1993 Senate Bill 462

Date of enactment: **April 28, 1994**
Date of publication: **May 12, 1994**

1993 Wisconsin Act 453
(Vetoed in Part)

AN ACT *to repeal* 144.442 (11) (c); *to renumber* 74.79; *to amend* 20.370 (2) (dv), 20.370 (2) (gr), 20.866 (2) (tg), 27.065 (10) (a), 32.05 (intro.) and (1) (a), 50.05 (15) (d), 66.521 (9), 70.01, 74.53 (3) and (5), 76.13 (2), 76.22 (1), 76.39 (5), 88.40 (2), 109.09 (2), 144.442 (1) (d), 144.442 (1) (e), 144.442 (6) (d) and (f), 214.495 (1), 215.21 (4) (a), 706.11 (1) (intro.), 779.01 (4), 779.35, 779.40 (1) and 823.115 (1); and *to create* 20.370 (2) (dh), 20.370 (4) (dc), 25.46 (10m), 66.121, 74.53 (7), 74.79 (2), 144.442 (1) (bm), 144.442 (5) (f), 144.442 (9) (i), 144.442 (9m), 144.4422, 144.76 (1) (b), (bm) and (d), 144.76 (9) (e), 144.76 (9m) and (9s), 144.76 (13), 144.765, 144.77 (6) (d), 703.16 (6) (e) and 707.37 (4) (d) of the statutes, *relating to* creating a grant program for investigation and remedial action for municipally owned property that is contaminated by environmental pollution, modifying property tax procedures, limiting municipal liability for damages caused by the release of a hazardous substance, limiting the liability of lenders related to hazardous substances, limiting the liability of purchasers of certain property for existing hazardous substances, imposing liability for the cost of remedial action for certain environmentally contaminated land owned by a political subdivision, creating a lien for state-incurred remedial action costs, providing for a study, granting rule-making authority and making appropriations. **Vetoed in Part**

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

~~SECTION 1. 20.005 (3) (schedule) of the statutes: at the appropriate place, insert the following amounts for the purposes indicated:~~ **Vetoed in Part**

			1993-94	1994-95
20.370	**Natural resources, department of**			
(4)	LOCAL SUPPORT			
(dc)	Environmental aids--remedial action	GPR B	500,000	-0-

SECTION 2. 20.370 (2) (dh) of the statutes is created to read:

20.370 (2) (dh) *Solid waste management — remediated property.* All moneys received under ss. 144.4422 (13) and 144.765 (5) for the department's activities related to remedial action cost recovery under s. 144.4422 and remediation of property under s. 144.765 (2) and (4).

SECTION 3. 20.370 (2) (dv) of the statutes is amended to read:

20.370 (2) (dv) *Solid waste management — environmental repair; spills; abandoned containers.* As a continuing appropriation, from the environmental fund, the amounts in the schedule for the administration of the environmental repair program under s. 144.442, but not for payments under s. 144.442 (9m); for the hazardous substance spills program under s. 144.76~~,~~; for the abandoned container program under s. 144.77; and for the payment of this state's share of environmental repair which is funded under 42 USC 9601, et seq., and any additional costs which this state is required to incur under 42 USC 9601, et seq.

SECTION 4. 20.370 (2) (gr) of the statutes is amended to read:

20.370 (2) (gr) *Solid waste management — mining programs.* From the investment and local impact fund, all moneys received under s. 70.395 (2) (j) for the purpose of making payments for the long-term care of mining waste sites under s. 144.441 (6) and received under s. 70.395 (2) (k) for the purpose of making payments for environmental repair of mining waste sites under s. 144.442 (4), (6) and (8).

~~SECTION 5. 20.370 (4) (dc) of the statutes is created to read:~~ **Vetoed in Part**

~~20.370 (4) (dc) *Environmental aids — remedial action.* Biennially, from the general fund, the amounts in the schedule for investigative and remedial action grants under s. 144.442 (9m).~~

SECTION 6. 20.866 (2) (tg) of the statutes, as affected by 1993 Wisconsin Act 16, is amended to read:

20.866 (2) (tg) *Natural resources; environmental repair.* From the capital improvement fund, a sum sufficient for the department of natural resources to ~~take~~ fund investigations and remedial action under s. 144.442 ~~(6) for sites and facilities subject to s. 144.442 (6) (cm)~~ and remedial action under s. 144.10 and for payment of this state's share of environmental repair

that is funded under 42 USC 9601 to 9675. The state may contract public debt in an amount not to exceed $27,500,000 for this purpose. Of this amount, $5,000,000 is allocated for remedial action under s. 144.10.

SECTION 7. 25.46 (10m) of the statutes is created to read:

25.46 (10m) The moneys recovered under s. 144.442 (9m) (e) for environmental repair.

SECTION 8. 27.065 (10) (a) of the statutes is amended to read:

27.065 (10) (a) The special improvement bonds herein mentioned shall be equal liens against all lots, parts of lots or parcels of land against which special assessments have been made, without priority one over another, which liens shall take precedence of all other claims or liens thereon, except a lien under s. 144.442 (9) (i), 144.76 (13) or 144.77 (6) (d), and when issued shall transfer to the holders thereof all the right, title and interest of such county in and to the assessment made on account of the improvement mentioned therein and the liens thereby created, with full power to enforce the collection thereof by foreclosure in the manner mortgages on real estate are foreclosed. The time of redemption therefrom shall be fixed by the court, and a copy of the bond foreclosed may be filed as a part of the judgment roll in said action in lieu of the original thereof.

SECTION 9. 32.05 (intro.) and (1) (a) of the statutes are amended to read:

32.05 Condemnation for sewers and transportation facilities. (intro.) In this section, "mass transit facility" includes, without limitation because of enumeration, exclusive or preferential bus lanes if those lanes are limited to abandoned railroad rights-of-way or existing expressways constructed before May 17, 1978, highway control devices, bus passenger loading areas and terminal facilities, including shelters, and fringe and corridor parking facilities to serve bus and other public mass transportation passengers, together with the acquisition, construction, reconstruction and maintenance of lands and facilities for the development, improvement and use of public mass transportation systems for the transportation of passengers. This section does not apply to town highways created or altered under ch. 80 except as to jury trials on appeals under ss. 80.24 and 80.25, nor to proceedings in 1st class cities under subch. II. In any city, condemnation for housing under ss. 66.40 to 66.404, or for urban renewal under s. 66.431 may proceed under this section or under s. 32.06 at the option of the condemning authority. All other condemnation of property for public alleys, streets, highways, airports, mass transit facilities, or other transportation facilities, gas or leachate extraction systems to remedy environmental pollution from a solid waste disposal facility, or storm sewers and sanitary sewers or watercourses shall proceed as follows:

(1) (a) Except as provided under par. (b), the county board of supervisors (or the county highway committee when so authorized by the board), city council, village board, sewerage commission governing metropolitan sewerage district created by ss. 66.22 or 66.88 to 66.918, secretary of transportation, a commission created by contract under s. 66.30, housing authority under ss. 66.40 to 66.404, redevelopment authority under s. 66.431 or community development authority under s. 66.4325 shall make an order providing for the laying out, relocation and improvement of the public highway, street, alley, storm and sanitary sewers, watercourses, mass transit facilities, airport, or other transportation facilities, gas or leachate extraction systems to remedy environmental pollution from a solid waste disposal facility, housing project or redevelopment project which shall be known as the relocation order. This order shall include a map or plat showing the old and new locations and the lands and interests required. A copy of the order shall, within 20 days after its issue, be filed with the county clerk of the county wherein the lands are located.

SECTION 10. 50.05 (15) (d) of the statutes is amended to read:

50.05 (15) (d) The lien provided by this subsection is prior to any lien or other interest which originates subsequent to the filing of a petition for receivership under this section, except for a construction or mechanic's lien arising out of work performed with the express consent of the receiver or a lien under s. 144.442 (9) (i), 144.76 (13) or 144.77 (6) (d).

SECTION 11. 66.121 of the statutes is created to read:

66.121 Inspection of property. A county or a city authorized to act under s. 74.87 may enter any real property for which a tax certificate has been issued under s. 74.57, or may authorize another person to enter the real property, to determine the nature and extent of environmental pollution, as defined in s. 144.01 (3).

SECTION 12. 66.521 (9) of the statutes is amended to read:

66.521 (9) PAYMENT OF TAXES. When any industrial project acquired by a municipality under this section is used by a private person as a lessee, sublessee or in any capacity other than owner, that person shall be subject to taxation in the same amount and to the same extent as though that person were the owner of the property. Taxes shall be assessed to such private person using the real property and collected in the same manner as taxes assessed to owners of real property. When due, the taxes shall constitute a debt due from such private person to the taxing unit and shall be recoverable as provided by law, and such unpaid taxes shall become a lien against the property with respect to which they were assessed, superior to all other liens, except a lien under s. 144.442 (9) (i), 144.76 (13) or 144.77 (6) (d), and shall be placed on their tax roll when there has

been a conveyance of the property in the same manner as are other taxes assessed against real property.

SECTION 13. 70.01 of the statutes is amended to read:

70.01 General property taxes; upon whom levied. Taxes shall be levied, under this chapter, upon all general property in this state except property that is exempt from taxation. Real estate taxes and personal property taxes are deemed to be levied when the tax roll in which they are included has been delivered to the local treasurer under s. 74.03. When so levied such taxes are a lien upon the property against which they are charged. That lien is superior to all other liens, except a lien under s. 144.442 (9) (i), 144.76 (13) or 144.77 (6) (d), and is effective as of January 1 in the year when the taxes are levied. Liens of special assessments of benefits for local improvements shall be in force as provided by the charter or general laws applicable to the cities that make the special assessments. In this chapter, unless the context requires otherwise, references to "this chapter" do not include ss. 70.37 to 70.395.

SECTION 14. 74.53 (3) and (5) of the statutes are amended to read:

74.53 (3) LIMITATION. A county or a city authorized to act under s. 74.87 may not proceed against any person under this section unless the property against which the amounts are levied in the tax roll is included in a tax certificate issued under s. 74.57 ~~and the fair market value of the property is less than the amounts owed plus interest and penalties~~.

(5) (title) PRIOR APPROVAL; NOTICE. No action may be commenced under sub. (1) unless it is approved by the county board or the common council of a city authorized to act under s. 74.87. The clerk shall mail, to the last-known address of the person against whom an action is proposed to be commenced, advance written notice of the time and place the county board will meet to consider approval of legal action. A county board or the common council of a city authorized to act under s. 74.87 may abrogate its duty to approve and notice each action to be commenced under sub. (1) by adopting an ordinance waiving the duty and specifying procedures by which an action under sub. (1) may be commenced.

SECTION 15. 74.53 (7) of the statutes is created to read:

74.53 (7) APPOINTMENT OF RECEIVER. A court may appoint a receiver to take charge of property included in a tax certificate under s. 74.57 if a county or a city authorized to act under s. 74.87 proceeds against the owner of the property under this section. The receiver shall manage the property, collect rents and apply income to the payment of delinquent real property taxes.

SECTION 16. 74.79 of the statutes is renumbered 74.79 (1).

SECTION 17. 74.79 (2) of the statutes is created to read:

74.79 (2) A county to which a tax certificate has been issued under s. 74.57 has the remedies of a property owner to contest, as to any property included in the tax certificate, the assessed value of the property and the legality or validity of any real property tax, special assessment, special charge or special tax.

SECTION 18. 76.13 (2) of the statutes is amended to read:

76.13 (2) Every tax roll upon completion shall be delivered to the state treasurer and a copy of the tax roll filed with the secretary of administration. The department shall notify, by certified mail, all companies listed on the tax roll of the amount of tax due, which shall be paid to the department. The payment dates provided for in sub. (2a) shall apply. The payment of one-fourth of the tax of any company may, if the company has brought an action in the Dane county circuit court under s. 76.08, be made without delinquent interest as provided in s. 76.14 any time prior to the date upon which the appeal becomes final, but any part of the tax ultimately required to be paid shall bear interest from the original due date to the date the appeal became final at the rate of 12% per year and at 1.5% per month thereafter until paid. The taxes extended against any company after the same become due, with interest, shall be a lien upon all the property of the company prior to all other liens, claims and demands whatsoever, except as provided in ss. 144.442 (9) (i), 144.76 (13) and 144.77 (6) (d), which lien may be enforced in an action in the name of the state in any court of competent jurisdiction against the property of the company within the state as an entirety.

SECTION 19. 76.22 (1) of the statutes is amended to read:

76.22 (1) The taxes levied upon and extended against the property of any company defined in s. 76.02, after the same become due, with interest thereon, shall become a lien upon the property of such company within the state prior to all other liens, debts, claims or demands whatsoever, except as provided in ss. 144.442 (9) (i), 144.76 (13) and 144.77 (6) (d), which lien may be enforced in an action in the name of the state in any state court of competent jurisdiction against such company and against the property of such company within the state. The place of the trial shall not be changed from the county in which any such action is commenced, except upon consent of parties.

SECTION 20. 76.39 (5) of the statutes is amended to read:

76.39 (5) Delinquent taxes, penalties, interest and late filing fees shall be a lien upon the property of any railroad company or car line company prior to all other liens, claims and demands, except as provided in ss. 144.442 (9) (i), 144.76 (13) and 144.77 (6) (d), which lien may be enforced in any action in the name of the state in any court of competent jurisdiction. All provisions of law for enforcing payment of delinquent

income or franchise taxes under ch. 71 or enforcing payment of delinquent taxes based on the value of property under this chapter shall be available to collection of taxes on gross receipts in this state levied under this section.

SECTION 21. 88.40 (2) of the statutes is amended to read:

88.40 (2) From the time of recordation of the order confirming such assessments for costs until they are paid, such assessments and the interest thereon are a first lien upon the lands assessed and take priority over all other liens or mortgages except liens for general taxes and liens under ss. 144.442 (9) (i), 144.76 (13) and 144.77 (6) (d), regardless of the priority in time of such other liens or mortgages.

SECTION 22. 109.09 (2) of the statutes, as affected by 1993 Wisconsin Act 86, is amended to read:

109.02 (2) The department, under its authority under sub. (1) to maintain actions for the benefit of employes, or an employe who brings an action under s. 109.03 (5) shall have a lien upon all property of the employer, real or personal, located in this state for the full amount of any wage claim or wage deficiency. A lien under this subsection takes effect when the department or employe files a verified petition claiming the lien with the clerk of the circuit court of the county in which the services or some part of the services were performed pays the fee specified in s. 814.61 (5) to that clerk of circuit court and serves a copy of that petition on the employer by personal service in the same manner as a summons is served under s. 801.11 or by certified mail with a return receipt requested. The department or employe must file the petition within 2 years after the date that the wages were due. The petition shall specify the nature of the claim and the amount claimed, describe the property upon which the claim is made and state that the petitioner claims a lien on that property. The lien shall take precedence over all other debts, judgments, decrees, liens or mortgages against the employer, except a lien under s. 144.442 (9) (i), 144.76 (13) or 144.77 (6) (d), and may be enforced in the manner provided in ss. 779.09 to 779.12, 779.20 and 779.21, insofar as such provisions are applicable. The lien ceases to exist if the department or the employe does not bring an action to enforce the lien within the period prescribed in s. 893.44 for the underlying wage claim.

SECTION 23. 144.442 (1) (bm) of the statutes is created to read:

144.442 (1) (bm) "Discharge" has the meaning given in s. 144.76 (1) (a).

SECTION 24. 144.442 (1) (d) of the statutes is amended to read:

144.442 (1) (d) "Site or facility" means, except in sub. (9m), an approved facility, an approved mining facility, a nonapproved facility or a waste site.

SECTION 25. 144.442 (1) (e) of the statutes is amended to read:

144.442 (1) (e) "Waste site" means any site, other than an approved facility, an approved mining facility or a nonapproved facility, where waste is disposed of regardless of when disposal occurred or where a hazardous substance is discharged before May 21, 1978.

SECTION 26. 144.442 (5) (f) of the statutes is created to read:

144.442 (5) (f) Means of making the most effective use of the grant program under sub. (9m) so as to encourage the greatest number of political subdivisions to undertake remedial action on property that they own.

SECTION 27. 144.442 (6) (d) and (f) of the statutes are amended to read:

144.442 (6) (d) *Emergency responses.* Notwithstanding rules promulgated under this section, the hazard ranking list, the considerations for taking action under par. (c) or the remedial action schedule under par. (cm), the department may take emergency action under this ~~section~~ subsection and subs. (4) and (8) at a site or facility if delay will result in imminent risk to public health or safety or the environment. The department is not required to hold a hearing under par. (f) if emergency action is taken under this paragraph. The decision of the department to take emergency action is a final decision of the agency subject to judicial review under ch. 227.

(f) *Notice; hearing.* The department shall publish a class 1 notice, under ch. 985, prior to taking remedial action under this ~~section~~ subsection and subs. (4) and (8), which describes the proposed remedial action and the amount and purpose of any proposed expenditure. Except as provided under par. (d), the department shall provide a hearing to any person who demands a hearing within 30 days after the notice is published for the purpose of determining whether the proposed remedial action and any expenditure is within the scope of this section and is reasonable in relation to the cost of obtaining similar materials and services. The department is not required to conduct more than one hearing for the remedial action proposed at a single site or facility. Notwithstanding s. 227.42, the hearing shall not be conducted as a contested case. The decision of the department to take remedial action under this section is a final decision of the agency subject to judicial review under ch. 227.

SECTION 28. 144.442 (9) (i) of the statutes is created to read:

144.442 (9) (i) *Lien.* Any expenditures made by the department under sub. (4), (6) or (8) shall constitute a lien upon the property for which the expenses are incurred, as provided in s. 144.76 (13).

SECTION 29. 144.442 (9m) of the statutes is created to read:

144.442 (9m) GRANTS TO POLITICAL SUBDIVISIONS FOR INVESTIGATIONS AND REMEDIAL ACTION. (a) *Definition.* In this subsection:

1. "Political subdivision" means a city, village, town or county.

2. "Site or facility" means an approved facility, an approved mining facility, a nonapproved facility, a waste site or a spill site.

3. "Spill site" means any site where a hazardous substance is discharged on or after May 21, 1978.

(b) *Grants for investigations.* 1. The department may make investigative funding grants from the appropriations under ss. 20.370 (4) (dc) and 20.866 (2) (tg) to political subdivisions for the investigation of any site or facility owned by a political subdivision in which the soil or groundwater is contaminated by environmental pollution.

Vetoed in Part

2. The department by rule shall establish the application requirements and grant conditions for an investigative funding grant.

3. The department may not approve the application for an investigative funding grant for a site or facility that is not a landfill if the political subdivision caused the environmental pollution.

4. An investigative funding grant shall equal 25% of the cost of the investigation. The political subdivision's share of the costs may include contributions of equipment and labor. No political subdivision may receive more than 35% of the total amount of funds available for investigative funding grants in any fiscal year.

5. If sufficient funds are not available to make investigative funding grants to all political subdivisions that are eligible for investigative funding grants, the department shall give a higher priority to investigations with the potential of leading to remedial action resulting in all of the following:

a. The greatest reduction of environmental pollution and of threats to public health.

b. The greatest avoidance of development of currently undeveloped land by making the site or facility available for redevelopment after remedial action.

6. A political subdivision may use the investigative funding grant funds for any of the following:

a. Investigation to determine the nature and scope of environmental pollution and the appropriate remedial action.

b. Planning the remedial action.

c. Identifying and negotiating with persons responsible for the environmental pollution, in order to obtain cooperation in or payment for the investigation and any remedial action.

d. Conducting interim remedial action approved by the department.

(c) *Grants for remedial action.* 1. The department may make remedial action grants from the appropriations under ss. 20.370 (4) (dc) and 20.866 (2) (tg) to political subdivisions for remedial action on any site or facility owned by a political subdivision in which the soil or groundwater is contaminated by environmental pollution.

Vetoed in Part

2. The department by rule shall establish the application requirements and grant conditions for a remedial action grant. The department shall require the political subdivision to include in its application all of the following:

a. The results of the investigation to determine the nature and scope of environmental pollution at the site or facility.

b. A remedial action plan.

c. Comprehensive plans for the redevelopment of the property after the remedial action is completed.

d. A statement of whether the political subdivision intends to use the cost recovery procedure in s. 144.4422. If the political subdivision indicates in its application that it intends to use the cost recovery procedure in s. 144.4422, the department may not approve the application for a remedial action grant until the political subdivision completes the procedures under s. 144.4422 (2g) and (2r).

4. The department may not approve the application for a remedial action grant for a site or facility that is not a landfill if the political subdivision caused the environmental pollution.

5. The department shall require the political subdivision to do all of the following as a condition of receiving a remedial action grant:

a. Make a commitment to seek contribution of funds from persons legally responsible for the environmental pollution.

b. Make a commitment to redevelop the property or to sell or lease it for the purposes of redevelopment, if appropriate.

6. Upon reviewing the application, if the department determines that the political subdivision is eligible to receive a remedial action grant and that funds are available to make a remedial action grant, it shall notify the political subdivision.

7. A remedial action grant shall equal 25% of the eligible costs of the remedial action. The political subdivision's share of the costs may include contributions of equipment and labor. No political subdivision may receive more than 35% of the total amount of funds allocated for remedial action grants in any fiscal year.

8. If sufficient funds are not available to make remedial action grants to all political subdivisions that are eligible for remedial action grants, the department shall give a higher priority to remedial actions that will result in all of the following:

a. The greatest potential to reduce environmental pollution and threats to public health.

b. The greatest avoidance of development of currently undeveloped land by making the site or facility available for redevelopment after remedial action.

(d) *Amount of funding.* In each fiscal year, the department shall submit to the joint committee on finance a proposal for the total amount of grants to be made in each of the following categories: investigative funding grants for waste sites; investigative funding grants for landfills; remedial action grants for waste sites; and remedial action grants for landfills. The

department may not issue a determination of grant eligibility under this section in any fiscal year until the joint committee on finance has approved the proposal for that fiscal year and may not issue a determination of grant eligibility under this section under an amendment to the proposal until the joint committee on finance has approved the amendment.

(e) *Subrogation.* The state is subrogated to the rights of a political subdivision that obtains an award under this section in an amount equal to the award. All moneys recovered under this paragraph shall be credited to the environmental fund for environmental repair.

SECTION 30. 144.442 (11) (c) of the statutes is repealed.

SECTION 31. 144.4422 of the statutes is created to read:

144.4422 Political subdivision negotiation and cost recovery. (1) DEFINITIONS. In this section:

(a) "Discharge" has the meaning given in s. 144.76 (1) (a).

(b) "Generator" means a person who, by contract, agreement or otherwise, either arranges or arranged for disposal or treatment, or arranges or arranged with a transporter for transport for disposal or treatment, of a hazardous substance owned or possessed by the person, if the disposal or treatment is done by another person at a site or facility owned and operated by another person and the site or facility contains the hazardous substance.

(c) "Owner or operator" means any of the following:

1. If the property is taken for tax delinquency, a person who owns or operates a site or facility at the time that the site or facility is taken for tax delinquency.

2. A person who owns or operates a site or facility at the time that the disposal or discharge of a hazardous substance at the site or facility occurs.

(d) "Political subdivision" means a city, village, town or county.

(e) "Responsible party" means a generator, an owner or operator, a transporter or a person who possesses or controls a hazardous substance that is discharged or disposed of or who causes the discharge or disposal of a hazardous substance.

(f) "Site or facility" has the meaning given in s. 144.442 (9m) (a) 2.

(g) "Transporter" means a person who accepts or accepted a hazardous substance for transport to a site or facility.

(2) APPLICABILITY. This section only applies to a site or facility if the site or facility is owned by a political subdivision. This section does not apply to a landfill until January 1, 1996.

(2g) IDENTIFICATION OF RESPONSIBLE PARTIES. (a) A political subdivision that intends to use the cost recovery procedures in this section shall attempt to identify all responsible parties. All information obtained by the political subdivision regarding responsible parties is a public record and may be inspected and copied under s. 19.35.

(b) Upon the request of an employe or authorized representative of the political subdivision, or pursuant to a special inspection warrant under s. 66.122, any person who generated, transported, treated, stored or disposed of a hazardous substance that may have been disposed of or discharged at the site or facility or who is or was an owner or operator shall provide the employe or authorized representative access to any records or documents in that person's custody, possession or control that relate to all of the following:

1. The type and quantity of hazardous substance that was disposed of or discharged at the site or facility and the dates of the disposal or discharge.

2. The identity of any person who may be a responsible party.

3. The identity of subsidiary or parent corporations, as defined in s. 144.442 (9) (a) 3, of any person who may be a responsible party.

(c) The political subdivision shall maintain a single repository that is readily accessible to the public for all documents related to responsible parties, the investigation, the remedial action and plans for redevelopment of the property.

(2r) PRELIMINARY REMEDIAL ACTION PLAN. (a) The political subdivision shall, in consultation with the department, prepare a draft remedial action plan.

(b) Upon completion of the draft remedial action plan, the political subdivision shall send written notice to all responsible parties identified by the political subdivision, provide public notice and conduct a public hearing on the draft remedial action plan. The notice to responsible parties shall offer the person receiving the notice an opportunity to provide information regarding the status of that person or any other person as a responsible party, notice and a description of the public hearing and a description of the procedures in this section. At the public hearing, the political subdivision shall solicit testimony on whether the draft remedial action plan is the least costly method of meeting the standards for remedial action promulgated by the department by rule. The political subdivision shall accept written comments for at least 30 days after the close of the public hearing.

(c) Upon the conclusion of the period for written comment, the political subdivision shall prepare a preliminary remedial action plan, taking into account the written comments and comments received at the public hearing and shall submit the preliminary remedial action plan to the department for approval. The department may approve the preliminary remedial action plan as submitted or require modifications.

(3) OFFER TO SETTLE; SELECTION OF UMPIRE. (a) Upon receiving the department's approval of the preliminary remedial action plan, the political subdivi-

sion shall serve an offer to settle regarding the contribution of funds for investigation and remedial action at the site or facility on each of the responsible parties identified by the political subdivision, using the procedure for service of a summons under s. 801.11 and shall notify the department that the offer to settle has been served. The political subdivision shall include in the offer to settle all of the following information:

1. The amount of the offer and a rationale for the amount.

2. The names, addresses and contact persons, to the extent known, for all of the responsible parties identified by the political subdivision.

3. The location and availability of documents that support the claim of the political subdivision against the responsible party.

4. The location of the public repository where documents relating to the site or facility are maintained, the times during which the repository is open and the name and telephone number of the contact person at the repository.

5. A description of the procedures under this section.

(b) The department shall maintain a list of competent and disinterested umpires qualified to perform the duties under subs. (4) to (6). None of the umpires may be employes of the department. Upon receiving notice from a political subdivision under par. (a), the secretary or his or her designee shall select an umpire from the list and inform the political subdivision and responsible parties of the person selected.

(c) Within 10 days after receiving notice of the umpire selected by the department under par. (b), the political subdivision may notify the department that the umpire selected is unacceptable. Within 10 days after receiving notice of the umpire selected by the department under par. (b), a responsible party may notify the department that the umpire selected is unacceptable or that the responsible party does not intend to participate in the negotiation. Failure to notify the department that the umpire is unacceptable shall be considered acceptance. If all responsible parties identified by the political subdivision indicate that they do not intend to participate in the negotiation, the department shall inform the political subdivision and the political subdivision shall cease further action under this section.

(d) Upon receiving notice under par. (c) that the selected umpire is unacceptable, the secretary or his or her designee shall select 5 additional umpires from the list and inform the political subdivision and responsible parties of the persons selected.

(e) Within 10 days after receiving notice of the umpires selected by the department under par. (d), the political subdivision or a responsible party may notify the department that one or more of the umpires selected are unacceptable. Failure to notify the department shall be considered acceptance. The secretary or his or her designee shall select an umpire from among those umpires not identified as unacceptable by the political subdivision or a responsible party or, if all umpires are identified as unacceptable, the secretary or his or her designee shall designate a person to be umpire for the negotiation.

(4) NEGOTIATION PROCESS. (a) The umpire, immediately upon being appointed, shall contact the department, the political subdivision and the responsible parties that received the offer to settle and shall schedule the negotiating sessions. The umpire shall schedule the first negotiating session no later than 20 days after being appointed. The umpire may meet with all parties to the negotiation, individual parties or groups of parties. The umpire shall facilitate a discussion between the political subdivision and the responsible parties to attempt to reach an agreement on the design and implementation of the remedial action plan and the contribution of funds by the political subdivision and responsible parties.

(b) The umpire shall permit the addition to the negotiation, at any time, of any responsible party or any other person who wishes to be a party to the negotiated agreement.

(c) Negotiations may not continue for more than 60 days after the first negotiating session, unless an extension is approved by the department for cause, at the request of any party to the negotiation. The department shall approve an extension if necessary to settle insurance claims.

(d) The political subdivision and the responsible parties that participate in negotiations shall pay for the costs of the umpire, whether or not an agreement among the parties is reached under sub. (5) or the parties accept the recommendation of the umpire under sub. (6). The umpire shall determine an equitable manner of paying for the costs of the umpire, which is binding.

(5) AGREEMENT IN NEGOTIATION. The political subdivision and any of the responsible parties may enter into any agreement in negotiation regarding the design and implementation of the remedial action plan and the contribution of funds by the political subdivision and responsible parties for the investigation and remedial action. The portion of the agreement containing the design and implementation of the remedial action plan shall be submitted to the department for approval. The department may approve that portion of the agreement as submitted or require modifications.

(6) FAILURE TO REACH AGREEMENT IN NEGOTIATION. (a) If the political subdivision and any responsible parties are unable to reach an agreement under sub. (5) by the end of the period of negotiation, the umpire shall make a recommendation regarding the design and implementation of the remedial action plan and the contribution of funds for investigation and remedial action by the political subdivision and all responsible parties that were identified by the political

subdivision and that did not reach an agreement under sub. (5), whether or not the responsible parties participated in negotiations under sub. (4). The umpire shall submit the recommendation to the department for its approval within 20 days after the end of the period of negotiation under sub. (4) (c). The department may approve the recommendation as submitted or require modifications. The umpire shall distribute a copy of the approved recommendation to the political subdivision and all responsible parties identified by the political subdivision.

(b) The political subdivision and the responsible parties that did not reach an agreement under sub. (5) shall accept or reject the umpire's recommendation within 60 days after receiving it. Failure to accept or reject the recommendation within 60 days shall be considered rejection of the recommendation. If the political subdivision rejects the recommendation with respect to any responsible party, the recommendation does not apply to that responsible party. If a responsible party rejects the recommendation, it does not apply to that responsible party.

(7) RESPONSIBLE PARTIES SUBJECT TO AN AGREEMENT OR RECOMMENDATION. A responsible party that enters into an agreement under sub. (5) with a political subdivision or that accepts the umpire's recommendation under sub. (6), if the political subdivision does not reject the recommendation, is required to comply with the agreement or recommendation. When the responsible party has complied with the agreement or recommendation, the responsible party is not liable to the state, including under s. 144.442 (9) or 144.76 (7) (b), or to the political subdivision for any additional costs of the investigation or remedial action; the responsible party is not liable to any other responsible party for contribution to costs incurred by any other responsible party for the investigation or remedial action; and the responsible party is not subject to an order under s. 144.76 (7) (c) for the discharge that is the subject of the agreement or recommendation.

(8) RESPONSIBLE PARTIES NOT SUBJECT TO OR NOT COMPLYING WITH AN AGREEMENT OR RECOMMENDATION. (a) In this subsection:

1. "Interest" means interest at the annual rate of 12%, commencing on the date of the umpire's recommendation under sub. (6) or, if there is no umpire's recommendation, on the date of the agreement under sub. (5).

2. "Litigation expenses" means the sum of the costs, disbursements and expenses, including engineering fees and, notwithstanding s. 814.04 (1), reasonable attorney fees necessary to prepare for or participate in proceedings before any court.

(b) A political subdivision is entitled to recover litigation expenses and interest on the judgment against a responsible party if any of the following occurs:

1. The political subdivision accepts the recommendation of an umpire under sub. (6), the responsible party rejects it and the political subdivision recovers a judgment under sub. (9) against that responsible party that equals or exceeds the amount of the umpire's recommendation.

2. The political subdivision and the responsible party enter into an agreement under sub. (5) or accept the umpire's recommendation under sub. (6), the responsible party does not comply with the requirements of the agreement or recommendation and the political subdivision recovers a judgment against that responsible party based on the agreement or recommendation.

(c) A responsible party is entitled to recover litigation expenses from a political subdivision if the responsible party accepts the recommendation of an umpire under sub. (6), the political subdivision rejects the recommendation of the umpire under sub. (6) with respect to the responsible party, the political subdivision institutes an action under sub. (9) against the responsible party and the political subdivision recovers a judgment under sub. (9) against the responsible party that is equal to or less than the amount of the umpire's recommendation.

(9) LIABILITY FOR REMEDIAL ACTION COSTS. (a) 1. This subsection applies only to a site or facility that satisfies the applicability provisions of sub. (2) and for which the remedial action specified in an agreement under sub. (5) or a recommendation under sub. (6) is completed.

(b) 1. Except as provided in pars. (bm), (br) and (e), sub. (7) and s. 144.76 (9m) and (9s), a responsible party is liable for a portion of the costs, as determined under pars. (c) to (e), incurred by a political subdivision for remedial action in an agreement under sub. (5) or a recommendation under sub. (6) and for any related investigation. A right of action shall accrue to a political subdivision against the responsible party for costs listed in this subdivision.

2. Except as provided in pars. (bm), (br) and (e), sub. (7) and s. 144.76 (9m) and (9s), a responsible party is liable for a portion of any unreimbursed costs, as determined under pars. (c) to (e), incurred by this state in approving and supervising a remedial action funded under s. 144.442 (9m) (c) and for the costs of a grant under s. 144.442 (9m) (c). A right of action shall accrue to this state against the responsible party for costs listed in this subdivision.

(bm) Paragraph (b) does not apply with respect to a discharge if the discharge was in compliance with a permit license, approval, special order, waiver or variance issued under ss. 144.30 to 144.426 or ch. 147 or under corresponding federal statutes or regulations.

(br) Paragraph (b) applies with respect to a transporter only if the transporter does any of the following:

1. Selects the site or facility where the hazardous substance is disposed of without direction from the generator.

2. Violates an applicable statute, rule, plan approval or special order in effect at the time the

disposal occurred and the violation causes or contributes to the condition at the site or facility.

3. Causes or contributes to the condition at the site or facility by an action related to the disposal that would result in liability under common law in effect at the time the disposal occurred, based on standards of conduct for the transporter at the time the disposal occurred.

(c) The liability of each party to the action to recover costs under par. (b) is limited to a percentage of the cost of the remedial action that is determined by dividing the percentage of that party's contribution to the environmental pollution resulting from the disposal or discharge of a hazardous substance at the site or facility by the percentage of contribution of all responsible parties to the environmental pollution resulting from the disposal or discharge of a hazardous substance at the site or facility. Section 895.045 does not apply to this paragraph.

(cm) Notwithstanding par. (c), if 2 or more parties act in accordance with a common scheme or plan, those parties are jointly and severally liable for the total contribution of all parties involved in the common scheme or plan.

(d) The finder of fact shall apportion the contribution of each responsible party to the environmental pollution resulting from the disposal or discharge of hazardous substances at the site or facility for the purposes of par. (c), using the following criteria, and any other appropriate criteria:

1. The ability of the responsible parties to demonstrate that their contribution to the environmental pollution resulting from the disposal or discharge of hazardous substances can be distinguished from the contribution of other responsible parties.

2. The amount of hazardous substances involved.

3. The degree of toxicity of the hazardous substances involved.

4. The degree of involvement by the responsible parties in the generation, transportation, treatment, storage, disposal or discharge of the hazardous substances.

5. The degree of cooperation by the responsible parties with federal, state or local officials to prevent or minimize harm to the public health or the environment.

6. The degree of care exercised by the parties with respect to the hazardous substance, taking into account the characteristics of the hazardous substance.

(e) A responsible party is not liable under par. (b) if the responsible party establishes by a preponderance of the evidence that the responsible party's contribution to the environmental pollution resulting from the disposal or discharge of hazardous substances was caused solely by any of the following:

1. An act of God.

2. An act of war.

3. An act or omission of a 3rd party, other than an officer, director, employe or agent of the responsible party, or other than a person whose act or omission occurs in connection with a direct or indirect contractual relationship with the responsible party if all of the following apply:

a. The responsible party establishes by a preponderance of the evidence that the responsible party exercised due care with respect to the hazardous substances that caused environmental pollution.

b. In exercising due care under subd. 3. a., the responsible party took into consideration the characteristics of the hazardous substances, in light of all relevant facts and circumstances.

c. The responsible party took precautions against foreseeable acts or omissions of the 3rd party and the consequences that could foreseeably result from those acts or omissions.

(f) Any responsible party may seek contribution from any other responsible party. Such a contribution claim may be brought as a separate action or may be brought in the action commenced against the responsible party under this section.

(10) TECHNICAL ASSISTANCE. The department shall provide technical assistance to an umpire at the request of the umpire. The department may limit the amount of staff time allocated to each negotiation.

(11) LIABILITY. Except as provided in sub. (7), no common law liability, and no statutory liability that is provided in other statutes, for damages resulting from a site or facility is affected in any manner by this section. The authority, power and remedies provided in this section are in addition to any authority, power or remedy provided in any other statutes or provided at common law.

(13) FEES. The department may, by rule, assess and collect fees to offset the cost of the department's activities under this section. The fees may include an advance deposit, from which the department shall return the amount in excess of the cost of the department's activities under this section.

SECTION 32. 144.76 (1) (b), (bm) and (d) of the statutes are created to read:

144.76 (1) (b) "Lender" means a bank, credit union, savings bank, savings and loan association, mortgage banker or similar financial institution, the primary business of which is to engage in lending activities or an insurance company, pension fund or government agency engaged in secured lending.

(bm) "Lending activities" means advancing funds or credit to and collecting funds from another person; entering into security agreements, including executing mortgages, liens, factoring agreements, accounts receivable financing arrangements, conditional sales, sale and leaseback arrangements and instalment sales contracts; conducting inspections of or monitoring a borrower's business and collateral; providing financial assistance; restructuring or renegotiating the terms of a loan obligation; requiring payment of addi-

tional interest; extending the payment period of a loan obligation; initiating foreclosure or other proceedings to enforce a security interest in property before obtaining title; requesting and obtaining the appointment of a receiver; and making decisions related to extending or refusing to extend credit.

(d) "Representative" means any person acting in the capacity of a conservator, guardian, court-appointed receiver, personal representative, executor, administrator, testamentary trustee of a deceased person, trustee of a living trust or fiduciary of real or personal property.

SECTION 33. 144.76 (9) (e) of the statutes is created to read:

144.76 (9) (e) 1. In this paragraph, "municipality" includes a redevelopment authority under s. 66.431 or a public body designated by a municipality under s. 66.435 (4).

1m. A municipality is exempt from subs. (3), (4) and (7) (b) and (c) with respect to property acquired by the municipality before, on or after the effective date of this subdivision .... [revisor inserts date], in any of the following ways:

a. Through tax delinquency proceedings or as the result of an order by a bankruptcy court.

b. From a municipality that acquired the property under a method described in subd. 1m. a.

2. Subdivision 1m does not apply to a discharge of a hazardous substance caused by any of the following:

a. An action taken by the municipality.

b. A failure of the municipality to take appropriate action to restrict access to the property in order to minimize costs or damages that may result from unauthorized persons entering the property.

c. A failure of the municipality to sample and analyze unidentified substances in containers stored aboveground on the property.

d. A failure of the municipality to remove and properly dispose of, or to place in a different container and properly store, any hazardous substance stored aboveground on the property in a container that is leaking or is likely to leak.

SECTION 34. 144.76 (9m) and (9s) of the statutes are created to read:

144.76 (9m) RESPONSIBILITY OF LENDERS; LENDING ACTIVITIES; ACQUISITION OF PROPERTY. (a) *Lending.* 1. Subject to subd. 2 and par. (b), for purposes of this chapter, a lender does not possess or control a hazardous substance or cause the discharge of a hazardous substance as a result of engaging in lending activities.

2. Subdivision 1 does not apply in any of the following situations:

a. A lender physically causes a discharge.

b. The lender through tortious conduct with respect to lending activities causes a discharge of a hazardous substance or exacerbates an existing discharge of a hazardous substance.

3. The department may, by rule, designate as lending activities other activities, in addition to those listed in sub. (1) (bm), that are related to undertaking appropriate actions to preserve and protect property or are related to the advancing of funds or credit or the collecting of funds.

(b) *Preacquisition inspections of real property.* For purposes of this chapter, a lender does not possess or control a hazardous substance or cause the discharge of a hazardous substance as the result of inspecting real property for compliance with environmental laws, conducting any portion of an environmental assessment of the property in the manner specified in par. (c) 2, conducting an investigation to determine the degree and extent of contamination or performing remedial action to clean the discharge of a hazardous substance. This paragraph applies to a lender only if all of the following conditions are satisfied:

1. The activities described in this paragraph occur before the date on which the lender acquires title to, or possession or control of, real property through enforcement of a security interest.

2. The lender notifies the department, in accordance with sub. (2), of any discharge of a hazardous substance identified as the result of activities described in this paragraph.

3. If the lender conducts an investigation or performs remedial action, the lender does so in accordance with department rules.

4. The lender does not physically cause a discharge.

5. The lender through tortious conduct with respect to the activities described in this paragraph does not cause a new discharge of a hazardous substance or exacerbate an existing discharge of a hazardous substance.

(c) *Acquisition of real property.* 1. A lender that acquires title to, or possession or control of, real property through enforcement of a security interest is not subject to subs. (3), (4) and (7) (b) and (c) and is not liable under this chapter for a discharge of a hazardous substance on that real property if all of the following conditions are satisfied:

a. The lender, through action or inaction, does not intentionally or negligently cause a new discharge of a hazardous substance or exacerbate an existing discharge of a hazardous substance.

b. Any discharge of a hazardous substance was not from an underground storage tank regulated under 42 USC 6991 to 6991i.

c. The lender notifies the department, in accordance with sub. (2), of any known discharge of a hazardous substance.

d. The lender conducts an environmental assessment of the real property in accordance with subd. 2 not more than 90 days after the date the lender acquires title to, or possession or control of, the real property and files a complete copy of the environmental assessment with the department not more than 180

days after the date the lender acquires title to, or possession or control of, the real property.

e. For a hazardous substance released on or after the date on which the lender acquires title to, or possession or control of, the real property, the lender is not engaged in the operation of a business at the property, completion of work in progress or other actions associated with conducting the conclusion of the borrower's business.

f. If the discharge of a hazardous substance occurs on or after the date on which the lender acquires title to, or possession or control of, the real property, the lender implements an emergency response action in response to the discharge of the hazardous substance.

2. The environmental assessment under subd. 1. d. shall be performed by a qualified environmental technician or consultant and shall include all of the following:

a. A visual inspection of the real property.

b. A visual inspection and description of the personal property located on the real property that may constitute a hazardous waste or hazardous substance or that has a significant risk of being discharged.

c. A review of the ownership and use history of the real property, including a search of title records showing prior ownership of the real property for a period of 80 years previous to the date of the visual inspection under subd. 2. b.

d. A review of historic and recent aerial photographs of the real property, if available.

e. A review of the environmental licenses, permits or orders issued with respect to the real property.

f. An evaluation of the results of any environmental sampling and analysis that has been conducted.

g. A review to determine if the real property is listed in any of the written compilations of sites or facilities considered to pose a threat to human health or the environment, including the national priorities list under 42 USC 9605 (a) (8) (B); the federal environmental protection agency's information system for the comprehensive environmental response, compensation and liability act, 42 USC 9601 to 9675, (CERCLIS); the department's most recent Wisconsin remedial response site evaluation report, including the inventory of sites or facilities which may cause or threaten to cause environmental pollution required by s. 144.442 (4) (a); and the department's registry of abandoned landfills.

h. The collection and analysis of representative samples of soil or other materials in the ground that are suspected of being contaminated based on observations made during a visual inspection of the real property or based on aerial photographs, or other information available to the lender, including stained or discolored soil or other materials in the ground and including soil or materials in the ground in areas with dead or distressed vegetation. The collection and analysis shall identify contaminants in the soil or other materials in the ground and shall quantify concentrations.

i. The collection and analysis of representative samples of unknown wastes or potentially hazardous substances found on the real property and the determination of concentrations of hazardous waste and hazardous substances found in tanks, drums or other containers or in piles or lagoons on the real property.

3. An environmental assessment filed under subd. 1. d. does not constitute notice required under sub. (2).

(d) *Personal property and fixtures.* A lender that enforces a security interest in personal property or fixtures at a particular location, filed under ch. 409, and that does not acquire title to, or possession or control of, the real property at that location, except for purposes of protecting and removing personal property or fixtures, is not subject to subs. (3), (4) and (7) (b) and (c) and is not liable under this chapter for a discharge of a hazardous substance on that real property if all of the following conditions are satisfied:

1. Not more than 30 days after entry onto the real property where the personal property or fixtures are located, the lender notifies the department and the borrower of any decision not to accept specific personal property or fixtures.

2. Not more than 30 days after entry onto the real property where the personal property or fixtures are located, the lender provides the department with a written general description of the personal property or fixtures, the location of the personal property or fixtures on the real property and the location of the real property by street address.

3. The lender, within its ability to do so, permits reasonable access to the personal property or fixtures to the department or the borrower or others acting on the borrower's behalf.

4. The lender does not engage in the operation of a business at the location of the personal property or fixtures, completion of work in progress or other actions associated with conducting the conclusion of the borrower's business except for actions that are undertaken to protect the property and are approved by the department in writing.

(e) *Rules; approvals.* The department may promulgate rules further specifying the activities to be carried out by a lender for the environmental assessment required under par. (c) 1. d. The department may not, by rule, require a lender to undertake sampling and analysis beyond that required under par. (c) 2. h. and i. in order to determine the degree and extent of contamination or require a lender to perform any remedial action to clean any discharge. The department may approve, by rule or in a site-specific approval, the use of reliable methods of identification other than the collection and laboratory analysis of samples.

(9s) RESPONSIBILITY OF REPRESENTATIVES. (a) A representative who acquires title to, or possession or control of, real or personal property is not personally

liable under this chapter for a discharge of a hazardous substance if all of the following circumstances apply:

1. The representative acquires title to, or possession or control of, the real or personal property in the capacity of a representative.

2. The representative, through action or inaction, does not knowingly, wilfully or recklessly cause a discharge of a hazardous substance.

3. The representative does not physically cause a discharge of a hazardous substance.

4. The representative does not have a beneficial interest in a trust, estate or similar entity that owns, possesses or controls the real or personal property.

5. The representative does not knowingly, wilfully or recklessly fail to notify the department in accordance with sub. (2) of the discharge of a hazardous substance.

(b) Paragraph (a) does not apply to any of the following:

1. A representative that knew or should have known that the trust, estate or similar entity for which the representative is acting as a representative was established, or that assets were transferred to the trust, estate or similar entity, in order to avoid responsibility for a discharge of a hazardous substance.

2. A representative that fails to act in good faith to cause the trust, estate or similar entity for which the representative is acting as a representative to take the actions described in sub. (3) or to reimburse the department under sub. (7) (b). It is not a lack of good faith for a representative to resign as representative, to seek a court order directing the representative to act or refrain from acting or to challenge the department by any legal means.

(c) This subsection does not limit the responsibility of any trust, estate or similar entity to take the actions required under sub. (2), (3), (4) or (7) (c) or any other provision of this chapter or to reimburse the department under sub. (7) (b).

SECTION 35. 144.76 (13) of the statutes is created to read:

144.76 (13) NOTICE; LIEN. (a) In this subsection, "valid prior lien" means a purchase money real estate mortgage that is recorded before the lien is filed under this paragraph, including any extension or refinancing of that purchase money mortgage, or an equivalent security interest, or a 2nd or subsequent mortgage for home improvement or repair that is recorded before the lien is filed under this paragraph, including any extension or refinancing of that 2nd or subsequent mortgage.

(b) 1. Before incurring expenses under this section or s. 144.442 (4), (6) or (8) or 144.77 (4) with respect to a property, the department shall provide to the current owner of the property and to any mortgagees of record a notice containing all of the following:

a. A brief description of the property for which the department expects to incur expenses under this section or s. 144.442 (4), (6) or (8) or 144.77 (4).

b. A brief description of the types of activities that the department expects may be conducted at the property under this section or s. 144.442 (4), (6) or (8) or 144.77 (4).

c. A statement that the property owner could be liable for the expenses incurred by the department.

d. A statement that the department could file a lien against the property to recover the expenses incurred by the department.

e. An explanation of whom to contact in the department to discuss the matter.

2. The department shall provide notice under subd. 1 by certified mail, return receipt requested, to the property owner and to each mortgagee of record at the addresses listed on the recorded documents. If the property owner is unknown or if a mailed notice is returned undelivered, the department shall provide the notice by publication thereof as a class 3 notice under ch. 985.

3. The failure to provide the notice or include information required under this paragraph does not impair the department's ability to file a lien or to seek to establish the property owner's liability for the expenses incurred by the department.

4. No notice under this paragraph is necessary in circumstances in which entry onto the property without prior notice is authorized under sub. (8) or under s. 144.77 (5).

(c) Any expenditures made by the department under this section, under s. 144.442 (4), (6) or (8) or, subject to s. 144.77 (6) (d), under s. 144.77 (4) shall constitute a lien upon the property for which expenses are incurred if the department files the lien with the register of deeds in the county in which the property is located. A lien under this subsection shall be superior to all other liens that are or have been filed against the property, except that if the property is residential property, as defined in s. 895.52 (1) (i), the lien may not affect any valid prior lien on that residential property.

(d) 1. Before filing a lien under par. (c), the department shall give the owner of the property for which the expenses are incurred a notice of its intent to file the lien, as provided in this paragraph.

2. The notice required under subd. 1 shall provide all of the following:

a. A statement of the purpose of the lien.

b. A brief description of the property to be affected by the lien.

c. A statement of the expenses incurred by the department.

e. The date on or after which the lien will be filed.

3. The department shall serve the notice required in subd. 1 on the property owner at least 60 days before filing the lien. The notice shall be provided by certi-

fied mail, return receipt requested, to the property owner and to each mortgagee of record at the addresses listed on the recorded documents. If the property owner is unknown or if a mailed notice is returned undelivered, the department shall provide the notice by publication thereof as a class 3 notice under ch. 985.

4. In the foreclosure of any lien filed under this paragraph, ch. 846 shall control as far as applicable unless otherwise provided in this paragraph. All persons who may be liable for the expenses incurred by the department may be joined as defendants. The judgment shall adjudge the amount due the department, and shall direct that the property, or so much of the property as is necessary, be sold to satisfy the judgment, and that the proceeds be brought into court with the report of sale to abide the order of the court. If the sum realized at the sale is insufficient after paying the costs of the action and the costs of making the sale, the court shall determine the liability of the defendants for the remaining unreimbursed expenses and costs.

5. This paragraph does not apply if the lien is filed after the department obtains a judgment against the property owner and the lien is for the amount of the judgment.

SECTION 36. 144.765 of the statutes is created to read:

144.765 Remediated property; purchaser liability. (1) DEFINITIONS. In this section:

(a) "Discharge" has the meaning given in s. 144.76 (1) (a).

(b) "Owner of a business or entity" means any person who owns or who receives direct or indirect consideration from the operation of a business or entity regardless of whether the business or entity remains in operation and regardless of whether the person owns or receives consideration at the time any discharge of a hazardous substance occurs. "Owner of a business or entity" includes a subsidiary or parent corporation.

(c) "Purchaser" means a person who acquires property in an arm's-length, good faith transaction and to whom all of the following apply:

1. The person did not participate in the management of, and was not the owner of, a business or entity that caused the release of a hazardous substance on the property.

2. The person did not own the property at the time a hazardous substance was released.

3. The person did not otherwise cause the release of a hazardous substance on the property.

(d) "Release" means the original discharge.

(e) "Subsidiary or parent corporation" means any business entity, including a subsidiary, parent corporation or other business arrangement that has elements of common ownership or control or uses a long-term contractual arrangement with any person that has the effect of avoiding direct responsibility for conditions on a parcel of property.

(2) EXEMPTION FROM LIABILITY. (a) A purchaser is exempt from the provisions of s. 144.76 (3), (4) and (7) (b) and (c) with respect to the existence of a hazardous substance on the property the release of which occurred prior to the date of acquisition of the property, if all of the following occur at any time before or after the date of acquisition:

1. The purchaser conducts a thorough environmental investigation of the property that is approved by the department or the person from whom the purchaser acquires the property conducts a thorough environmental investigation of the property under a contract with the purchaser and the investigation is approved by the department.

2. Except as provided in sub. (4), the purchaser cleans up the property by restoring the environment and minimizing the harmful effects from a release of a hazardous substance in accordance with rules promulgated by the department and any contract entered into under those rules.

3. The purchaser obtains a certification from the department that the property has been satisfactorily restored and that the harmful effects from a release of a hazardous substance have been minimized.

4. The purchaser maintains and monitors the property as required under rules promulgated by the department and any contract entered into under those rules.

5. The purchaser does not engage in activities that are inconsistent with the maintenance of the property.

6. The purchaser has not obtained the certification under subd. 3 by fraud or misrepresentation, by the knowing failure to disclose material information or under circumstances in which the purchaser knew or should have known about more environmental pollution than was revealed by the investigation conducted under subd. 1.

(b) The exemption provided in par. (a) continues to apply after the date of certification by the department under par. (a) 3 notwithstanding the occurrence of any of the following:

1. Statutes, rules or regulations are created or amended that would impose greater responsibilities on the purchaser than those imposed under par. (a) 2.

2. The purchaser fully complies with the rules promulgated by the department and any contract entered into under those rules under par. (a) 2 but it is discovered that the cleanup fails to fully restore the environment and minimize the effects from a release of a hazardous substance.

3. The contamination from a hazardous substance that is the subject of the cleanup under par. (a) 2 is discovered to be more extensive than anticipated by the purchaser and the department.

(c) The department of justice may not commence an action under 42 USC 9607 against any purchaser meeting the criteria of this subsection to recover costs for which the purchaser is exempt under pars. (a) and (b).

(3) SUCCESSORS AND ASSIGNS. The exemption provided in sub. (2) applies to any successor or assignee of the purchaser who complies with the provisions of sub. (2) (a) 4 and 5 unless the successor or assignee knows that a certification under sub. (2) (a) 3 was obtained by any of the means or under any of the circumstances specified in sub. (2) (a) 6.

(4) LIMITED RESPONSIBILITY. The responsibility of a purchaser under sub. (2) (a) 2 may be monetarily limited by agreement between the purchaser and the department if the purchaser purchased the property from a municipality that acquired the property in a way described in s. 144.76 (9) (e) 1. a. or b. The agreement shall stipulate all of the following:

(a) That the purchaser may cease the cleanup when the cost of the cleanup equals 125% of the anticipated expense of the cleanup.

(b) That the purchaser will continue to receive the benefit of the exemption under sub. (2) (a) after cessation of the cleanup if the purchaser complies with sub. (2) (a) 4 and 5.

(c) That, if the purchaser ceases the cleanup, the purchaser shall use reasonable efforts to sell the property in accordance with rules of the department that define "reasonable efforts" in a manner substantively equivalent to 40 CFR 300.1100 (d) (2) (i).

(5) FEES. The department may, in accordance with rules that it promulgates, assess and collect fees from a purchaser to offset the cost of the department's activities under subs. (2) and (4). The fees may include an advance deposit, from which the department shall return the amount in excess of the cost of the department's activities under subs. (2) and (4).

SECTION 37. 144.77 (6) (d) of the statutes is created to read:

144.77 (6) (d) Any expenditures made by the department under sub. (4) shall constitute a lien upon the property for which the expenses are incurred, as provided in s. 144.76 (13), if the department is entitled to recover the expenditures from the property owner under par. (c).

SECTION 38. 214.495 (1) of the statutes is amended to read:

214.495 (1) A mortgage taken and recorded by a savings bank shall have priority over all liens, except tax and special assessment liens and liens under ss. 144.442 (9) (i), 144.76 (13) and 144.77 (6) (d), upon the mortgaged premises and the buildings and improvements thereon, that are filed after the recording of the mortgage.

SECTION 39. 215.21 (4) (a) of the statutes is amended to read:

215.21 (4) (a) All mortgages described in this section shall have priority over all liens, except tax and special assessment liens and liens under ss. 144.442 (9) (i), 144.76 (13) and 144.77 (6) (d), upon the mortgaged premises and the buildings and improvements thereon, which shall be filed subsequent to the recording of such mortgage.

SECTION 40. 703.16 (6) (e) of the statutes is created to read:

703.16 (6) (e) A lien under s. 144.442 (9) (i), 144.76 (13) or 144.77 (6) (d).

SECTION 41. 706.11 (1) (intro.) of the statutes is amended to read:

706.11 (1) (intro.) Except as provided in sub. (4), when any of the following mortgages has been duly recorded, it shall have priority over all liens upon the mortgaged premises and the buildings and improvements thereon, except tax and special assessment liens filed after the recording of such mortgage and except liens under s. 144.442 (9) (i), 144.76 (13) and 144.77 (6) (d):

SECTION 42. 707.37 (4) (d) of the statutes is created to read:

707.37 (4) (d) A lien under s. 144.442 (9) (i), 144.76 (13) or 144.47 (6) (d).

SECTION 43. 779.01 (4) of the statutes is amended to read:

779.01 (4) PRIORITY OF CONSTRUCTION LIEN. The lien provided in sub. (3) shall be prior to any lien which originates subsequent to the visible commencement in place of the work of improvement, except as otherwise provided by ss. 144.442 (9) (i), 144.76 (13), 144.76 (6) (d), 215.21 (4) (a) and 706.11 (1). When new construction is the principal improvement involved, commencement is deemed to occur no earlier than the beginning of substantial excavation for the foundations, footings or base of the new construction, except where the new construction is to be added to a substantial existing structure, in which case the commencement is the time of the beginning of substantial excavation or the time of the beginning of substantial preparation of the existing structure to receive the added new construction, whichever is earlier. The lien also shall be prior to any unrecorded mortgage given prior to the commencement of the work of improvement, if the lien claimant has no actual notice of the mortgage before the commencement. Lien claimants who perform work or procure its performance or furnish any labor or materials or plans or specifications for an improvement prior to the visible commencement of the work of improvement shall have lien rights, but shall have only the priority accorded to other lien claimants.

SECTION 44. 779.35 of the statutes is amended to read:

779.35 Mining liens. Any person who shall perform any labor or services for any person or corporation engaged in or organized for the purpose of mining, smelting or manufacturing iron, copper, silver or other ores or minerals, and any bona fide holder of any draft, time check or order for the payment of money due for any such labor, issued or drawn by any such person or corporation, shall have a lien for the wages due for the amount due on such draft, check or order upon all the personal property connected with such mining, smelting or manufacturing industry

belonging to such person or corporation, including the ores or products of such mine or manufactory, together with the machinery and other personal property used in the operation of such mine or manufactory and all the interest of such person or corporation in any real estate belonging thereto and connected with such business, which said lien shall take precedence of all other debts, judgments, decrees, liens or mortgages against such person or corporation, except liens accruing for taxes, fines or penalties and liens under ss. 144.442 (9) (i), 144.76 (13) and 144.77 (6) (d), subject to the exceptions and limitations hereinafter set forth.

SECTION 45. 779.40 (1) of the statutes is amended to read:

779.40 (1) Any person who shall perform any labor for an employer not the owner of the real estate, engaged in quarrying, crushing, cutting or otherwise preparing stone for use or for manufacturing lime and any bona fide holder of any draft, time check or order for the payment of money due for any such labor issued by such employer, shall have a lien for wages owed and for the amount due on such draft, check or order upon the personal property connected with such industry owned by such employer, including interest in the product of such quarry or factory and machinery and other personal property used in the operation of such quarry or factory, and all interest in any lease of the real estate connected with such business, which lien shall take precedence of all other debts, judgments, decrees, liens or mortgages against such employer, except taxes, fines or penalties and mortgages or judgments recorded or entered before such labor is performed and except liens under ss. 144.442 (9) (i), 144.76 (13) and 144.76 (6) (d).

SECTION 46. 823.115 (1) of the statutes is amended to read:

823.115 (1) If personal and real property are ordered sold under s. 823.114, and the real property is not released to the owner under s. 823.15, the plaintiff in the action under s. 823.113 shall sell the property at the highest available price. The city, town or village may sell the property at either a public or private sale. The proceeds of the sale shall be applied to the payment of the costs of the action and abatement and any liens on the property, and the balance, if any, paid as provided in sub. (2). The plaintiff may file a notice of the pendency of the action as in actions affecting the title to real estate and if the owner of the building or structure, or the owner of the land upon which the building or structure is located, is found guilty of the nuisance, the judgment for costs of the action not paid out of the proceeds of the sale of the property shall constitute a lien on the real estate prior to any other lien created after the filing of the lis pendens, except a lien under s. 144.442 (9) (i), 144.76 (13) or 144.77 (6) (d).

SECTION 47. **Nonstatutory provisions; legislature.** (1) JOINT LEGISLATIVE COUNCIL STUDY; REMEDIAL ACTION. The joint legislative council is requested to study the means by which the state can increase the number of environmentally contaminated sites that are cleaned and returned to productive use, to study the need for political subdivisions to obtain liens for the cost of investigating privately owned contaminated land, to study the potential methods of paying for remedial action on contaminated land attributable to responsible parties that are insolvent or that no longer exist, and to study issues relating to liability under state law for the costs of remedial action on environmentally contaminated sites, considering the series of rules under chapter NR 700, Wisconsin administrative code, and the reauthorization of 42 USC 9601 to 9675 (CERCLA).

(2) JOINT LEGISLATIVE COUNCIL STUDY; CHAPTER 144 OF THE STATUTES. The joint legislative council is requested to recodify chapter 144 of the statutes.

(3) REPORT. The joint legislative council is requested to submit its findings, conclusions and recommendations under subsections (1) and (2) by January 15, 1995, to the legislature in the manner provided in section 13.172 (2) of the statutes.

SECTION 48. **Nonstatutory provisions; funding proposal.** The department of natural resources and the department of administration shall jointly study possible means for funding a contaminated lands loan program to cover the costs of remedial action on contaminated lands attributable to responsible parties that cannot be identified, are insolvent or no longer exist. The study shall consider the possibility of using the clean water fund program under sections 144.241 and 144.2415 of the statutes or the segregated environmental fund as well as other revenue sources for this purpose. The departments shall jointly submit their findings, conclusions and recommendations to the legislature in the manner provided in section 13.172 (2) of the statutes.

Vetoed in Part

SECTION 49. **Nonstatutory provisions; natural resources.** (1) EXPENDITURE LIMITATION. The department of natural resources may not expend any funds appropriated under section 20.370 (4) (dc) of the statutes, as created by this act, for the 1993-95 fiscal biennium until it promulgates rules for the grant program under section 144.442 (9m) of the statutes, as created by this act and the joint committee on finance authorizes the department to begin expending the funds.