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**WISCONSIN LEGISLATIVE COUNCIL  
AMENDMENT MEMO**

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**2005 Assembly Bill 222**

**Assembly Amendment 1, as  
Amended by Assembly  
Amendment 1 to Assembly  
Amendment 1, and Assembly  
Amendment 3**

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**Insurance Provision**

*2005 Assembly Bill 222* addresses various issues related to environmental claims under general liability insurance policies if bodily injury or property damage arises from the presence of pollutants on the beds or banks of a navigable water in Wisconsin as a result of a release of pollutants in Wisconsin.

The bill does not define “general liability insurance policy” for this purpose. The fiscal estimate submitted by the Office of the Commissioner of Insurance indicates that, while the phrase often refers to commercial general liability policies, the bill could “be interpreted to mean any policy that covers ‘general liability,’ such as a homeowner or farmowner policy.”

*Assembly Amendment 1 to the bill, as amended by Assembly Amendment 1 to Assembly Amendment 1*, specifies that, for the purposes of the bill, “general liability insurance policy” does *not* include any of the following:

1. A homeowners or residential insurance policy. (Assembly Amendment 1 to Assembly Amendment 1 added the reference to residential policies.)
2. An insurance policy covering a farm owner’s or farm operator’s liability.
3. A claims-made insurance policy.

By way of background with respect to the third item, there are two basic types of liability policy forms: claims-made and occurrence. *Claims-made* coverage typically applies only if: (a) the incident, act, or omission took place on or after a specified date (often the policy effective date, but a prior or retrospective date could be specified in the policy); *and* (b) the claim (or, under some policies, some

type of notice of demand) is made before a date specified in the policy (such as the date the policy expires, a specific later date, or a specified number of days after the expiration date). In contrast, an ***occurrence*** policy covers losses from occurrences during the policy period but does not require that the claim be reported before a certain date. For example, in the case of damages which are not known until many years after an event (for example, damage caused by certain types of pollution), a claims-made policy would not provide coverage, whereas an occurrence policy may do so. (Commercial general liability policies typically began including an absolute pollution exclusion around 1985 or 1986; pollution coverage before then was typically written on an occurrence basis. In contrast, the limited pollution coverage available more recently under limited types of policies typically is written on a claims-made basis.)

### **DNR Fee and Appropriation Provision**

***Assembly Bill 222*** also authorizes the Department of Natural Resources (DNR) to collect fees from a person who is responsible, under state or federal law, for an environmental cleanup requiring the removal of at least 10,000 tons of contaminated material from the beds or banks of a navigable water. The fee may not exceed 25 cents per ton. An appropriation is created to DNR for using the fees for activities related to environmental cleanups in and adjacent to navigable waters.

***Assembly Amendment 3*** to the bill deletes this fee and this appropriation.

### **Legislative History**

Assembly Amendment 1 to the bill was introduced by the Assembly Committee on Insurance. The committee recommended adoption of that amendment on a vote of Ayes, 15; Noes, 0. The committee then recommended passage of the bill, as amended, on a vote of Ayes, 9; Noes, 6.

Assembly Amendment 1 to Assembly Amendment 1 was offered by Representative Gronemus and was adopted on a voice vote. Assembly Amendment 1 to the bill, as amended, was also adopted on a voice vote. Assembly Amendment 3 to the bill was offered by Representative Wood and others and was adopted on a voice vote. Assembly Bill 222, as amended, was passed on a vote of Ayes, 49; Noes 44; Paired 6.

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