, expand, add to, improve,
17 conduct, control, operate or manage such revenue-producing enterprises or
18 programs as are specified by the legislature.

19 (b) In the case of special fund obligations, the amount specified by the
20 legislature for such expenditures to be paid from special fund obligations.

21 **SECTION 12.** 18.56 (1) of the statutes is renumbered 18.56 and amended to read:

22 **18.56 Revenue bonds obligations.** The commission may authorize, for any
23 of the purposes described in s. 18.53 (3), the issuance of ~~revenue-obligation bonds~~
24 revenue obligations. The ~~bonds~~ revenue obligations shall mature at any time not
25 exceeding 50 years from the date thereof as the commission shall determine. The

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1 ~~bonds~~ revenue obligations shall be payable only out of the redemption fund provided
2 under ~~sub. s. 18.561 (5) or 18.562 (3)~~ and each ~~bond~~ revenue obligation shall contain
3 on its face a statement to that effect. ~~Any such bonds~~ A revenue obligation may
4 contain a provision authorizing redemption, in whole or in part, at stipulated prices,
5 at the option of the commission and shall provide the method of redeeming the ~~bonds~~.
6 ~~The state and a contracting party may provide in any contract for purchasing or~~
7 ~~acquiring a revenue-producing enterprise or program, that payment shall be made~~
8 ~~in such bonds~~ revenue obligations.

9 **SECTION 13.** 18.56 (2) to (6) of the statutes are renumbered 18.561 (2) to (6) and
10 amended to read:

11 **18.561 (2) SECURITY INTERESTS OF OWNERS OF ENTERPRISE OBLIGATIONS.** There
12 ~~shall be~~ is a mortgage lien upon or security interest in the income and property of
13 each revenue-producing enterprise or program ~~to~~ for the benefit of the holders
14 owners of the related ~~bonds~~ and to the holders of the coupons of the bonds. ~~The note~~
15 ~~or other instrument evidencing the security interest of a bondholder in a loan made~~
16 ~~or purchased with revenue obligation bonds shall constitute a statutory lien on the~~
17 ~~revenue~~ enterprise obligations. No physical delivery, recordation or other action is
18 required to perfect the security interest. The income and property of the
19 revenue-producing enterprise or program shall remain subject to the lien until
20 provision for payment in full of the principal and interest of the ~~bonds~~ enterprise
21 obligations has been made, as provided in the authorizing resolution. Any holder
22 owner of such ~~bonds or attached coupons~~ enterprise obligations may either at law or
23 in equity protect and enforce the lien and compel performance of all duties required
24 by this section. If there is any default in the payment of the principal or interest of
25 any of such ~~bonds~~ enterprise obligations, any court having jurisdiction of the action

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1 may appoint a receiver to administer the revenue-producing enterprise or program
2 on behalf of the state and the ~~bondholders~~ owners of the enterprise obligations, with
3 power to charge and collect rates sufficient to provide for the payment of the
4 operating expenses and also to pay any ~~bonds or~~ enterprise obligations outstanding
5 against the revenue-producing enterprise or program, and to apply the income and
6 revenues thereof in conformity with this subchapter and the authorizing resolution,
7 or the court may declare the whole amount of the ~~bonds~~ enterprise obligations due
8 and payable, if such relief is requested, and may order and direct the sale of the
9 revenue-producing enterprise or program. Under any sale so ordered, the purchaser
10 shall be vested with an indeterminate permit to maintain and operate the
11 revenue-producing enterprise or program. The legislature may provide for
12 additions, extensions and improvements to a revenue-producing enterprise or
13 program to be financed by additional issues of ~~bonds~~ enterprise obligations as
14 provided by this section. Such additional issues of ~~bonds~~ enterprise obligations shall
15 be subordinate to all prior related issues of ~~bonds~~ enterprise obligations which may
16 have been made under this section, unless the legislature, in the statute authorizing
17 the initial issue of ~~bonds~~ enterprise obligations, permits the issue of additional ~~bonds~~
18 enterprise obligations on a parity therewith.

19 **(3) DEDICATION OF REVENUES.** As accurately as possible in advance, the
20 commission and the state department or agency carrying out program
21 responsibilities for which ~~bonds~~ enterprise obligations are to be issued shall
22 determine, and the commission shall fix in the authorizing resolution for such ~~bonds~~
23 enterprise obligations: the proportion of the revenues of the revenue-producing
24 enterprise or program which shall be necessary for the reasonable and proper
25 operation and maintenance thereof; the proportion of the revenues which shall be set

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1 aside as a proper and adequate replacement and reserve fund; and the proportion of
2 the revenues which shall be set aside and applied to the payment of the principal and
3 interest of the ~~bonds~~ enterprise obligations, and shall provide that the revenues be
4 set aside in separate funds. At any time after one year's operation, the state
5 department or agency and the commission may recompute the proportion of the
6 revenues which shall be assignable under this subsection based upon the experience
7 of operation or upon the basis of further financing.

8 (4) REPLACEMENT AND RESERVE FUND. The proportion set aside to the
9 replacement and reserve fund shall be available and shall be used, whenever
10 necessary, to restore any deficiency in the redemption fund for the payment of the
11 principal and interest due on ~~bonds~~ enterprise obligations and for the creation and
12 maintenance of any reserves established by the authorizing resolution to secure such
13 payments. At any time when the redemption fund is sufficient for said purposes,
14 moneys in the replacement and reserve fund may, subject to available
15 appropriations, be expended either in the revenue-producing enterprise or program
16 or in new acquisitions, constructions, extensions ~~or~~ additions, expansions or
17 improvements. Any accumulations of the replacement and reserve fund may be
18 invested as provided in this subchapter, and if invested, the income from the
19 investment shall be carried in the replacement and reserve fund.

20 (5) REDEMPTION FUND. The proportion which shall be set aside for the payment
21 of the principal and interest ~~of such bonds~~ on the enterprise obligations shall from
22 month to month as they accrue and are received, be set apart and paid into a separate
23 fund in the treasury or in an account maintained by a trustee under sub. (9) (j) to be
24 identified as "the ... redemption fund". Each redemption fund shall be expended, and
25 all moneys from time to time on hand therein are irrevocably appropriated, in sums

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1 sufficient, only for the payment of principal and interest on the revenue enterprise
2 obligations giving rise to it and premium, if any, due upon ~~refunding~~ redemption of
3 any such obligations. Moneys in the redemption funds may be commingled only for
4 the purpose of investment with other public funds, but they shall be invested only
5 in investment instruments permitted in s. 25.17 (3) (dr). All such investments shall
6 be the exclusive property of the fund and all earnings on or income from such
7 investments shall be credited to the fund.

8 **(6) REDEMPTION FUND SURPLUS.** If any surplus is accumulated in any of the
9 redemption funds, subject to any contract rights vested in ~~holders~~ owners of revenue
10 enterprise obligations secured thereby, it shall be paid over to the treasury.

11 **SECTION 14.** 18.56 (7) and (8) of the statutes are renumbered 18.561 (7) and (8).

12 **SECTION 15.** 18.56 (9) (intro.) of the statutes is renumbered 18.561 (9) (intro.)
13 and amended to read:

14 18.561 **(9) AUTHORIZING RESOLUTION.** (intro.) The commission may provide in
15 the authorizing resolution for ~~bonds~~ enterprise obligations or by subsequent action
16 all things necessary to carry into effect this section. Any authorizing resolution shall
17 constitute a contract with the ~~holder~~ owners of any ~~bonds~~ enterprise obligations
18 issued pursuant to such the resolution. Any authorizing resolution may contain such
19 provisions or covenants, without limiting the generality of the power to adopt the
20 resolution, as ~~is~~ are deemed necessary or desirable for the security of ~~bondholders~~
21 the owners of enterprise obligations or the marketability of the ~~bonds~~ enterprise
22 obligations, including ~~but not limited to~~ provisions as to:

23 **SECTION 16.** 18.56 (9) (a) to (j) of the statutes are renumbered 18.561 (9) (a) to
24 (j), and 18.561 (9) (i) and (j), as renumbered, are amended to read:

25 18.561 **(9) (i)** Issuance of additional ~~bonds~~ enterprise obligations.

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1 (j) Deposit of the proceeds of the sale of the ~~bonds~~ enterprise obligations or
2 revenues of the revenue-producing enterprise or program in trust, including the
3 appointment of depositories or trustees.

4 **SECTION 17.** 18.56 (10) of the statutes is renumbered 18.561 (10) and amended
5 to read:

6 18.561 (10) SINKING FUND. The authorizing resolution may set apart ~~bonds~~
7 enterprise obligations the par value of which are equal to the principal amount of any
8 secured obligation or charge subject to which a revenue-producing enterprise or
9 program is to be purchased or acquired, and shall set aside in a sinking fund from
10 the income of the revenue-producing enterprise or program, a sum sufficient to
11 comply with the requirements of the instrument creating the security, ~~or if interest.~~
12 If the instrument does not make any provision therefor for a sinking fund, the
13 resolution shall fix and determine the amount ~~which~~ that shall be set aside into ~~such~~
14 the sinking fund from month to month for interest on the secured obligation or
15 charge, and a fixed amount or proportion not exceeding a stated sum, which shall be
16 not less than one percent of the principal, to be set aside into the fund to pay the
17 principal of the secured obligation or charge. Any balance in the fund after satisfying
18 the secured obligations or charge, shall be transferred to the redemption fund. ~~Bonds~~
19 Enterprise obligations set aside for the secured obligation or charge may, from time
20 to time, be issued to an amount sufficient with the amount then in the sinking fund,
21 to pay and retire the secured obligation or charge or any portion thereof. The ~~bonds~~
22 enterprise obligation may be issued in exchange for or satisfaction of the secured
23 obligation or charge, or may be sold in the manner provided in this subchapter, and
24 the proceeds applied in payment of the same at maturity or before maturity by
25 agreement with the ~~holder~~ owner of the secured obligation or charge. The

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1 commission and the owners of any revenue-producing enterprise or program
2 acquired or purchased may, upon such terms and conditions as are satisfactory,
3 contract that ~~bonds~~ enterprise obligations to provide for the discharge of the secured
4 obligation or charge, or for the whole purchase price shall be deposited with a trustee
5 or depository and released from the deposit from time to time on such terms and
6 conditions as are necessary to secure the payment of the secured obligation or charge.

7 **SECTION 18.** 18.561 (title) of the statutes is created to read:

8 **18.561 (title) Enterprise obligations.**

9 **SECTION 19.** 18.561 (1) of the statutes is created to read:

10 18.561 **(1)** PAYMENT WITH REVENUE OBLIGATIONS. The state and a contracting
11 party may provide, in any contract for purchasing or acquiring a revenue-producing
12 enterprise or program, that payment shall be made in revenue obligations.

13 **SECTION 20.** 18.561 (7) (title) of the statutes is created to read:

14 18.561 **(7)** (title) PAYMENT FOR SERVICES.

15 **SECTION 21.** 18.561 (8) (title) of the statutes is created to read:

16 18.561 **(8)** (title) RATES FOR SERVICES.

17 **SECTION 22.** 18.561 (9) (k) of the statutes is created to read:

18 18.561 **(9)** (k) Defeasance of the obligations.

19 **SECTION 23.** 18.562 of the statutes is created to read:

20 **18.562 Special fund obligations. (1)** SECURITY INTEREST IN SPECIAL FUND.

21 There is a security interest, for the benefit of the owners of the special fund
22 obligations, in the amounts that arise after the creation of the special fund program
23 in the special fund related to the special fund obligations. For this purpose, amounts
24 in the special fund shall be accounted for on a first-in, first-out basis. No physical
25 delivery, recordation or other action is required to perfect the security interest. The

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1 special fund shall remain subject to the security interest until provision for payment
2 in full of the principal and interest of the special fund obligations has been made, as
3 provided in the authorizing resolution. An owner of special fund obligations may
4 either at law or in equity protect and enforce the security interest and compel
5 performance of all duties required by this section.

6 **(2) USE OF SPECIAL FUND MONEYS.** The commission and the state agency carrying
7 out the special fund program responsibilities shall jointly determine, and the
8 commission shall fix in the authorizing resolution for the obligations, the conditions
9 under which money in the special fund shall be set aside and applied to the payment
10 of the principal and interest of the obligations, deposited in funds established under
11 the authorizing resolution or made available for other purposes.

12 **(3) REDEMPTION FUND.** The special fund revenues that are to be set aside for the
13 payment of the principal and interest of the special fund obligations shall be paid into
14 a separate fund in the treasury or in an account maintained by a trustee under sub.
15 (5) (e) to be identified as “the ... redemption fund”. Each redemption fund shall be
16 expended, and all moneys from time to time on hand therein are irrevocably
17 appropriated, in sums sufficient, only for the payment of principal and interest on
18 the special fund obligations giving rise to it and premium, if any, due upon
19 redemption of any such obligations. Moneys in the redemption funds may be
20 commingled only for the purpose of investment with other public funds, but they
21 shall be invested only in investment instruments permitted in s. 25.17 (3) (dr). All
22 such investments shall be the exclusive property of the fund and all earnings on or
23 income from such investments shall be credited to the fund.

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1 **(4) SURPLUS.** If any surplus is accumulated in any of the redemption funds,
2 subject to contract rights vested in the owners of special fund obligations secured
3 thereby, it shall be paid over to the treasury.

4 **(5) AUTHORIZING RESOLUTION.** The commission may provide in the authorizing
5 resolution for special fund obligations or by subsequent action all things necessary
6 to carry into effect this section. Any authorizing resolution shall constitute a
7 contract with the owners of any special fund obligations issued pursuant to the
8 resolution. An authorizing resolution may contain such provisions or covenants,
9 without limiting the generality of the power to adopt the resolution, as are deemed
10 necessary or desirable for the security of owners of the obligations or the
11 marketability of the obligations, including provisions as to:

12 (a) Employment of consultants.

13 (b) Records and accounts.

14 (c) Establishment of reserve or other funds.

15 (d) Issuance of additional obligations.

16 (e) Deposit of the proceeds of the sale of the obligations or revenues of the
17 special fund in trust, including the appointment of depositories or trustees.

18 (f) Defeasance of the obligations.

19 **SECTION 24.** 18.57 (title) of the statutes is repealed and recreated to read:

20 **18.57 (title) Funds established for revenue obligations.**

21 **SECTION 25.** 18.57 (1) of the statutes is amended to read:

22 **18.57 (1)** A separate and distinct fund shall be established in the state treasury
23 or in an account maintained by a trustee under s. ~~18.56~~ 18.561 (9) (j) with respect to
24 each revenue-producing enterprise or program the income from which is to be
25 applied to the payment of any revenue enterprise obligation. A separate and distinct

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1 fund shall be established in the state treasury or in an account maintained by a
2 trustee under s. 18.562 (5) (e) with respect to any special fund that is created by the
3 imposition of fees, penalties or excise taxes and is applied to the payment of special
4 fund obligations. All moneys resulting from the issuance of evidences of revenue
5 obligation shall be credited to the appropriate fund or applied for refunding or note
6 renewal purposes, except that moneys which represent premium or accrued interest
7 received on the issuance of evidences shall be credited to the appropriate redemption
8 fund.

9 **SECTION 26.** 18.57 (4) of the statutes is renumbered 18.57 (4) (intro.) and
10 amended to read:

11 18.57 (4) (intro.) If, after all outstanding related revenue obligations have been
12 paid or payment provided for, moneys remain in any such a fund, they created under
13 sub. (1), all of the following shall occur:

14 (a) If the fund created under sub. (1) is in an account maintained by a trustee
15 under s. 18.561 (9) (j) or 18.562 (5) (e), the moneys shall be paid over to the treasury
16 and the,

17 (b) The fund created under sub. (1) shall be closed.

18 **SECTION 27.** 18.58 (1) of the statutes is amended to read:

19 18.58 (1) MANAGEMENT OF FUNDS AND RECORDS. All funds established under this
20 subchapter which are deposited in the state treasury shall be managed as provided
21 by law for other state funds, subject to any contract rights vested in holders owners
22 of evidences of revenue obligation secured by such fund. The department of
23 administration shall maintain full and correct records of each fund. The legislative
24 audit bureau shall audit each fund as of January 1 of each year reconciling all
25 transactions and showing the fair market value of all property on hand. All records

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1 and audits shall be public documents. All funds established under this subchapter
2 which are deposited with a trustee under s. ~~18.56~~ 18.561 (9) (j) or 18.562 (5) (e) shall
3 be managed in accordance with resolutions authorizing the issuance of revenue
4 obligations, agreements between the commission and the trustee and any contract
5 rights vested in ~~holders of evidence~~ owners of revenue obligations secured by such
6 fund.

7 **SECTION 28.** 18.60 (1) of the statutes is amended to read:

8 18.60 (1) The commission may authorize, for any one or more of the purposes
9 described in s. 18.53 (1), the issuance of revenue–obligation refunding bonds.
10 Refunding bonds may be issued, subject to any contract rights vested in ~~holders~~
11 owners of bonds or notes being refinanced, to refinance more than one issue of bonds
12 or notes notwithstanding that the bonds or notes may have been issued at different
13 times for different purposes and may be secured by the property or income of more
14 than one enterprise or program or may be public debt or building–corporation
15 indebtedness. The principal amount of refunding bonds shall not exceed the sum of:
16 the principal amount of the bonds or notes being refinanced; applicable redemption
17 premiums; unpaid interest on the bonds or notes to the date of delivery or exchange
18 of the refunding bonds; in the event the proceeds are to be deposited in trust as
19 provided in sub. (3), interest to accrue on the bonds or notes from the date of delivery
20 to the date of maturity or to the redemption date selected by the commission,
21 whichever is earlier; and the expenses incurred in the issuance of the refunding
22 bonds and the payment of the bonds or notes. A determination by the commission
23 that a refinancing is advantageous or that any of the amounts provided in the
24 preceding sentence should be included in the refinancing shall be conclusive.

25 **SECTION 29.** 18.60 (2) of the statutes is amended to read:

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1 18.60 (2) If the commission determines to exchange refunding bonds, they may
2 be exchanged privately for and in payment and discharge of any of the outstanding
3 bonds or notes being refinanced. Refunding bonds may be exchanged for a like or
4 greater principal amount of the bonds or notes being exchanged therefor except that
5 the principal amount of the refunding bonds may exceed the principal amount of the
6 bonds or notes being exchanged therefor only to the extent determined by the
7 commission to be necessary or advisable to pay redemption premiums and unpaid
8 interest to the date of exchange not otherwise provided for. The holders owners of
9 the bonds or notes being refunded who elect to exchange need not pay accrued
10 interest on the refunding bonds if and to the extent that interest is accrued and
11 unpaid on the bonds or notes being refunded and to be surrendered. If any of the
12 bonds or notes to be refinanced are to be called for redemption, the commission shall
13 determine which redemption dates shall be used, if more than one date is applicable
14 and shall, prior to the issuance of the refunding bonds, provide for notice of
15 redemption to be given in the manner and at the times required by the proceedings
16 authorizing the outstanding bonds or notes.

17 **SECTION 30.** 18.60 (5) of the statutes is renumbered 18.60 (5) (intro.) and
18 amended to read:

19 18.60 (5) (intro.) All of the following provisions ~~of s. 18.56~~ that are not
20 inconsistent with the express provisions of this section shall apply to refunding
21 bonds, except that the maximum permissible term shall be 50 years from the date
22 of original issue of the oldest note or bond issue being refunded.;

23 **SECTION 31.** 18.60 (5) (a) to (c) of the statutes are created to read:

24 18.60 (5) (a) Section 18.56.

25 (b) In the case of enterprise obligations, s. 18.561.

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1 (c) In the case of special fund obligations, s. 18.562.

2 **SECTION 32.** 18.61 (2) of the statutes is amended to read:

3 18.61 (2) The state pledges and agrees with the ~~holders~~ owners of any evidences
4 of revenue ~~obligation~~ obligations that the state will not limit or alter its powers to
5 fulfill the terms of any agreements made with the ~~holders~~ owners or in any way
6 impair the rights and remedies of the ~~holders~~ owners until the revenue obligations,
7 together with interest including interest on any unpaid instalments of interest, and
8 all costs and expenses in connection with any action or proceeding by or on behalf of
9 the ~~holders~~ owners, are fully met and discharged. The commission may include this
10 pledge and agreement of the state in any agreement with the ~~holders of notes or~~
11 ~~bonds and in any evidence~~ owners of revenue obligation.

12 **SECTION 33.** 18.61 (3) (a) of the statutes is amended to read:

13 18.61 (3) (a) If the state fails to pay any revenue obligation in accordance with
14 its terms, and default continues for a period of 30 days or if the state fails or refuses
15 to comply with this subchapter or defaults in any agreement made with the ~~holders~~
16 owners of any issue of revenue obligations, the ~~holders~~ owners of 25% in aggregate
17 principal amount of the revenue obligations of the issue then outstanding by
18 instrument recorded in the office of the register of deeds of Dane county and approved
19 or acknowledged in the same manner as a deed to be recorded may appoint a trustee
20 to represent the ~~holders~~ owners of the ~~notes or bonds~~ revenue obligations for the
21 purposes specifically provided in the instrument.

22 **SECTION 34.** 18.61 (3) (b) (intro.) of the statutes is amended to read:

23 18.61 (3) (b) (intro.) The trustee may, and upon written request of the ~~holders~~
24 owners of 25% in aggregate principal amount of the revenue obligations of the issue
25 then outstanding shall, in the trustee's own name:

ASSEMBLY BILL 218**SECTION 35**

1 **SECTION 35.** 18.61 (3) (b) 1. of the statutes is amended to read:

2 18.61 **(3)** (b) 1. By action or proceeding, enforce all rights of all holders owners
3 of the issue of revenue obligations, including the right to require the state to collect
4 enterprise or program income adequate to carry out any agreement as to, or pledge
5 of, such income and to require the state to carry out any other agreements with the
6 holders owners of the revenue obligations and to perform its duties under this
7 subchapter;

8 **SECTION 36.** 18.61 (3) (b) 3. of the statutes is amended to read:

9 18.61 **(3)** (b) 3. By action, require the state to account as if it were the trustee
10 of an express trust for the holders owners of the revenue obligations;

11 **SECTION 37.** 18.61 (3) (b) 4. of the statutes is amended to read:

12 18.61 **(3)** (b) 4. By action, enjoin any acts or things which may be unlawful or
13 in violation of the rights of the holders owners of the revenue obligations; and

14 **SECTION 38.** 18.61 (3) (c) of the statutes is amended to read:

15 18.61 **(3)** (c) The trustee shall have all of the powers necessary or appropriate
16 for the exercise of any functions specifically set forth in this subchapter or incident
17 to the general representation of the holders owners of revenue obligations in the
18 enforcement and protection of their rights.

19 **SECTION 39.** 18.61 (4) of the statutes is amended to read:

20 18.61 **(4)** Any public officer or public employe, as defined in s. 939.22 (30), and
21 the surety on the person's official bond, or any other person participating in any
22 direct or indirect impairment of any fund established under this subchapter, shall
23 be liable in any action brought by the attorney general in the name of the state, or
24 by any taxpayer of the state, or by the ~~holder of any evidence~~ owner of revenue

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1 obligation payable in whole or in part, directly or indirectly, out of such fund, to
2 restore to the fund all diversions from the fund.

3 **SECTION 40.** 20.143 (3) (s) of the statutes is created to read:

4 20.143 (3) (s) *Petroleum inspection fund — revenue obligation proceeds.* As a
5 continuing appropriation, all proceeds from revenue obligations that are issued
6 under subch. II or IV of ch. 18, authorized under s. 101.143 (9m) and deposited in a
7 fund in the state treasury created under s. 18.57 (1), to provide for reserves and for
8 expenses of issuance and management of the revenue obligations, and the remainder
9 to be transferred to the petroleum inspection fund for the purposes of the petroleum
10 storage remedial action program under s. 101.143. Estimated disbursements under
11 this paragraph shall not be included in the schedule under s. 20.005.

12 **SECTION 41.** 20.143 (3) (t) of the statutes is created to read:

13 20.143 (3) (t) *Petroleum inspection fund — revenue obligation repayment.* From
14 the petroleum inspection fund, a sum sufficient to repay the fund in the state
15 treasury created under s. 18.57 (1) the amount needed to retire revenue obligations
16 issued under subch. II or IV of ch. 18, as authorized under s. 101.143 (9m).

17 **SECTION 42.** 20.143 (3) (u) of the statutes is created to read:

18 20.143 (3) (u) *Revenue obligation debt service -- petroleum inspection fund.*
19 From the fund in the state treasury created under s. 18.57 (1), all moneys received
20 by the fund for the purpose of the retirement of revenue obligations, providing for
21 reserves and for operations relating to the management and retirement of revenue
22 obligations issued under subch. II or IV of ch. 18, as authorized under s. 101.143 (9m).
23 All moneys received by the fund are irrevocably appropriated in accordance with
24 subch. II of ch. 18 and further established in resolutions authorizing the issuance of
25 the revenue obligations and setting forth the distribution of funds to be received

ASSEMBLY BILL 218**SECTION 42**

1 thereafter. Estimated disbursements under this paragraph shall not be included in
2 the schedule under s. 20.005.

3 **SECTION 43.** 20.143 (3) (v) of the statutes is amended to read:

4 20.143 (3) (v) *Petroleum storage environmental remedial action; awards.*
5 Biennially, from the petroleum inspection fund, the amounts in the schedule to pay
6 awards under s. 101.143 and, legal costs incurred under s. 101.143 (7m), amounts
7 to reduce principal of outstanding revenue obligations issued pursuant to s. 101.143
8 (9m) and, if the department promulgates rules under s. 101.143 (2) (i) 1., to purchase,
9 or provide funding to purchase, insurance described in s. 101.143 (2) (i) 2.

10 **SECTION 44.** 20.143 (3) (vb) of the statutes is created to read:

11 20.143 (3) (vb) *Petroleum storage environmental remedial action revenue*
12 *bonding; awards.* From the petroleum inspection fund, a sum sufficient not to exceed
13 the net proceeds of special fund obligations issued pursuant to s. 101.143 (9m) to pay
14 awards under s. 101.143 (4) and legal costs incurred under s. 101.143 (7m).
15 Estimated disbursements under this paragraph shall not be included in the schedule
16 under s. 20.005.

17 **SECTION 45.** 25.47 of the statutes is renumbered 25.47 (intro.) and amended
18 to read:

19 **25.47 Petroleum inspection fund.** (intro.) There is established a separate
20 nonlapsible trust fund designated as the petroleum inspection fund, to consist of the:

21 (1) The fees imposed under s. 168.12 (1), the,

22 (2) The payments under s. 101.143 (4) (h) 1m., the

23 (3) The payments under s. 101.143 (5) (a) and the,

24 (4) The net recoveries under s. 101.143 (5) (c).

25 **SECTION 46.** 25.47 (5) of the statutes is created to read:

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1 25.47 (5) The moneys transferred from the appropriation account under s.
2 20.143 (3) (s).

3 **SECTION 47.** 45.79 (9) (a) of the statutes is amended to read:

4 45.79 (9) (a) All moneys received from any source for repayment of loans,
5 mortgages or mortgage loan notes funded with proceeds of revenue obligations
6 issued under sub. (6) (c) shall be deposited into one or more separate nonlapsible
7 trust funds in the state treasury or with a trustee as provided in s. ~~18.56~~ 18.561 (9)
8 (j) or 18.562 (5) (e). The board may pledge revenues received by the funds to secure
9 revenue obligations issued under sub. (6) (c) and shall have all other powers
10 necessary and convenient to distribute the proceeds of the revenue obligations and
11 loan repayments in accordance with subch. II of ch. 18. Unrestricted balances in the
12 funds may be used to fund additional loans issued under sub. (6) (c) and pay the
13 balances owing on loans after the assumptions of the loans or the closings of the sales
14 of residences under sub. (10) (c).

15 **SECTION 48.** 84.59 (2) of the statutes is amended to read:

16 84.59 (2) The department may, under s. ~~18.56~~ 18.561 (5) and (9) (j) or 18.562
17 (3) and (5) (e), deposit in a separate and distinct fund outside the state treasury, in
18 an account maintained by a trustee, revenues derived under s. 341.25. The revenues
19 deposited are the trustee's revenues in accordance with the agreement between this
20 state and the trustee or in accordance with the resolution pledging the revenues to
21 the repayment of revenue obligations issued under this section.

22 **SECTION 49.** 85.52 (5) (c) of the statutes is amended to read:

23 85.52 (5) (c) The department of administration may, under s. ~~18.56~~ 18.561 (5)
24 and (9) (j) or 18.562 (3) and (5) (e), deposit in a separate and distinct fund in the state
25 treasury or in an account maintained by a trustee outside the state treasury, any

ASSEMBLY BILL 218**SECTION 49**

1 portion of the revenues derived under s. 25.405 (2). The revenues deposited with a
2 trustee outside the state treasury are the trustee's revenues in accordance with the
3 agreement between this state and the trustee or in accordance with the resolution
4 pledging the revenues to the repayment of revenue obligations issued under this
5 subsection.

6 **SECTION 50.** 101.143 (1) (bm) of the statutes is created to read:

7 101.143 (1) (bm) "Enforcement standard" has the meaning given in s. 160.01
8 (2).

9 **SECTION 51.** 101.143 (1) (cq) of the statutes is created to read:

10 101.143 (1) (cq) "Natural attenuation" means the reduction in the
11 concentration and mass of a substance, and the products into which the substance
12 breaks down, due to naturally occurring physical, chemical and biological processes.

13 **SECTION 52.** 101.143 (2) (h) of the statutes is created to read:

14 101.143 (2) (h) The department of commerce, in consultation with the
15 department of natural resources, shall promulgate rules designed to facilitate
16 effective and cost-efficient administration of the program under this section that
17 specify all of the following:

18 1. Information that must be submitted under this section, including quarterly
19 summaries of costs incurred with respect to a discharge for which a claim is intended
20 to be submitted under sub. (3) but for which a final claim has not been submitted.

21 2. Formats for submitting the information under subd. 1.

22 3. Review procedures that must be followed by employees of the department of
23 natural resources and the department of commerce in reviewing the information
24 under subd. 1.

25 **SECTION 53.** 101.143 (2) (i) of the statutes is created to read:

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1 101.143 **(2)** (i) The department of commerce, in consultation with the
2 department of natural resources, shall promulgate rules specifying procedures for
3 evaluating remedial actions under sub. (3) (c) 3. to be used by employes of the
4 department of commerce and the department of natural resources while remedial
5 actions are being conducted. The department of commerce shall specify procedures
6 that include all of the following for ongoing remedial actions:

7 1. Annual reviews that include application of the method under sub. (2e) (a) to
8 determine the risk posed by discharges that are the subject of the remedial actions.

9 2. Annual reports by consultants estimating the additional costs that must be
10 incurred to comply with sub. (3) (c) 3. and with enforcement standards.

11 **SECTION 54.** 101.143 (2) (j) of the statutes is created to read:

12 101.143 **(2)** (j) The department of commerce, in consultation with the
13 department of natural resources, shall promulgate rules specifying all of the
14 following:

15 1. The conditions under which employes of the department of commerce and
16 the department of natural resources must issue approvals under sub. (3) (c) 4.

17 2. Training and management procedures to ensure that employes comply with
18 the requirements under subd. 1.

19 **SECTION 55.** 101.143 (2e) of the statutes is created to read:

20 101.143 **(2e)** RISK-BASED ANALYSIS. (a) The department of commerce, in
21 consultation with the department of natural resources, shall promulgate rules
22 specifying a method, which shall include consideration of the routes for migration of
23 petroleum product contamination, for determining the risk to public health, safety
24 and welfare and to the environment posed by discharges for which the department
25 of commerce receives notification under sub. (3) (a) 3.

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1 (b) The department of natural resources or, if the discharge is covered under
2 s. 101.144 (2) (b), the department of commerce shall apply the method under par. (a)
3 to determine the risk posed by a discharge for which the department of commerce
4 receives notification under sub. (3) (a) 3.

5 **SECTION 56.** 101.143 (3) (c) 2. of the statutes is amended to read:

6 101.143 (3) (c) 2. Prepare a remedial action plan that identifies specific
7 remedial action activities proposed to be conducted under subd. 3. and submit the
8 remedial action plan to the department.

9 **SECTION 57.** 101.143 (3) (cg) of the statutes is created to read:

10 101.143 (3) (cg) *Approval to begin remedial action.* 1. Except as provided in
11 subds. 2. and 3., to be eligible for an award under sub. (4) an owner or operator may
12 not begin remedial action under par. (c) 3. with respect to a discharge without the
13 approval of the department of commerce and the department of natural resources.
14 The department of commerce and the department of natural resources shall jointly
15 determine when it is appropriate to begin remedial action with respect to a discharge
16 based on the determination of risk under sub. (2e) (b) for the discharge and the
17 availability of funds to pay awards under sub. (4).

18 2. Subdivision 1. does not apply if the discharge is from a home oil tank system,
19 a petroleum product storage system that is described in sub. (4) (ei) 1. or a petroleum
20 product storage system that is owned by a school district and that is used for storing
21 heating oil for consumptive use on the premises where stored.

22 3. Subdivision 1. does not apply to remedial action in response to an emergency
23 if par. (g) applies.

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1 4. Notwithstanding s. 292.11 (3) and (7) (c), an owner or operator to whom subd.
2 1. applies is not required to begin remedial action under par. (c) 3. until the owner
3 or operator receives approval under subd. 1.

4 **SECTION 58.** 101.143 (3) (cm) of the statutes is amended to read:

5 101.143 (3) (cm) *Monitoring as remedial action.* An owner or operator or person
6 owning a home oil tank system may, with the approval of the department of natural
7 resources or, if the discharge is covered under s. 101.144 (2) (b), the department of
8 commerce, satisfy the requirements of par. (c) 2. and 3. by proposing and
9 implementing monitoring to ensure the effectiveness of the natural process of
10 ~~degradation~~ attenuation of petroleum product contamination.

11 **SECTION 59.** 101.143 (3) (cp) of the statutes is created to read:

12 101.143 (3) (cp) *Bidding process.* 1. Except as provided in subs. 2. to 4., if the
13 department of natural resources or, if the site is covered under s. 101.144 (2) (b), the
14 department of commerce estimates that the cost to complete a site investigation,
15 remedial action plan and remedial action for an occurrence exceeds \$60,000, the
16 department of commerce shall implement a competitive public bidding process to
17 obtain information to assist in making the determination under par. (cs).

18 2. The department of commerce may not implement the process under subd.
19 1. if an enforcement standard is exceeded in groundwater within 1,000 feet of a well
20 operated by a public utility, as defined in s. 196.01 (5), or within 100 feet of any other
21 well used to provide water for human consumption.

22 3. The department of commerce may not implement the process under subd.
23 1. if the department of natural resources waives the requirement on the grounds that
24 waiver is necessary in an emergency to prevent or mitigate an imminent hazard to
25 public health, safety or welfare or to the environment.

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1 4. The department of commerce may not implement the process under subd.
2 1. if the secretary of natural resources waives the requirement after providing notice
3 to the secretary of commerce.

4 **SECTION 60.** 101.143 (3) (cs) of the statutes is created to read:

5 101.143 **(3)** (cs) *Determination of least costly method of remedial action.* 1. The
6 department of commerce shall review the remedial action plan for a site that is
7 classified as low or medium priority under s. 101.144 (3m) and shall determine the
8 least costly method of complying with par. (c) 3. and with enforcement standards.
9 The department shall notify the owner or operator of its determination of the least
10 costly method and shall notify the owner or operator that reimbursement for
11 remedial action under this section is limited to the amount necessary to implement
12 that method.

13 2. The department of natural resources and the department of commerce shall
14 review the remedial action plan for a site that is classified as high priority under s.
15 101.144 (3m) and shall jointly determine the least costly method of complying with
16 par. (c) 3. and with enforcement standards. The departments shall notify the owner
17 or operator of their determination of the least costly method and shall notify the
18 owner or operator that reimbursement for remedial action under this section is
19 limited to the amount necessary to implement that method.

20 3. In making determinations under subds. 1. and 2., the department of natural
21 resources and the department of commerce shall determine whether natural
22 attenuation will achieve compliance with par. (c) 3. and with enforcement standards.

23 **SECTION 61.** 101.143 (3) (cw) of the statutes is created to read:

24 101.143 **(3)** (cw) *Annual reviews.* 1. The department of commerce shall conduct
25 the annual review required under sub. (2) (i) 1. for a site that is classified as low or

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1 medium priority under s. 101.144 (3m) and shall determine the least costly method
2 of completing remedial action at the site in order to comply with par. (c) 3. and with
3 enforcement standards. The department shall notify the owner or operator of its
4 determination of the least costly method and shall notify the owner or operator that
5 reimbursement under this section for any remedial action conducted after the date
6 of the notice is limited to the amount necessary to implement that method.

7 2. The department of natural resources and the department of commerce shall
8 conduct the annual review required under sub. (2) (i) 1. for a site that is classified as
9 high priority under s. 101.144 (3m) and shall jointly determine the least costly
10 method of completing remedial action at the site in order to comply with par. (c) 3.
11 and with enforcement standards. The departments shall notify the owner or
12 operator of their determination of the least costly method and shall notify the owner
13 or operator that reimbursement under this section for remedial action conducted
14 after the date of the notice is limited to the amount necessary to implement that
15 method.

16 3. In making determinations under subds. 1. and 2., the department of natural
17 resources and the department of commerce shall determine whether natural
18 attenuation will achieve compliance with par. (c) 3. and with enforcement standards.

19 **SECTION 62.** 101.143 (3) (d) of the statutes is amended to read:

20 101.143 (3) (d) ~~Review of site investigations, remedial action plans and Final~~
21 ~~review of remedial action activities.~~ *Review of site investigations, remedial action plans and Final*
22 ~~The department of natural resources or, if the~~
23 ~~discharge is covered under s. 101.144 (2) (b), the department of commerce shall, at~~
24 ~~the request of the claimant, review the site investigation and the remedial action~~
25 ~~plan and advise the claimant on the adequacy of proposed remedial action activities~~
~~in meeting the requirements of s. 292.11. The advice is not an approval of the~~

ASSEMBLY BILL 218**SECTION 62**

1 remedial action activities. The department of natural resources or, if the discharge
2 is covered under s. 101.144 (2) (b), the department of commerce shall complete a final
3 review of the remedial action activities within 60 days after the claimant notifies the
4 appropriate department that the remedial action activities are completed.

5 **SECTION 63.** 101.143 (3) (g) (intro.) and 1. of the statutes are consolidated,
6 renumbered 101.143 (3) (g) and amended to read:

7 101.143 (3) (g) *Emergency situations.* Notwithstanding pars. (a) 3. and (c) 1.
8 and 2., an owner or operator or the person may submit a claim for an award under
9 sub. (4) after notifying the department under par. (a) 3., without completing an
10 investigation under par. (c) 1. and without preparing a remedial action plan under
11 par. (c) 2. if any of the following apply: 1. ~~An~~ an emergency existed which made the
12 investigation under par. (c) 1. and the remedial action plan under par. (c) 2.
13 inappropriate and, before conducting remedial action, the owner or operator or
14 person notified the department of natural resources of the emergency and the
15 department of natural resources authorized emergency action.

16 **SECTION 64.** 101.143 (3) (g) 2. of the statutes is repealed.

17 **SECTION 65.** 101.143 (4) (b) (intro.) of the statutes is amended to read:

18 101.143 (4) (b) *Eligible costs.* (intro.) Eligible Except as provided in par. (c),
19 eligible costs for an award under par. (a) include actual costs or, if the department
20 establishes a schedule usual and customary cost under par. (cm) for an item, usual
21 and customary costs for the following items ~~only~~:

22 **SECTION 66.** 101.143 (4) (c) 10. of the statutes is created to read:

23 101.143 (4) (c) 10. Costs incurred with respect to a discharge if sub. (3) (cg) 1.
24 applies and remedial action is begun before approval is given under sub. (3) (cg) 1.

25 **SECTION 67.** 101.143 (4) (c) 11. of the statutes is created to read:

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1 101.143 (4) (c) 11. Costs that exceed the amount necessary to comply with sub.
2 (3) (c) 3. and with enforcement standards using the least costly method.

3 **SECTION 68.** 101.143 (4) (c) 12. of the statutes is created to read:

4 101.143 (4) (c) 12. Costs that are incurred after the date of a notice under sub.
5 (3) (cw) 1. or 2. and that exceed the amount necessary to comply with sub. (3) (c) 3.
6 and with enforcement standards using the method specified in the notice.

7 **SECTION 69.** 101.143 (4) (cm) of the statutes is renumbered 101.143 (4) (cm) 1.
8 and amended to read:

9 101.143 (4) (cm) 1. The department ~~may~~ shall establish a schedule of usual and
10 customary costs for ~~any~~ items under par. (b) ~~and may~~ that are commonly associated
11 with claims under this section. The department shall use that schedule to determine
12 the amount of a claimant's eligible costs for an occurrence for which a competitive
13 bidding process is not used to select service providers, except in circumstances under
14 which higher costs must be incurred to comply with sub. (3) (c) 3. and with
15 enforcement standards. For an occurrence for which a competitive bidding process
16 is used to select service providers, the department may use the schedule to determine
17 the amount of eligible costs of items designated by the department. In the schedule,
18 the department shall specify the maximum number of reimbursable hours for
19 particular tasks and the maximum reimbursable hourly rates for those tasks. The
20 department shall use methods of data collection and analysis that enable the
21 schedule to be revised to reflect changes in actual costs. This subdivision does not
22 apply after June 30, 2001.

23 **SECTION 70.** 101.143 (4) (cm) 2. of the statutes is created to read:

24 101.143 (4) (cm) 2. The department may establish a schedule of usual and
25 customary costs for any items under par. (b) and may use that schedule to determine

ASSEMBLY BILL 218**SECTION 70**

1 the amount of a claimant's eligible costs. This subdivision applies after June 30,
2 2001.

3 **SECTION 71.** 101.143 (4) (d) 2. (intro.) of the statutes is amended to read:

4 101.143 (4) (d) 2. (intro.) The department shall issue the award under this
5 paragraph without regard to fault in an amount equal to the amount of the eligible
6 costs that exceeds a deductible amount of ~~\$2,500 plus 5% of the eligible costs~~ 2% of
7 the first \$40,000 of eligible costs, plus 10% of the amount by which eligible costs
8 exceed \$40,000 but do not exceed \$60,000, plus 15% of the amount by which eligible
9 costs exceed \$60,000, but not more than \$7,500 per occurrence, except that the
10 deductible amount for a petroleum product storage system that is owned by a school
11 district or a technical college district and that is used for storing heating oil for
12 consumptive use on the premises is 25% of eligible costs. An award issued under this
13 paragraph may not exceed the following for each occurrence:

14 **SECTION 72.** 101.143 (9m) of the statutes is created to read:

15 101.143 (9m) REVENUE OBLIGATIONS. (a) For purposes of subch. II of ch. 18, the
16 petroleum storage remedial action program is a special fund program, and the
17 petroleum inspection fund is a special fund. The petroleum inspection fund is a
18 segregated fund created by the imposition of fees, penalties or excise taxes. The
19 legislature finds and determines that a nexus exists between the petroleum storage
20 remedial action program and the petroleum inspection fund in that fees imposed on
21 users of petroleum are used to remedy environmental damage caused by petroleum
22 storage.

23 (b) Deposits, appropriations or transfers to the petroleum inspection fund for
24 the purposes of the petroleum storage remedial action program may be funded with
25 the proceeds of revenue obligations issued subject to and in accordance with subch.

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1 II of ch. 18 and, if designated a higher education bond, in accordance with subch. IV
2 of ch. 18.

3 (e) The department shall have all other powers necessary and convenient to
4 distribute the special fund revenues and to distribute the proceeds of the revenue
5 obligations in accordance with subch. II of ch. 18 and, if designated a higher
6 education bond, in accordance with subch. IV of ch. 18.

7 (f) The department may enter into agreements with the federal government or
8 its agencies, political subdivisions of this state, individuals or private entities to
9 insure or in any other manner provide additional security for the revenue obligations
10 issued under this subsection.

11 (g) Revenue obligations may be contracted by the building commission when
12 it reasonably appears to the building commission that all obligations incurred under
13 this subsection can be fully paid on a timely basis from moneys received or
14 anticipated to be received. Revenue obligations issued under this subsection may not
15 exceed \$450,000,000 in principal amount. In addition to this limit on principal
16 amount, the building commission may contract revenue obligations under this
17 subsection as the building commission determines is desirable to fund or refund
18 outstanding revenue obligations, to pay issuance or administrative expenses, to
19 make deposits to reserve funds or to pay accrued or capitalized interest.

20 (h) Unless otherwise expressly provided in resolutions authorizing the
21 issuance of revenue obligations or in other agreements with the owners of revenue
22 obligations, each issue of revenue obligations under this subsection shall be on a
23 parity with every other revenue obligation issued under this subsection and in
24 accordance with subch. II of ch. 18 and, if designated a higher education bond, in
25 accordance with subch. IV of ch. 18.

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1 (i) Recognizing its moral obligation to do so, the legislature expresses its
2 expectation and aspiration that, if the legislature reduces the rate of the petroleum
3 inspection fee and if the funds in the petroleum inspection fund are insufficient to
4 pay the principal and interest on the revenue obligations issued under subch. II or
5 IV of ch. 18 pursuant to this subsection, the legislature shall make an appropriation
6 from the general fund sufficient to pay the principal and interest on the obligations.

7 **SECTION 73.** 101.143 (11) of the statutes is created to read:

8 101.143 (11) ANNUAL REPORT. No later than October 1 annually, the department
9 of commerce and the department of natural resources shall submit to the joint
10 legislative audit committee, to the joint committee on finance and to the appropriate
11 standing committees of the legislature, under s. 13.172 (3), a report on the program
12 under this section for the fiscal year ending on June 30 of the year in which the report
13 is submitted. The departments shall include all of the following information in the
14 report:

15 (a) The number of notices received under sub. (3) (a) 3. and the number of
16 approvals given under sub. (3) (c) 4.

17 (b) The percentage of sites classified as high priority under s. 101.144 (3m).

18 (c) The name of each person providing engineering consulting services to a
19 claimant under this section and the number of claimants to whom the person has
20 provided those services.

21 (d) The charges for engineering consulting services for sites for which
22 approvals are given under sub. (3) (c) 4. and for other sites.

23 (e) The charges by service providers other than engineering consultants for
24 services for which reimbursement is provided under this section, including
25 excavating, hauling, laboratory testing and landfill disposal.

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1 (f) Strategies for recording and monitoring complaints of fraud in the program
2 under this section and for the use of employes of the department of commerce who
3 conduct audits to identify questionable claims and investigate complaints.

4 **SECTION 74.** 281.59 (4) (b) of the statutes is amended to read:

5 281.59 (4) (b) The department of administration may, under s. ~~18.56~~ 18.561 (5)
6 and (9) (j) or 18.562 (3) and (5) (e), deposit in a separate and distinct fund in the state
7 treasury or in an account maintained by a trustee outside the state treasury, any
8 portion of the revenues derived under s. 25.43 (1). The revenues deposited with a
9 trustee outside the state treasury are the trustee's revenues in accordance with the
10 agreement between this state and the trustee or in accordance with the resolution
11 pledging the revenues to the repayment of revenue obligations issued under this
12 subsection.

13 **SECTION 75. Nonstatutory provisions.**

14 (1) FINANCIAL MANAGEMENT. No later than the first day of the 6th month
15 beginning after the effective date of this subsection, the department of commerce
16 shall do all of the following:

17 (a) Update its financial data base for the program under section 101.143 of the
18 statutes to ensure that complete cost information related to each occurrence and to
19 the annual payment to each owner or operator is readily available.

20 (b) Investigate any variances between the amount of total payments indicated
21 by the department's financial data base for the program under section 101.143 of the
22 statutes and the amount of total payments indicated by the accounts maintained by
23 the department of administration under section 16.52 of the statutes to identify
24 when the variances occurred and the reasons for the variances.

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1 (c) Make any changes in the department's financial data base needed to ensure
2 that the data base is consistent with the accounts maintained by the department of
3 administration under section 16.52 of the statutes.

4 (2) **RULE MAKING.**

5 (a) The department of commerce shall submit in proposed form the rules
6 required under section 101.143 (2) (h), (i) and (j) and (2e) (a) of the statutes, as created
7 by this act, and the rules to implement section 101.143 (4) (cm) 1. of the statutes, as
8 affected by this act, to the legislative council staff under section 227.15 (1) of the
9 statutes no later than the first day of the 10th month beginning after the effective
10 date of this paragraph.

11 (b) Using the procedure under section 227.24 of the statutes, the department
12 of commerce shall promulgate the rules required under section 101.143 (2) (h), (i) and
13 (j) and (2e) (a) of the statutes, as created by this act, and shall promulgate rules to
14 implement section 101.143 (4) (cm) 1. of the statutes, as affected by this act, for the
15 period before the effective date of the rules submitted under paragraph (a), but not
16 to exceed the period authorized under section 227.24 (1) (c) and (2) of the statutes.
17 Notwithstanding section 227.24 (1) (a), (2) (b) and (3) of the statutes, the department
18 is not required to provide evidence that promulgating rules under this paragraph is
19 necessary for the preservation of the public peace, health, safety or welfare and is not
20 required to provide a finding of emergency for rules promulgated under this
21 paragraph. The department shall promulgate rules under this paragraph no later
22 than the 30th day after the effective date of this paragraph.

23 (3) **EVALUATION OF USUAL AND CUSTOMARY COST SCHEDULE.** The department of
24 commerce shall evaluate the operation of section 101.143 (4) (cm) 1. of the statutes,
25 as affected by this act, and shall report the results of the evaluation to the joint

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1 legislative audit committee, to the joint committee on finance and to the appropriate
2 standing committees of the legislature, in the manner provided in s. 13.172 (3) of the
3 statutes, no later than the first day of the 14th month beginning after the effective
4 date of this subsection.

5 **SECTION 76. Initial applicability.**

6 (1) The treatment of section 101.143 (2e) (b), (3) (cg), (cp), (cs) and (g) and (4)
7 (c) 10. and 11. of the statutes first applies to a discharge with respect to which
8 activities under section 101.143 (3) (c) 3. or (g) of the statutes are begun on the
9 effective date of this subsection.

10 (END)