State of Wisconsin
2013 - 2014 LEGISLATURE

LRB-1092/2
RCT:eev:jm

DOA:.....Stinebrink, BB0164 – Transfer the PECFA program to DNR

FOR 2013-2015 BUDGET — NOT READY FOR INTRODUCTION

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

Analysis by the Legislative Reference Bureau

Currently, this state operates a program (known as PECFA) to reimburse owners of certain petroleum product storage tanks for a portion of the costs of cleaning up discharges from those tanks. Under current law, DSPS administers PECFA, with involvement by DNR. Current law also authorizes DSPS to provide funding for the removal of abandoned underground petroleum product storage tanks.

This bill transfers the administration of PECFA and the authority to fund the removal of abandoned underground petroleum product storage tanks from DSPS to DNR.

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:

2 **SECTION 1.** 20.165 (2) (Lm) of the statutes is renumbered 20.370 (2) (ej) and

3 amended to read:

20.370 **(2)** (ej) *Petroleum storage remedial action fees.* The amounts in the schedule for the administration of ~~ss. 101.143 and 101.144~~ s. 292.63. All moneys received under s. ~~101.143~~ 292.63 (2) (L) shall be credited to this appropriation account.

****NOTE: This SECTION involves a change in an appropriation that must be reflected in the revised schedule in s. 20.005, stats.

SECTION 2. 20.165 (2) (s) of the statutes is renumbered 20.370 (2) (er) and amended to read:

20.370 **(2)** (er) *Petroleum inspection fund — revenue obligation proceeds.* As a continuing appropriation, all proceeds from revenue obligations that are issued under subch. II or IV of ch. 18, authorized under s. ~~101.143~~ 292.63 (9m) and deposited in a fund in the state treasury created under s. 18.57 (1), to provide for reserves and for expenses of issuance and management of the revenue obligations, and the remainder to be transferred to the petroleum inspection fund for the purposes of the petroleum storage remedial action program under s. ~~101.143~~ 292.63. Estimated disbursements under this paragraph shall not be included in the schedule under s. 20.005.

SECTION 3. 20.165 (2) (t) of the statutes is renumbered 20.370 (2) (es) and amended to read:

20.370 **(2)** (es) *Petroleum inspection fund — revenue obligation repayment.* From the petroleum inspection fund, a sum sufficient to repay the fund in the state treasury created under s. 18.57 (1), or the separate and distinct fund outside the state treasury under s. 18.562 (3), the amount needed to retire revenue obligations issued under subch. II or IV of ch. 18, as authorized under s. ~~101.143~~ 292.63 (9m), and to

make payments under an agreement or ancillary arrangement entered into under s. 18.55 (6) with respect to revenue obligations issued under s. ~~101.143~~ 292.63 (9m).

****NOTE: This SECTION involves a change in an appropriation that must be reflected in the revised schedule in s. 20.005, stats.

SECTION 4. 20.165 (2) (u) of the statutes is renumbered 20.370 (2) (et) and amended to read:

20.370 **(2)** (et) *Revenue obligation debt service — petroleum inspection fund.* From the fund in the state treasury created under s. 18.57 (1), all moneys received by the fund for the purpose of the retirement of revenue obligations, providing for reserves and for operations relating to the management and retirement of revenue obligations issued under subch. II or IV of ch. 18, as authorized under s. ~~101.143~~ 292.63 (9m), and to make payments under an agreement or ancillary arrangement entered into under s. 18.55 (6) with respect to revenue obligations issued under s. ~~101.143~~ 292.63 (9m). All moneys received by the fund are irrevocably appropriated in accordance with subch. II of ch. 18 and further established in resolutions authorizing the issuance of the revenue obligations and setting forth the distribution of funds to be received thereafter. Estimated disbursements under this paragraph shall not be included in the schedule under s. 20.005.

SECTION 5. 20.165 (2) (v) of the statutes is renumbered 20.370 (2) (eu) and amended to read:

20.370 **(2)** (eu) *Petroleum storage environmental remedial action; awards.* Biennially, from the petroleum inspection fund, the amounts in the schedule to pay awards under s. ~~101.143~~ 292.63, legal costs incurred under s. ~~101.143~~ 292.63 (7m), amounts to reduce principal of outstanding revenue obligations issued pursuant to s. ~~101.143~~ 292.63 (9m) and, if the department promulgates rules under s. ~~101.143~~

292.63 (2) (i) 1., to purchase, or provide funding to purchase, insurance described in s. ~~101.143~~ 292.63 (2) (i) 2.

****NOTE: This SECTION involves a change in an appropriation that must be reflected in the revised schedule in s. 20.005, stats.

SECTION 6. 20.165 (2) (vb) of the statutes is renumbered 20.370 (2) (ev) and amended to read:

20.370 **(2)** (ev) *Petroleum storage environmental remedial action revenue bonding; awards.* From the petroleum inspection fund, a sum sufficient not to exceed the net proceeds of special fund obligations issued pursuant to s. ~~101.143~~ 292.63 (9m) to pay awards under s. ~~101.143~~ 292.63 (4) and legal costs incurred under s. ~~101.143~~ 292.63 (7m). Estimated disbursements under this paragraph shall not be included in the schedule under s. 20.005.

SECTION 7. 20.165 (2) (vm) of the statutes is renumbered 20.370 (2) (ew) and amended to read:

20.370 **(2)** (ew) *Removal of underground petroleum storage tanks.* From the petroleum inspection fund, the amounts in the schedule for the removal of abandoned underground petroleum storage tanks under s. ~~101.1435~~ 292.64.

****NOTE: This SECTION involves a change in an appropriation that must be reflected in the revised schedule in s. 20.005, stats.

SECTION 8. 20.165 (2) (w) of the statutes is repealed.

****NOTE: This SECTION involves a change in an appropriation that must be reflected in the revised schedule in s. 20.005, stats.

SECTION 9. 20.370 (2) (dw) of the statutes is amended to read:

20.370 **(2)** (dw) *Solid waste management — environmental repair; petroleum spills; administration.* From the petroleum inspection fund, the amounts in the schedule for the administration of ~~s. 101.143~~ ss. 292.63 and 292.64.

SECTION 10. 25.47 (1m) of the statutes is amended to read:

25.47 **(1m)** Any fees imposed under s. ~~101.143~~ 292.63 (2) (em) 1.

SECTION 11. 25.47 (2) of the statutes is amended to read:

25.47 **(2)** The payments under s. ~~101.143~~ 292.63 (4) (h) 1m.

SECTION 12. 25.47 (3) of the statutes is amended to read:

25.47 **(3)** The payments under s. ~~101.143~~ 292.63 (5) (a).

SECTION 13. 25.47 (4) of the statutes is amended to read:

25.47 **(4)** The net recoveries under s. ~~101.143~~ 292.63 (5) (c).

SECTION 14. 25.47 (4m) of the statutes is amended to read:

25.47 **(4m)** The payments under s. ~~101.1435~~ 292.64 (3).

SECTION 15. 25.47 (5) of the statutes is amended to read:

25.47 **(5)** The moneys transferred from the appropriation account under s. ~~20.165 (2) (s)~~ 20.370 (2) (er).

SECTION 16. 25.47 (6) of the statutes is amended to read:

25.47 **(6)** The net proceeds of revenue obligations issued under s. ~~101.143~~ 292.63 (9m) that are transferred from a separate and distinct fund outside the state treasury, in an account maintained by a trustee, under s. 18.562 (3).

SECTION 17. 101.02 (20) (a) of the statutes is amended to read:

101.02 **(20)** (a) For purposes of this subsection, "license" means a license, permit, or certificate of certification or registration issued by the department for an occupation or profession under s. ~~101.09 (3) (c),~~ 101.122 (2) (c), ~~101.143 (2) (g),~~ 101.147, 101.15 (2) (e), 101.16 (3g), 101.17, 101.178 (2) or (3) (a), 101.63 (2) or (2m), 101.653, 101.73 (5) or (6), 101.82 (1m), (1v), and (2), 101.935, 101.95, 101.951, 101.952, 101.96 (2), 101.985 (1) to (3), 145.02 (4), 145.035, 145.045, 145.15, 145.16, 145.165, 145.17, 145.175, 145.18, or 167.10 (6m) or under rules promulgated under ch. 101 or 145.

****NOTE: This is reconciled s. 101.02 (20) (a). This SECTION has been affected by drafts with the following LRB numbers: –0387 and –1092.

SECTION 18. 101.02 (21) (a) of the statutes is amended to read:

101.02 **(21)** (a) In this subsection, "license" means a license, permit, or certificate of certification or registration issued by the department for an occupation or profession under s. ~~101.09 (3) (c)~~, 101.122 (2) (c), ~~101.143 (2) (g),~~ 101.147, 101.15 (2) (e), 101.16 (3g), 101.17, 101.178 (2) or (3) (a), 101.63 (2) or (2m), 101.653, 101.73 (5) or (6), 101.82 (1m), (1v), and (2), 101.935, 101.95, 101.951, 101.952, 101.96 (2), 101.985 (1) to (3), 145.02 (4), 145.035, 145.045, 145.15, 145.16, 145.165, 145.17, 145.175, 145.18, or 167.10 (6m) or under rules promulgated under ch. 101 or 145.

****NOTE: This is reconciled s. 101.02 (21) (a). This SECTION has been affected by drafts with the following LRB numbers: –0387 and –1092.

SECTION 19. 101.02 (24) (a) 2. of the statutes is amended to read:

101.02 **(24)** (a) 2. "License" means a license, permit, or certificate of certification or registration issued by the department for an occupation or profession under s. ~~101.09 (3) (c)~~, 101.122 (2) (c), ~~101.143 (2) (g),~~ 101.147, 101.15 (2) (e), 101.16 (3g), 101.17, 101.177 (4) (a), 101.178 (2) or (3) (a), 101.63 (2) or (2m), 101.653, 101.654, 101.73 (5) or (6), 101.82 (1m), (1v), and (2), 101.935, 101.95, 101.951, 101.952, 101.985 (1) to (3), 145.02 (4), 145.035, 145.045, 145.15, 145.16, 145.165, 145.17, 145.175, 145.18, or 167.10 (6m) or under rules promulgated under ch. 101 or 145.

****NOTE: This is reconciled s. 101.02 (24) (a) 2. This SECTION has been affected by drafts with the following LRB numbers: –0387 and –1092.

SECTION 20. 101.143 (title) and (1) (intro.) and (ad) of the statutes are renumbered 292.63 (title) and (1) (intro.) and (ad).

SECTION 21. 101.143 (1) (am) of the statutes is repealed.

SECTION 22. 101.143 (1) (b) of the statutes is repealed.

1 **SECTION 23.** 101.143 (1) (bm) to (i) of the statutes are renumbered 292.63 (1)
2 (bm) to (i).

3 **SECTION 24.** 101.143 (1m) of the statutes is renumbered 292.63 (1m).

4 **SECTION 25.** 101.143 (2) (title) and (b) and (c) of the statutes are renumbered
5 292.63 (2) (title) and (b) and (c).

6 **SECTION 26.** 101.143 (2) (d) of the statutes is renumbered 292.63 (2) (d) and
7 amended to read:

8 292.63 **(2)** (d) The department shall reserve a portion, not to exceed 20%, of the
9 amount annually appropriated under s. ~~20.165 (2) (v)~~ 20.370 (2) (eu) for awards
10 under this section to be used to fund emergency remedial action and claims that
11 exceed the amount initially anticipated.

12 **SECTION 27.** 101.143 (2) (e) to (g) of the statutes are renumbered 292.63 (2) (e)
13 to (g).

14 **SECTION 28.** 101.143 (2) (h) of the statutes is renumbered 292.63 (2) (h), and
15 292.63 (2) (h) (intro.) and 3., as renumbered, are amended to read:

16 **292.63 (2)** (h) (intro.) The department ~~of safety and professional services and~~
17 ~~the department of natural resources, jointly~~, shall promulgate rules designed to
18 facilitate effective and cost–efficient administration of the program under this
19 section that specify all of the following:

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

23 **SECTION 29.** 101.143 (2) (i) of the statutes is renumbered 292.63 (2) (i), and
24 292.63 (2) (i) (intro.) and 1., as renumbered, are amended to read:

292.63 **(2)** (i) (intro.) The department ~~of safety and professional services and the department of natural resources, jointly,~~ shall promulgate rules specifying procedures for evaluating remedial action plans and procedures to be used by employees of the department ~~of safety and professional services and the department of natural resources~~ while remedial actions are being conducted. The ~~departments~~ department shall specify procedures that include all of the following:

1. Annual reviews that include application of the method in the rules promulgated under sub. (2e) ~~(b)~~ (a) to determine the risk posed by discharges that are the subject of the remedial actions.

SECTION 30. 101.143 (2) (j) of the statutes is renumbered 292.63 (2) (j), and 292.63 (2) (j) (intro.) and 1., as renumbered, are amended to read:

292.63 **(2)** (j) (intro.) The department ~~of safety and professional services and the department of natural resources, jointly,~~ shall promulgate rules specifying all of the following:

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

SECTION 31. 101.143 (2) (k) of the statutes is repealed.

SECTION 32. 101.143 (2) (L) of the statutes is renumbered 292.63 (2) (L) and amended to read:

292.63 **(2)** (L) The department may promulgate rules for the assessment and collection of fees to recover its costs for providing approval under sub. (3) (c) 4. and for providing other assistance requested by applicants under this section. Any moneys collected under this paragraph shall be credited to the appropriation account under s. ~~20.165 (2) (Lm)~~ 20.370 (2) (ej).

SECTION 33. 101.143 (2e) (title) of the statutes is renumbered 292.63 (2e) (title).

SECTION 34. 101.143 (2e) (a) of the statutes is renumbered 292.63 (2e) (a) and amended to read:

292.63 **(2e)** (a) The department ~~of safety and professional services and the department of natural resources~~ shall ~~attempt to agree on~~ promulgate rules that specify a method, which shall include individualized consideration of the routes for migration of petroleum product contamination at each site, for determining the risk to public health, safety and welfare and to the environment posed by discharges for which the department ~~of safety and professional services~~ receives notification under sub. (3) (a) 3.

SECTION 35. 101.143 (2e) (b) of the statutes is repealed.

SECTION 36. 101.143 (2e) (c) of the statutes is renumbered 292.63 (2e) (c) and amended to read:

292.63 **(2e)** (c) The department ~~of natural resources or, if the discharge is covered under s. 101.144 (2) (b), the department of safety and professional services~~ shall apply the method in the rules promulgated under par. ~~(b)~~ (a) to determine the risk posed by a discharge for which the department ~~of safety and professional services~~ receives notification under sub. (3) (a) 3.

SECTION 37. 101.143 (2m) of the statutes is repealed.

SECTION 38. 101.143 (3) (title) and (a) of the statutes are renumbered 292.63 (3) (title) and (a), and 292.63 (3) (a) 4., 5. and 9., as renumbered, are amended to read:

292.63 **(3)** (a) 4. The owner or operator registers the petroleum product storage system or the home oil tank system is registered with the department of agriculture, trade and consumer protection under s. ~~101.09~~ 168.23.

****NOTE: This is reconciled s. 101.143 (3) (a) 4. This SECTION has been affected by drafts with the following LRB numbers: –0387 and –1092.

5. The owner or operator or the person reports the discharge in a timely manner to the division of emergency management in the department of military affairs or to the department ~~of natural resources~~, according to the requirements under s. 292.11.

9. The owner or operator or the person follows standards for groundwater restoration in the groundwater standards in the rules promulgated by the department ~~of natural resources~~ under ss. 160.07 and 160.09 and restores the environment, to the extent practicable, according to those standards at the site of the discharge from a petroleum product storage system or home oil tank system.

SECTION 39. 101.143 (3) (ae) of the statutes is renumbered 292.63 (3) (ae) and amended to read:

292.63 **(3)** (ae) *New systems.* An owner or operator or a person owning a home oil tank system is not eligible for an award under this section for costs incurred because of a petroleum product discharge from an underground petroleum product storage tank system or a home oil tank system that meets the performance standards in 40 CFR 280.20 or in rules ~~promulgated by~~ of the department of agriculture, trade and consumer protection relating to underground petroleum product storage tank systems installed after December 22, 1988, if the discharge is confirmed after December 31, 1995.

****NOTE: This is reconciled s. 101.143 (3) (ae). This SECTION has been affected by drafts with the following LRB numbers: –0387 and –1092.

SECTION 40. 101.143 (3) (ah) of the statutes is renumbered 292.63 (3) (ah) and amended to read:

292.63 **(3)** (ah) *New aboveground systems.* An owner or operator is not eligible for an award under this section for costs incurred because of a petroleum product discharge from a petroleum product storage system that is not an underground

1 petroleum product storage tank system and that meets the performance standards
2 in rules ~~promulgated by~~ of the department of agriculture, trade and consumer
3 protection relating to petroleum product storage systems that are not underground
4 petroleum product storage tank systems and that are installed after April 30, 1991,
5 if the discharge is confirmed after December 22, 2001.

****NOTE: This is reconciled s. 101.143 (3) (ah). This SECTION has been affected by drafts with the following LRB numbers: –0387 and –1092.

6 **SECTION 41.** 101.143 (3) (am) of the statutes is renumbered 292.63 (3) (am) and
7 amended to read:

8 292.63 **(3)** (am) *Upgraded underground systems.* 1. An owner or operator or
9 a person owning a home oil tank system is not eligible for an award under this section
10 for costs incurred because of a petroleum product discharge from an underground
11 petroleum product storage tank system or a home oil tank system if the discharge
12 is confirmed after December 31, 1995, and the discharge is confirmed, or activities
13 under par. (c) or (g) are begun with respect to that discharge, after the day on which
14 the underground petroleum product storage tank system or home oil tank system
15 first meets the upgrading requirements in 40 CFR 280.21 (b) to (d) or in rules
16 ~~promulgated by~~ of the department of agriculture, trade and consumer protection
17 relating to the upgrading of existing underground petroleum product storage tank
18 systems, except as provided in subd. 2.

****NOTE: This is reconciled s. 101.143 (3) (am) 1. This SECTION has been affected by drafts with the following LRB numbers: –0387 and –1092.

19 2. If an underground petroleum product storage tank system or home oil tank
20 system first meets the upgrading requirements in 40 CFR 280.21 (b) to (d) or in rules
21 ~~promulgated by~~ of the department of agriculture, trade and consumer protection
22 relating to the upgrading of existing underground petroleum product storage tank

systems, after December 31, 1993, and the owner or operator or person owning the home oil tank system applies for private pollution liability insurance covering the underground petroleum product storage tank system or home oil tank system within 30 days after the day on which the underground petroleum product storage tank system or home oil tank system first meets those upgrading requirements, then the owner or operator or person remains eligible for an award for costs incurred because of a petroleum product discharge, from that underground petroleum product storage tank system or home oil tank system, which is confirmed, and with respect to which activities under par. (c) or (g) are begun, before the 91st day after the day on which the underground petroleum product storage tank system or home oil tank system first meets those upgrading requirements.

****NOTE: This is reconciled s. 101.143 (3) (am) 2. This SECTION has been affected by drafts with the following LRB numbers: –0387 and –1092.

SECTION 42. 101.143 (3) (ap) of the statutes is renumbered 292.63 (3) (ap) and amended to read:

292.63 **(3)** (ap) *Upgraded aboveground systems.* An owner or operator is not eligible for an award under this section for costs incurred because of a petroleum product discharge from a petroleum product storage system that is not an underground petroleum product storage tank system if the discharge is confirmed after December 22, 2001, and the discharge is confirmed, or activities under par. (c) or (g) are begun with respect to that discharge, after the day on which the petroleum product storage system first meets the upgrading requirements in rules ~~promulgated by~~ of the department of agriculture, trade and consumer protection relating to the upgrading of existing petroleum product storage systems that are not underground petroleum product storage tank systems.

****NOTE: This is reconciled s. 101.143 (3) (ap). This SECTION has been affected by drafts with the following LRB numbers: –0387 and –1092.

SECTION 43. 101.143 (3) (av) of the statutes is renumbered 292.63 (3) (av) and amended to read:

292.63 **(3)** (av) *Claims submitted for petroleum product storage systems on tribal trust lands.* The owner or operator of a petroleum product storage system located on trust lands of an American Indian tribe may submit a claim for an award under sub. (4) if the owner or operator otherwise satisfies par. (a) and complies with the rules promulgated under this section and any ~~other~~ rules ~~promulgated by~~ of the department of agriculture, trade and consumer protection concerning petroleum product storage systems.

****NOTE: This is reconciled s. 101.143 (3) (av). This SECTION has been affected by drafts with the following LRB numbers: –0387 and –1092.

SECTION 44. 101.143 (3) (b), (bm) and (bn) of the statutes are renumbered 292.63 (3) (b), (bm) and (bn).

SECTION 45. 101.143 (3) (c) of the statutes is renumbered 292.63 (3) (c), and 292.63 (3) (c) 4., as renumbered, is amended to read:

292.63 **(3)** (c) 4. Receive written approval from the department ~~of natural resources or, if the discharge is covered under s. 101.144 (2) (b), from the department of safety and professional services~~ that the remedial action activities performed under subd. 3. meet the requirements of s. 292.11.

SECTION 46. 101.143 (3) (cm) of the statutes is renumbered 292.63 (3) (cm) and amended to read:

292.63 **(3)** (cm) *Monitoring as remedial action.* An owner or operator or person owning a home oil tank system may, with the approval of the department ~~of natural resources or, if the discharge is covered under s. 101.144 (2) (b), the department of~~

~~safety and professional services~~, satisfy the requirements of par. (c) 2. and 3. by proposing and implementing monitoring to ensure the effectiveness of natural attenuation of petroleum product contamination.

SECTION 47. 101.143 (3) (cp) of the statutes is renumbered 292.63 (3) (cp) and amended to read:

292.63 **(3)** (cp) *Bidding process.* 1. Except as provided in subds. 2. ~~to 5.~~ and 5., if the department ~~of natural resources or, if the site is covered under s. 101.144 (2) (b), the department of safety and professional services~~ estimates that the cost to complete a site investigation, remedial action plan and remedial action for an occurrence exceeds $60,000, the department ~~of safety and professional services~~ shall implement a competitive public bidding process to obtain information to assist in making the determination under par. (cs).

2. The department ~~of safety and professional services or the department of natural resources~~ may waive the requirement under subd. 1. if an enforcement standard is exceeded in groundwater within 1,000 feet of a well operated by a public utility, as defined in s. 196.01 (5), or within 100 feet of any other well used to provide water for human consumption.

5. The department ~~of safety and professional services or the department of natural resources~~ may waive the requirement under subd. 1. after providing notice to the ~~other department~~ secretary of administration.

6. The department ~~of safety and professional services~~ may disqualify a bid received under subd. 1. if, based on information available to the department and experience with remedial action at other sites, the bid is unlikely to establish an amount to sufficiently fund remedial action that will comply with par. (c) 3. and with enforcement standards.

7. The department ~~of safety and professional services~~ may disqualify a person from submitting bids under subd. 1. if, based on past performance of the bidder, the department determines that the person has demonstrated an inability to complete remedial action within established cost limits.

SECTION 48. 101.143 (3) (cs) (title) of the statutes is renumbered 292.63 (3) (cs) (title).

SECTION 49. 101.143 (3) (cs) 1. of the statutes is renumbered 292.63 (3) (cs) 1. and amended to read:

292.63 **(3)** (cs) 1. The department ~~of safety and professional services~~ shall review the remedial action plan for a site ~~that is classified as low or medium risk under s. 101.144~~ and shall determine the least costly method of complying with par. (c) 3. and with enforcement standards. The department shall notify the owner or operator of its determination of the least costly method and shall notify the owner or operator that reimbursement for remedial action under this section is limited to the amount necessary to implement that method.

SECTION 50. 101.143 (3) (cs) 2. of the statutes is repealed.

SECTION 51. 101.143 (3) (cs) 3. of the statutes is renumbered 292.63 (3) (cs) 3. and amended to read:

292.63 **(3)** (cs) 3. In making determinations under ~~subds.~~ subd. 1. ~~and 2.~~, the department ~~of natural resources and the department of safety and professional services~~ shall determine whether natural attenuation will achieve compliance with par. (c) 3. and with enforcement standards.

SECTION 52. 101.143 (3) (cs) 4. of the statutes is renumbered 292.63 (3) (cs) 4. and amended to read:

292.63 **(3)** (cs) 4. The department ~~of safety and professional services~~ may review and modify an amount established under subd. 1. if the department determines that new circumstances, including newly discovered contamination at a site, warrant those actions. ~~The department of safety and professional services and the department of natural resources may review and modify an amount established under subd. 2. if the departments determine that new circumstances, including newly discovered contamination at a site, warrant those actions.~~

SECTION 53. 101.143 (3) (cw) (title) of the statutes is renumbered 292.63 (3) (cw) (title).

SECTION 54. 101.143 (3) (cw) 1. of the statutes is renumbered 292.63 (3) (cw) 1. and amended to read:

292.63 **(3)** (cw) 1. The department ~~of safety and professional services~~ shall conduct the annual review required under sub. (2) (i) 1. for a site ~~that is classified as low or medium risk under s. 101.144~~ and shall determine the least costly method of completing remedial action at the site in order to comply with par. (c) 3. and with enforcement standards. The department shall notify the owner or operator of its determination of the least costly method and shall notify the owner or operator that reimbursement under this section for any remedial action conducted after the date of the notice is limited to the amount necessary to implement that method.

SECTION 55. 101.143 (3) (cw) 2. of the statutes is repealed.

SECTION 56. 101.143 (3) (cw) 3. of the statutes is renumbered 292.63 (3) (cw) 3. and amended to read:

292.63 **(3)** (cw) 3. In making determinations under ~~subds.~~ subd. 1. ~~and 2.~~, the department ~~of natural resources and the department of safety and professional~~

~~services~~ shall determine whether natural attenuation will achieve compliance with par. (c) 3. and with enforcement standards.

SECTION 57. 101.143 (3) (cw) 4. of the statutes is renumbered 292.63 (3) (cw) 4. and amended to read:

292.63 **(3)** (cw) 4. The department ~~of safety and professional services~~ may review and modify an amount established under subd. 1. if the department determines that new circumstances, including newly discovered contamination at a site, warrant those actions. ~~The department of safety and professional services and the department of natural resources may review and modify an amount established under subd. 2. if the departments determine that new circumstances, including newly discovered contamination at a site, warrant those actions.~~

SECTION 58. 101.143 (3) (d) of the statutes is renumbered 292.63 (3) (d) and amended to read:

292.63 **(3)** (d) *Final review of remedial action activities.* The department ~~of natural resources or, if the discharge is covered under s. 101.144 (2) (b), the department of safety and professional services~~ shall complete a final review of the remedial action activities within 60 days after the claimant notifies the ~~appropriate~~ department that the remedial action activities are completed.

SECTION 59. 101.143 (3) (e) of the statutes is repealed.

SECTION 60. 101.143 (3) (f) of the statutes is renumbered 292.63 (3) (f), and 292.63 (3) (f) 5., as renumbered, is amended to read:

292.63 **(3)** (f) 5. The written approval of the department ~~of natural resources or the department of safety and professional services~~ under par. (c) 4.

SECTION 61. 101.143 (3) (g) of the statutes is renumbered 292.63 (3) (g) and amended to read:

292.63 **(3)** (g) *Emergency situations.* Notwithstanding pars. (a) 3. and (c) 1. and 2., an owner or operator or the person may submit a claim for an award under sub. (4) after notifying the department under par. (a) 3., without completing an investigation under par. (c) 1. and without preparing a remedial action plan under par. (c) 2., if an emergency existed which made the investigation under par. (c) 1. and the remedial action plan under par. (c) 2. inappropriate and, before conducting remedial action, the owner or operator or person notified the department ~~of safety and professional services and the department of natural resources~~ of the emergency and the department ~~of safety and professional services and the department of natural resources~~ authorized emergency action.

SECTION 62. 101.143 (3) (h) of the statutes is renumbered 292.63 (3) (h).

SECTION 63. 101.143 (4) (title) of the statutes is renumbered 292.63 (4) (title).

SECTION 64. 101.143 (4) (a) of the statutes is renumbered 292.63 (4) (a), and 292.63 (4) (a) 6. and 7., as renumbered, are amended to read:

292.63 **(4)** (a) 6. In any fiscal year, the department may not award more than 5% of the amount appropriated under s. ~~20.165 (2) (v)~~ 20.370 (2) (eu) as awards for petroleum product storage systems described in par. (ei).

7. In any fiscal year, the department may not award more than 5% of the amount appropriated under s. ~~20.165 (2) (v)~~ 20.370 (2) (eu) as awards for petroleum product storage systems that are owned by school districts and that are used for storing heating oil for consumptive use on the premises where stored.

SECTION 65. 101.143 (4) (b) of the statutes is renumbered 292.63 (4) (b).

SECTION 66. 101.143 (4) (c) of the statutes is renumbered 292.63 (4) (c), and 292.63 (4) (c) 12., as renumbered, is amended to read:

1 292.63 **(4)** (c) 12. Costs that are incurred after the date of a notice under sub.
2 (3) (cw) 1. ~~or 2.~~ and that exceed the amount necessary to comply with sub. (3) (c) 3.
3 and with enforcement standards using the method specified in the notice.

4 **SECTION 67.** 101.143 (4) (cc) of the statutes is renumbered 292.63 (4) (cc).

5 **SECTION 68.** 101.143 (4) (ce) of the statutes is renumbered 292.63 (4) (ce).

6 **SECTION 69.** 101.143 (4) (cm) of the statutes is renumbered 292.63 (4) (cm).

7 **SECTION 70.** 101.143 (4) (d) of the statutes is renumbered 292.63 (4) (d).

8 **SECTION 71.** 101.143 (4) (dg) of the statutes is renumbered 292.63 (4) (dg).

9 **SECTION 72.** 101.143 (4) (di) of the statutes is renumbered 292.63 (4) (di).

10 **SECTION 73.** 101.143 (4) (dm) of the statutes is renumbered 292.63 (4) (dm).

11 **SECTION 74.** 101.143 (4) (dr) of the statutes is renumbered 292.63 (4) (dr).

12 **SECTION 75.** 101.143 (4) (e) of the statutes is renumbered 292.63 (4) (e).

13 **SECTION 76.** 101.143 (4) (ee) of the statutes is renumbered 292.63 (4) (ee).

14 **SECTION 77.** 101.143 (4) (ei) of the statutes is renumbered 292.63 (4) (ei), and
15 292.63 (4) (ei) 1m. a. and b. and 2m., as renumbered, are amended to read:

16 292.63 **(4)** (ei) 1m. a. The owner or operator of the farm tank owns a parcel of
17 35 or more acres of contiguous land, on which the farm tank is located, which is
18 devoted primarily to agricultural use, as defined in s. 91.01 (2), including land
19 designated by the department ~~of natural resources~~ as part of the ice age trail under
20 s. 23.17, which during the year preceding submission of a first claim under sub. (3)
21 produced gross farm profits, as defined in s. 71.58 (4), of not less than $6,000 or
22 which, during the 3 years preceding that submission produced gross farm profits, as
23 defined in s. 71.58 (4), of not less than $18,000, or a parcel of 35 or more acres, on
24 which the farm tank is located, of which at least 35 acres, during part or all of the

year preceding that submission, were enrolled in the conservation reserve program under 16 USC 3831 to 3836.

b. The claim is submitted by a person who, at the time that the notification was made under sub. (3) (a) 3., was the owner of the farm tank and owned a parcel of 35 or more acres of contiguous land, on which the farm tank is or was located, which was devoted primarily to agricultural use, as defined in s. 91.01 (2), including land designated by the department ~~of natural resources~~ as part of the ice age trail under s. 23.17, which during the year preceding that notification produced gross farm profits, as defined in s. 71.58 (4), of not less than $6,000 or which, during the 3 years preceding that notification, produced gross farm profits, as defined in s. 71.58 (4), of not less than $18,000, or a parcel of 35 or more acres, on which the farm tank is located, of which at least 35 acres, during part or all of the year preceding that notification, were enrolled in the conservation reserve program under 16 USC 3831 to 3836.

2m. The owner or operator of the farm tank has received a letter or notice from the department ~~of safety and professional services or department of natural resources~~ indicating that the owner or operator must conduct a site investigation or remedial action because of a discharge from the farm tank or an order to conduct such an investigation or remedial action.

SECTION 78. 101.143 (4) (em) of the statutes is renumbered 292.63 (4) (em).

SECTION 79. 101.143 (4) (es) of the statutes is renumbered 292.63 (4) (es), and 292.63 (4) (es) 1., as renumbered, is amended to read:

292.63 **(4)** (es) 1. The department shall issue an award for a claim filed after August 9, 1989, for eligible costs, under par. (b), incurred on or after August 1, 1987, by an owner or operator or a person owning a home oil tank system in investigating

the existence of a discharge or investigating the presence of petroleum products in soil or groundwater if the investigation is undertaken at the written direction of the department ~~of safety and professional services or the department of natural resources~~ and no discharge or contamination is found.

SECTION 80. 101.143 (4) (f) of the statutes is renumbered 292.63 (4) (f).

SECTION 81. 101.143 (4) (g) of the statutes is renumbered 292.63 (4) (g).

SECTION 82. 101.143 (4) (h) of the statutes is renumbered 292.63 (4) (h).

SECTION 83. 101.143 (4e) of the statutes is renumbered 292.63 (4e).

SECTION 84. 101.143 (4m) of the statutes is renumbered 292.63 (4m).

SECTION 85. 101.143 (5) of the statutes is renumbered 292.63 (5).

SECTION 86. 101.143 (6) of the statutes is renumbered 292.63 (6).

SECTION 87. 101.143 (6s) of the statutes is renumbered 292.63 (6s).

SECTION 88. 101.143 (7) of the statutes is renumbered 292.63 (7).

SECTION 89. 101.143 (7m) of the statutes is renumbered 292.63 (7m).

SECTION 90. 101.143 (9) of the statutes is renumbered 292.63 (9).

SECTION 91. 101.143 (9m) of the statutes is renumbered 292.63 (9m).

SECTION 92. 101.143 (10) of the statutes is renumbered 292.63 (10).

SECTION 93. 101.1435 of the statutes is renumbered 292.64, and 292.64 (1) (b) and (2) (b), as renumbered, are amended to read:

292.64 (1) (b) "Underground petroleum product storage tank system" has the meaning given in s. ~~101.143~~ 292.63 (1) (i).

(2) (b) Using the method that the department uses to determine inability to pay under s. ~~101.143~~ 292.63 (4) (ee), the department determines that the owner of the underground petroleum product storage tank system is unable to pay to empty, clean, remove, and dispose of the underground petroleum product storage tank

system; to assess the site on which the underground petroleum product storage tank system is located; and to backfill the excavation.

SECTION 94. 101.144 of the statutes is repealed.

SECTION 95. 101.19 (1r) of the statutes is amended to read:

101.19 **(1r)** Notwithstanding subs. (1g) and (1m), the department shall waive any fee imposed on an individual who is eligible for the veterans fee waiver program under s. 45.44 for a license, permit, or certificate of certification or registration issued by the department under ~~ss. 101.09 (3) (c),~~ s. 101.122 (2) (c), ~~101.143 (2) (g),~~ 101.147, 101.15 (2) (e), 101.16 (3g), 101.17, 101.177 (4) (a), 101.178 (2) or (3) (a), 101.63 (2) or (2m), 101.653, 101.73 (5) or (6), 101.82 (1m), (1v), and (2), 101.935, 101.95, 101.951, 101.952, 101.985 (1) to (3), 145.02 (4), 145.035, 145.045, 145.07 (12), 145.15, 145.16, 145.165, 145.17, 145.175, 145.18, or 167.10 (6m).

****NOTE: This is reconciled s. 101.19 (1r). This SECTION has been affected by drafts with the following LRB numbers: –0387 and –1092.

SECTION 96. 227.03 (7m) of the statutes is amended to read:

227.03 **(7m)** Except as provided in s. ~~101.143~~ 292.63 (6s), this chapter does not apply to proceedings in matters that are arbitrated under s. ~~101.143~~ 292.63 (6s).

SECTION 97. 227.44 (8) of the statutes is amended to read:

227.44 **(8)** A stenographic, electronic or other record of oral proceedings shall be made in any class 2 or class 3 proceeding and in any class 1 proceeding when requested by a party. Each agency may establish rules relating to the transcription of the record into a written transcript and the providing of free copies of the written transcript. Rules may require a purpose for transcription which is deemed by the agency to be reasonable, such as appeal, and if this test is met to the satisfaction of the agency, the record shall be transcribed at the agency's expense, except that in

preparing the record for judicial review of a decision that was made in an appeal under s. 227.47 (2) or in an arbitration proceeding under s. ~~101.143~~ 292.63 (6s) or 230.44 (4) (bm) the record shall be transcribed at the expense of the party petitioning for judicial review. Rules may require a showing of impecuniousness or financial need as a basis for providing a free copy of the transcript, otherwise a reasonable compensatory fee may be charged. If any agency does not promulgate such rules, then it must transcribe the record and provide free copies of written transcripts upon request. In any event, an agency shall not refuse to provide a written transcript if the person making the request pays a reasonable compensatory fee for the transcription and for the copy. This subsection does not apply where a transcript fee is specifically provided by law.

SECTION 98. 238.133 (1) (c) of the statutes is amended to read:

238.133 **(1)** (c) "Petroleum product" has the meaning given in s. ~~101.143~~ 292.63 (1) (f).

SECTION 99. 238.133 (1) (e) of the statutes is amended to read:

238.133 **(1)** (e) "Underground petroleum product storage tank" has the meaning given in s. ~~101.143~~ 292.63 (1) (i).

SECTION 100. 292.11 (2) (e) of the statutes is repealed.

SECTION 101. 292.11 (7) (a) of the statutes is amended to read:

292.11 **(7)** (a) Subject to ss. 94.73 (2m) ~~and 101.144 (3)~~, in any case where action required under sub. (3) is not being adequately taken or the identity of the person responsible for the discharge is unknown, the department or its authorized representative may identify, locate, monitor, contain, remove or dispose of the hazardous substance or take any other emergency action which it deems appropriate under the circumstances.

SECTION 102. 292.11 (7) (c) of the statutes is amended to read:

292.11 **(7)** (c) Subject to ss. 94.73 (2m) ~~and 101.144 (3)~~, the department, for the protection of public health, safety or welfare, may issue an emergency order or a special order to the person possessing, controlling or responsible for the discharge of hazardous substances to fulfill the duty imposed by sub. (3).

SECTION 103. 292.12 (1) (a) of the statutes is amended to read:

292.12 **(1)** (a) "Agency with administrative authority" means the department of agriculture, trade and consumer protection with respect to a site over which it has jurisdiction under s. 94.73 (2)~~, the department of safety and professional services with respect to a site over which it has jurisdiction under s. 101.144 (2) (a),~~ or the department of natural resources with respect to a site over which it has jurisdiction under s. 292.11 (7).

SECTION 104. 292.99 (1) of the statutes is amended to read:

292.99 **(1)** Except as provided under sub. (1m) <u>and s. 292.63 (10)</u>, any person who violates this chapter or any rule promulgated or any plan approval, license or special order issued under this chapter shall forfeit not less than $10 nor more than $5,000 for each violation. Each day of continued violation is a separate offense. While an order is suspended, stayed or enjoined, this penalty does not accrue.

SECTION 105. 299.07 (1) (a) 6m. of the statutes is created to read:

299.07 **(1)** (a) 6m. A certification or registration under s. 292.63 (2) (g).

SECTION 106. 299.08 (1) (a) 6m. of the statutes is created to read:

299.08 **(1)** (a) 6m. A certification or registration under s. 292.63 (2) (g).

SECTION 107. 299.09 (1) of the statutes is amended to read:

299.09 **(1)** In this section, "approval" means a well driller license under s. 280.15 (2m), certification for an incinerator operator under s. 285.51 (2), ~~or~~

1 certification for an operator of a solid waste disposal facility under s. 289.42 (1), or
2 certification of a consultant under s. 292.63 (2) (g).

3 **SECTION 108.** 601.415 (10) of the statutes is amended to read:

4 601.415 **(10)** PETROLEUM PRODUCT STORAGE REMEDIAL ACTION PROGRAM RULES.
5 The commissioner shall promulgate the rules required under s. ~~101.143~~ 292.63 (1m).

6 **SECTION 109.** 788.01 of the statutes is amended to read:

7 **788.01 Arbitration clauses in contracts enforceable.** A provision in any
8 written contract to settle by arbitration a controversy thereafter arising out of the
9 contract, or out of the refusal to perform the whole or any part of the contract, or an
10 agreement in writing between 2 or more persons to submit to arbitration any
11 controversy existing between them at the time of the agreement to submit, shall be
12 valid, irrevocable and enforceable except upon such grounds as exist at law or in
13 equity for the revocation of any contract. This chapter shall not apply to contracts
14 between employers and employees, or between employers and associations of
15 employees, except as provided in s. 111.10, nor to agreements to arbitrate disputes
16 under s. ~~101.143~~ 292.63 (6s) or 230.44 (4) (bm).

17 **SECTION 9138. Nonstatutory provisions; Safety and Professional**
18 **Services.**

19 (1) TRANSFER OF PETROLEUM STORAGE REMEDIAL ACTION PROGRAM.

20 (a) *Assets and liabilities.* The assets and liabilities of the department of safety
21 and professional services that the secretary of administration determines to be
22 primarily related to activities under sections 101.143, 101.1435, and 101.144, 2011
23 stats., become the assets and liabilities of the department of natural resources on the
24 effective date of this paragraph.

(b) *Employee transfer.* All incumbent employees who hold positions in the department of safety and professional services performing duties that the secretary of administration determines to be primarily related to sections 101.143, 101.1435, and 101.144, 2011 stats., and the full–time equivalent positions held by those employees, are transferred to the department of natural resources on the effective date of this paragraph.

(c) *Employee status.* Employees transferred under paragraph (b) have all the rights and the same status under subchapter V of chapter 111 and chapter 230 of the statutes in the department of natural resources that they enjoyed in the department of safety and professional services immediately before the transfer. Notwithstanding section 230.28 (4) of the statutes, no employee so transferred who has attained permanent status in class is required to serve a probationary period.

(d) *Tangible personal property.* On the effective date of this paragraph, all tangible personal property, including records, of the department of safety and professional services that the secretary of administration determines to be primarily related to activities under sections 101.143, 101.1435, and 101.144, 2011 stats., is transferred to the department of natural resources.

(e) *Contracts.* All contracts that were entered into by the department of safety and professional services that the secretary of administration determines to be primarily related to sections 101.143, 101.1435, and 101.144, 2011 stats., and that are in effect on the effective date of this paragraph remain in effect and are transferred to the department of natural resources. The department of natural resources shall carry out any obligations under such a contract until the contract is modified or rescinded by the department of natural resources to the extent allowed under the contract.

1 (f) *Rules and orders.* All rules promulgated, and all orders issued, by the
2 department of safety and professional services that the secretary of administration
3 determines to be primarily related to sections 101.143, 101.1435, and 101.144, 2011
4 stats., and that are in effect on the effective date of this paragraph, shall remain in
5 effect until their specified expiration date or until amended or repealed by the
6 department of natural resources.

7 (g) *Pending matters.* Any matter pending with the department of safety and
8 professional services on the effective date of this paragraph that the secretary of
9 administration determines to be related to section 101.143, 101.1435, or 101.144,
10 2011 stats., is transferred to the department of natural resources, and all materials
11 submitted to or actions taken by the department of safety and professional services
12 with respect to the pending matter are considered as having been submitted to or
13 taken by the department of natural resources.

14 **(END)**