

To: Joint Committee on Finance  
From: Bob Lang, Director  
Legislative Fiscal Bureau

## ISSUE

### Nonpoint Source Program Funding (DNR -- Water Quality)

[LFB Summary: Page 437, #2]

## CURRENT LAW

DNR is provided \$6,363,600 GPR and \$6,705,300 SEG in base level funding for the nonpoint source water pollution abatement program for aids to local units of government for priority watershed project administration and cost-share grants to landowners and certain governmental units for the installation of water pollution abatement and conservation practices. In addition, \$20.0 million in general obligation bonding has been authorized for nonpoint source water pollution abatement grants, of which approximately \$18.6 million has been expended. The bonding provided the program is limited to cost-share grants for the installation of water pollution abatement or conservation practices and cannot be used for local program administration.

## GOVERNOR

Delete base GPR funding of \$6,363,600 in 1997-98 for the nonpoint source water pollution abatement program. Instead, provide an additional \$12,363,000 in general obligation bonding authority, of which \$2.0 million would be designated for projects selected after July 1, 1998.

Further, limit the program's GPR appropriation (\$6,363,600 in 1998-99) to the provision of nonpoint source cost share grants only, rather than both cost share grants and local assistance grants. The bill would also provide \$6,505,300 SEG annually from the nonpoint account of the environmental fund which would be available for local administration and cost share grants.

## **DISCUSSION POINTS**

### **Background**

1. The nonpoint source water pollution abatement program provides grants to local units of government for: (a) priority watershed project administration; and (b) 50-70% cost share grants to landowners and communities in priority watersheds to install water pollution abatement practices and structures.

2. Large scale watershed projects generally take at least ten years to complete, excluding planning efforts prior to selection. The first two years following project selection is the project planning phase in which local assistance grants are made available for county and/or municipal administration of the watershed. Among other activities, local officials plan watershed projects, contract with landowners, assist in the design and installation of practices, conduct demonstrations and train staff. Local assistance grant awards for implementation and administration of the project are made throughout the remaining years of the project. Beginning in the third year of a project, landowners can sign-up for cost-sharing awards for the installation of practices such as manure storage facilities and barnyard roofs and contour strips on cropland to reduce nonpoint pollution runoff. The cost-sharing grant awards are available from the third year through the tenth year of a project. However, some projects have been extended and cost-sharing awards have been made for additional years.

### **Program Funding**

3. Local governmental units (primarily counties) are advanced funds to meet anticipated cost share grant expenditures in a watershed project. As the advanced funds are expended, DNR reimburses the county's or the local government unit's advance account. During the final years of the project, DNR does not reimburse the advance funds provided each project, and the advanced funds are spent down.

4. Approximately 66 large scale priority watershed projects and 20 priority lake projects could receive funding during the 1997-99 biennium. The bill would provide \$29.8 million in funding for existing projects as follows: \$6.5 million SEG annually from the nonpoint account of the environmental fund; \$6.4 million GPR in 1998-99; and \$10.4 million in bonding. The bill would also provide \$2.0 million in general fund-supported bonding that would be restricted to new projects identified during the biennium.

5. DNR indicates that the nonpoint source pollution abatement program expenditures for existing watersheds could be as high as \$40.8 million for the 1997-99 biennium. However, in a November, 1996, report to the Land and Water Conservation Board (LWCB), DNR indicated that the amount of funding needed in the biennium could be reduced by \$10.7 million to \$30.1 million as follows: (a) \$1.0 million associated with encumbrances that will be carried into the 1997-99 biennium; (b) \$3.0 million, by eliminating advances to counties or local governments

for cost share grants (a reimbursement approach would be used); and (c) \$5.7 million program savings primarily associated with ending selected priority watershed and lake projects; and (d) \$1.0 million in federal Clean Water Act section 319 grants.

6. The following table lists the estimated program need and the funding available in the biennium under the bill.

**Estimated Nonpoint Program Expenditures  
1997-99 (millions)**

SB 77 Funding	\$29.8
Estimated Expenditures	40.8
Less adjustments:	
reduced advances	-3.0
carryover encumbrances	-1.0
ending projects	-5.7
federal Clean Water Act funds	-1.0
Adjusted Expenditure Estimate	30.1
Remaining Funding	-\$0.3

7. By eliminating advances to counties, DNR would require counties to spend down the estimated \$4.0 million in advance account balances. After the funds in the advance accounts are depleted, the program would be administered as a reimbursement program in that counties would be required to fund cost share agreements and then submit the claims for reimbursement. It should be noted that not all counties or local governments have a balance in their advance accounts, and therefore, such counties or local governments would be on a reimbursement approach at an earlier date.

8. DNR is currently in the process of identifying watershed and lake projects that could be ended. Further, other provisions in the bill would require DNR and DATCP to review existing watershed projects and recommend those to be re-identified by the Board as a priority project. Under the provisions, if a watershed or lake currently designated as priority (except those statutorily designated) is not re-identified by the LWCB, the priority watershed or lake project would be terminated. If a project is terminated, the LWCB would be required to review the status of the project and direct DNR to continue, modify or eliminate funding for that watershed or lake project.

9. DNR has also indicated that program costs could also be reduced by better coordinating county activities with federal programs such as the United States Department of Agriculture's (USDA) environmental quality incentive program (EQIP). USDA is in the process of issuing final rules on the EQIP program, which would provide \$4.2 million in federal funding for cost share grants to landowners in Wisconsin. The EQIP program replaces the agricultural conservation program (ACP), and the water quality incentives program (WQIP) which were each funded at approximately \$2.0 million annually for Wisconsin in recent years.

10. One criticism of the nonpoint program has been that because the program provides a large share of funding for staff compared to federal programs, counties tend to focus their conservation efforts on obtaining watershed projects rather than using available federal program funding. That is, counties may not pursue federal cost-share funds or federal conservation program efforts (such as the conservation reserve program) because only a small share of the funds (approximately 10% under EQIP) can be used for staff, versus approximately 50% for nonpoint projects. Therefore, federal and DNR officials believe that there is potential to make better use of federal funds and federal conservation programs, to meet the state's nonpoint pollution abatement goals.

11. EQIP funds do not pass through the state government but rather are accessed directly by counties, local governments and landowners. Under the program, 65% of the funds, have to be spent in eight federally designated priority area basins, which would include several state priority watersheds and lakes. Further, the EQIP program is a competitive program with the state's share of future being largely dependent on the ability of counties to access the funds. Therefore, to the extent that counties and landowners in state designated priority watersheds make greater use of the federal EQIP funds, the demand for cost share funds in those projects could be reduced.

12. The bill would also require DNR, in consultation with DATCP, to promulgate rules that specify cost-effective best management practices that can be implemented by local governments and landowners to meet the priority watershed, lake and water basin water quality objectives. Therefore, to the extent that more cost-effective practices are used, the level of cost share funding needed in the biennium could be reduced.

13. Under the bill, the \$2.0 million in bonding would be restricted for use as cost share grants for new projects. Allowing this to be used for any project would provide DNR greater flexibility related to the use of the proposed funding.

14. If the Committee did not approve the Governor's recommendations the program would be provided \$26.2 million in funding and no additional bonding: \$6,363,600 GPR annually and \$6,705,300 SEG annually. It should be noted that DOA indicates that the \$200,000 annual reduction in segregated funding was proposed because the nonpoint account of the environmental fund could not support the expenditures.

## Local Assistance Funding

15. The bill would limit the program's GPR appropriation (\$6,363,600 in 1998-99) to the provision of nonpoint source cost share grants only rather than both cost share grants and local assistance grants as allowed under current law. The bill would also provide \$6,505,300 SEG annually from the nonpoint account of the environmental fund which would also be available for local administration and cost share grants.

16. DOA indicates that the GPR appropriation was limited to cost share grants to ensure that a greater percentage of the program's funding would be available for the installation of water pollution abatement practices. Historically, at least one-half of the funds have been expended on local assistance grants (county staff and supplies) and one-half (or less) on cost share grants (farm practices).

17. Local assistance grants totalled \$13.5 million in the 1993-95 biennium and approximately \$18.9 million will be spent on local assistance (with approximately \$16.6 million spent on cost share grants) in the 1995-97 biennium. Under the bill, approximately \$14.0 million could be used to fund local assistance grants to counties and local governments (\$13.0 million SEG provided under the bill and approximately \$1.0 million in federal Clean Water Act Section 319 grant funding). Allowing the \$6,363,600 GPR in 1998-99 to be used for both local assistance grants and cost share grants would provide DNR the flexibility to expend up to \$19.4 million on local assistance grants in the biennium.

18. However, allowing the GPR to be used for local assistance grants would reduce the amount of funds that would be exclusively available for cost share grants to landowners or local governments. If GPR funding were used for county staff, and assuming DNR implements its program to reduce cost share advance accounts, approximately \$15.4 million would be available exclusively for cost share funding: (a) \$10.4 in bonding for existing priority watershed or lake projects provided in the bill; (b) \$3.0 million associated with spending down cost share advances previously provided counties and local governments; and (1) \$1.0 million associated with encumbrances of previously provided grant funding. In addition, federal funding under the EQIP program could reduce the need for state funding in the biennium to implement cost share practices.

19. Alternatively, allowing up to 50% of the GPR funds to be used for local assistance grants would allow DNR some additional flexibility while limiting local assistance grant funding. Under this scenario, approximately \$16.2 million (\$13.0 million SEG and \$3.2 million GPR) in funding provided in the biennium would be available for county staff grants and \$18.6 million for landowner practices. This alternative would not provide the \$18.9 million in funding that was expended on local assistance grants during the last biennium. However, under DNR's expenditure reduction plan, assuming that 50% of the \$5.7 million in savings associated with ending watershed or lake projects is staff related, the need for local assistance could be reduced by approximately \$2.9 million. Therefore, under this alternative, county staffing in active

watersheds would remain at approximately the 1995-97 level (\$18.9 million, less \$2.9 million in savings, would be \$16.0 million in active watersheds.)

20. Concerns have been raised that the nonpoint source program is expending more funding for local assistance grants than on the installation of pollution abatement and conservation practices. However, the recent focus of the program has involved the use of low-cost practices such as changes in tillage practices, nutrient planning and grazing management which are generally more staff intensive. Implementing such low-cost practices generally involves local staff working closely with landowners to change their behaviors and develop management plans aimed at pollution abatement rather than the building structures or facilities.

Therefore, despite the Governor's proposal to limit the funds for local assistance grants, it is unlikely that the need for local assistance funding will be reduced in the future. However, to alleviate concerns about the long-term funding implications for local assistance grants the Committee could require counties to match a portion of the nonpoint local assistance grants provided for their projects. Currently, DNR grants fund 70% of certain county equipment and up to 100% of most staff and supply costs. Cost share grant recipients (landowners) under the program, are generally required to pay a minimum of 30% of the costs of the practices installed under the program. A similar match could be required for county or local governments for local assistance grants. Further, a similar program, DATCP's soil and water resource management program, requires a 100% match to the state funding provided for county staffing grants. Requiring a 30% local match could also substantially reduce the need to terminate existing watersheds or, to the extent watersheds are terminated, to allow the funding of higher priority projects under new criteria sooner than would be allowed under the bill.

21. Requiring a minimum 30% local match could also increase the local commitment to a nonpoint project in that only counties or local governments who are willing to commit their own funds would receive state funding for their project. However, counties that currently have watershed projects received the project funding without a 30% required local match. Alternatively, the Committee could require a match for any projects selected for funding after July 1, 1998 (consistent with the Governor's recommendations for identification of new projects).

#### **ALTERNATIVES TO BASE**

1. Approve the Governor's recommendations to: (a) delete base GPR funding of \$6,363,600 in 1997-98 for the nonpoint source water pollution abatement program and limit use of the GPR appropriation to the provision of nonpoint source cost share grants to landowners; and (b) provide an additional \$12,363,000 in general obligation bonding authority, of which \$2.0 million would be designated for projects selected after July 1, 1998.

<u>Alternative 1</u>	<u>GPR</u>	<u>BR</u>
1997-99 REVENUE (Change to Base)	\$0	\$12,363,000
[Change to Bill]	\$0	\$0]
1997-99 FUNDING (Change to Bill)	- \$6,363,600	\$0
[Change to Bill]	\$0	\$0]

2. Adopt the Governor's recommendation, as modified by one or more of the following:

- a. specify that up to 50% of GPR funds could be used for local assistance grants (at least 50% would be for landowner cost share grants).
- b. specify that GPR funds may be used for cost share and local assistance grants.
- c. delete the requirement that \$2 million in bonding be designated only for newly selected projects (the \$2 million would be available for any projects).
- d. require recipients of nonpoint source program local assistance grants to provide a minimum 30% match in order to receive grant funds for projects.
- e. require recipients of nonpoint source program local assistance grants to provide a minimum 30% match in order to receive grant funds for projects selected after July 1, 1998.

<u>Alternative 2</u>	<u>GPR</u>	<u>BR</u>
1997-99 REVENUE (Change to Base)	\$0	\$12,363,000
[Change to Bill]	\$0	\$0]
1997-99 FUNDING (Change to Bill)	- \$6,363,600	\$0
[Change to Bill]	\$0	\$0]

MO# *AH\*Zate*

JENSEN	X	N	A
OURADA	X	N	A
HARSDORF	X	N	A
ALBERS	X	N	A
GARD	X	N	A
KAUFERT	X	N	A
LINTON <i>Murat</i>	X	N	A
COGGS	X	N	A

3. Maintain current law.

<u>Alternative 3</u>	<u>GPR</u>	<u>BR</u>
1997-99 REVENUE (Change to Base)	\$0	\$0
[Change to Bill]	\$0	- \$12,363,000]
1997-99 FUNDING (Change to Base)	\$0	\$0
[Change to Bill]	\$6,363,600	\$0]

2

BURKE	X	N	A
DECKER	X	N	A
GEORGE	X	N	A
JAUCH	X	N	A
WINEKE	X	N	A
SHIBILSKI	X	N	A
COWLES	X	N	A
PANZER	X	N	A

AYE 16 NO 0 ABS     

Prepared by: Al Runde

NATURAL RESOURCES

Local Assistance Grant Funding

Motion:

Move to restrict local assistance grant funds from being used for promotional items, excluding those used for informational purposes, such as brochures and videos.

MO# 3030

JENSEN	<input checked="" type="checkbox"/>	N	A
OURADA	<input checked="" type="checkbox"/>	N	A
HARSDORF	<input checked="" type="checkbox"/>	N	A
ALBERS	<input checked="" type="checkbox"/>	N	A
GARD	<input checked="" type="checkbox"/>	N	A
KAUFERT	<input checked="" type="checkbox"/>	N	A
LINTON <i>Murphy</i>	<input checked="" type="checkbox"/>	N	A
COGGS	<input checked="" type="checkbox"/>	N	A

BURKE	<input checked="" type="checkbox"/>	N	A
DECKER	<input checked="" type="checkbox"/>	N	A
GEORGE	<input checked="" type="checkbox"/>	N	A
JAUCH	<input checked="" type="checkbox"/>	N	A
WINEKE	<input checked="" type="checkbox"/>	N	A
SHIBILSKI	<input checked="" type="checkbox"/>	N	A
COWLES	<input checked="" type="checkbox"/>	N	A
PANZER	<input checked="" type="checkbox"/>	N	A

AYE 15 NO 1 ABS \_\_\_\_\_

To: Joint Committee on Finance

From: Bob Lang, Director  
Legislative Fiscal Bureau

## ISSUE

### **Nonpoint Segregated Funding -- Nonpoint Account Condition (DNR -- Water Quality)**

[LFB Summary: Page 438, #3]

## CURRENT LAW

Revenues of approximately \$10.3 million SEG annually are deposited to the nonpoint account of the environmental fund are derived from a \$7.50 vehicle title transfer fee collected at the time of filing an application for the first certificate of automobile title and at the time of filing a certificate of title after a transfer of ownership. The fee is collected by the Department of Transportation. The Department of Natural Resources (DNR), the Department of Agriculture, Trade and Consumer Protection (DATCP) and the Department of Workforce Development (DWD) for Wisconsin Conservation Corps enrollee shoreland projects are provided a total of \$10,757,800 SEG in base level funding with approximately 21.2 positions from the nonpoint account of the environmental fund.

## GOVERNOR

Delete \$600,000 SEG annually from the nonpoint source water pollution abatement program as follows: (a) \$400,000 annually associated with contracted services, including information and education, to support and implement the nonpoint program; (b) \$200,000 annually from the nonpoint source grant program.

## DISCUSSION POINTS

1. DOA indicates that the recommended reduction in funding is necessary to bring expenditures from the account in line with the revenues generated from the vehicle title transfer fee.

2. Due to a calculation error under the bill, it is estimated that the account will end the biennium with a \$600,000 deficit. The following table lists the estimated condition of the nonpoint account of the environmental fund.

### Nonpoint Account Condition Statement under SB 77 (in millions)

	1997-98	1998-99
Beginning Balance	-\$0.6	-\$0.6
Revenues	10.3	10.4
Expenditures	-10.3	-10.4
Ending Balance	-\$0.6	-\$0.6

3. If the \$1.2 million in reductions recommended by the Governor were not approved the fund would end the 1997-99 biennium with an estimated \$1.8 million deficit. However, in general, segregated funds and program revenue accounts are statutorily required to have positive year-end balances. Therefore, the agencies would have to administratively reduce nonpoint expenditures by \$1.8 million over the biennium.

4. While a 25 cent increase in the vehicle title transfer fee would provide approximately \$345,650 annually and balance the fund in the biennium, it should be noted that the account is structurally balanced. That is, expenditure levels under the bill are within estimated revenues for the biennium. Therefore, a one-time reduction in expenditures from the nonpoint account would balance the fund in the biennium and, potentially, thereafter. A one-time reduction of \$600,000 would be approximately a 3.0% reduction in overall spending in the biennium.

5. The following table lists the base level appropriations funded from the nonpoint account of the environmental fund:

**1997-99 Nonpoint Account Expenditures  
Under SB 77**

<b>Program</b>	<b>1997-98</b>	<b>1998-99</b>
<b>Natural Resources</b>		
Long-term monitoring research of impacts of priority watershed projects - integrated services	\$306,700	\$306,700
Trading water pollution credits	50,000	50,000
Nonpoint program administration	449,700	449,700
Priority watershed contracts	1,076,100	1,076,100
Priority watershed grant program	6,505,300	6,505,300
Administrative services funding for nonpoint source activities	203,500	203,500
Nonpoint grant administration	71,200	71,200
<b>Agriculture, Trade and Consumer Protection</b>		
Soil and water management grants (agricultural shoreland and animal waste management)	950,000	950,000
Soil and water resource management program administration	604,600	604,600
<b>Workforce Development (Wisconsin Conservation Corps)</b>		
Enrollee operations for shoreland projects	76,700	76,700
Compensation reserves	41,500	85,300
Estimated lapses	<u>-16,400</u>	<u>-16,400</u>
<b>Total</b>	<b>\$10,318,900</b>	<b>\$10,362,700</b>

**Administrative Funding**

6. Approximately \$1,635,700 and 21.2 state positions are provided from the nonpoint account under the bill. The staff are primarily associated the DNR nonpoint source pollution abatement grant program (5.5 conducting water quality monitoring support and 6.0 administering the program) and administering and providing technical assistance for DATCP's soil and water resource management (SWRM) program (8.0 staff). Remaining positions are DNR central administrative and grants administration staff.

7. All of positions funded from the nonpoint account of the environmental fund are currently filled. Therefore, any reductions in administrative appropriations would require DNR or DATCP to either layoff staff or reallocate them to other funding sources and could reduce program activity.

8. It could be argued that any reductions to the funding to either the nonpoint or SWRM grant programs should result in a comparable reduction in funding for staff. Therefore, if a reduction is required in the various grant and contract funding provided from the nonpoint account, administrative funding could also be reduced by 3% annually (approximately \$48,000). These reductions could be taken from DNR's nonpoint program administration or DATCP's SWRM program administration. On the other hand, agency officials argue that if a one-time reduction is required to balance the account, a permanent staff reduction is not warranted.

### **Grant and Contracts Funding**

9. Approximately \$8,531,400 SEG annually from the nonpoint account of the environmental fund is associated with nonpoint source pollution abatement grants, DATCP's SWRM grants and contract funding for services to support the nonpoint program.

10. The nonpoint source water pollution abatement program provides grants to local units of government for: (a) priority watershed project administration (county and local staff and supplies); and (b) 50-70% cost share grants to landowners and communities in priority watersheds to install water pollution abatement practices and structures. Historically, one-half (or more) of the funds have been expended on local assistance grants and up to one-half is expended on cost share grants.

11. Based on current estimates, the nonpoint source grant program will likely need the \$6,505,300 annually provided under the bill. However, other provisions in the bill would make changes to the nonpoint program which could impact the program demand. For example, the Governor recommends providing the Land and Water Conservation Board, with assistance from DNR and DATCP, to terminate some existing watersheds that are not meeting program goals in order to reduce program demand. DNR has indicated \$5.7 million could be saved in the biennium primarily through ending some existing watershed projects.

12. Under current law, both the GPR and SEG appropriations for the nonpoint grant program can be used to provide local assistance grants for the administration of the nonpoint program at the local level. The bill would eliminate the GPR funding for local assistance grants, and would allow that only the SEG funds (approximately \$13.0 million) be available for local assistance grants. Local assistance expenditures were \$13.5 million in the 1993-95 biennium and will be an estimated \$18.9 million during the 1995-97 biennium. DNR indicates that approximately \$1.0 million in the biennium in federal Clean Water Act funds could also be available for local assistance grant funding.

13. The funding provided for DATCP's SWRM program is primarily used to provide grants for agricultural shoreland projects and animal waste management grants to landowners. Agricultural shoreland funds are used to fund the development of county agricultural shoreland ordinances and conservation practices required under those ordinances. Animal waste

management grants are provided to landowners who have received a DNR notice of discharge of animal waste into the waters of the state and are required to take corrective action to reduce that discharge. The two programs are likely to need the available funding to meet the programs' demand in the 1997-99 biennium.

14. DNR's nonpoint source contracts fund water quality monitoring, education and research activities that support the nonpoint program. Contract funding has supported the development of watershed maps, water pollution abatement demonstration projects, fisheries inventories, lab analysis, monitoring and various informational and educational activities. Contractors have included the State Laboratory of Hygiene, University of Wisconsin-Extension, the United States Geological Survey and other DNR programs as well as counties. Several of the contracts entered into to support the nonpoint program are long term.

15. Concerns have been raised that while the state has spent considerable funds on the nonpoint program and water pollution abatement practices, evaluation of the program through water quality monitoring has been limited. The contracts funding is one of the primary funding sources used to conduct such evaluations. Further, reducing the contract funding further, while it may not result in loss of staffing for DNR, could result in staff reductions at UW-Extension or the State Laboratory of Hygiene.

16. As mentioned earlier, despite having a deficit, the account is structurally balanced. To balance the fund a one-time reduction of approximately \$600,000 is needed. Therefore, any reductions in expenditures could be taken in the first year of the biennium. As a result, the program would maintain a higher base level of funding available for the 1999-2001 biennium.

17. Since program funding in all categories is expected to be expended, it could be argued that an across-the-board reduction would be most equitable. A 3% overall reduction would generate the necessary savings. If the funding reductions necessary to balance the account in the biennium were taken entirely from the grant and contract funding, a 3.5% reduction would be required in the biennium (or approximately a 7% reduction in funding in 1997-98).

#### ALTERNATIVES TO BASE

1. Approve the Governor's recommendations to delete (a) \$400,000 annually associated with contracted services; and (b) \$200,000 annually from the nonpoint source grant program. (DNR and DATCP would have to administratively reduce expenditures by an estimated \$600,000 to avoid a deficit.)

<u>Alternative 1</u>	<u>SEG</u>
1997-99 FUNDING (Change to Base)	-\$1,200,000
[Change to Bill]	\$0

2. In addition to the Governor's recommendation, delete \$300,000 SEG annually under one of the following:

<u>Alternative 2</u>	<u>SEG</u>
1997-99 FUNDING (Change to Base)	- \$600,000
[Change to Bill]	- \$600,000]

a. Delete \$300,000 SEG annually in nonpoint grant funding (\$6.2 million in base funding would be available in the 1999-2001 biennium).

b. Delete 3.5% annually in grant and contract funding provided in the biennium as follows: \$228,800 annually from the nonpoint grant program; \$33,400 annually from the SWRM grant program; and \$37,800 annually in contract funding.

c. Delete approximately 3% of annual expenditures as follows: \$48,000 with 1.0 position associated with DNR's nonpoint program administration; \$192,200 in nonpoint source pollution abatement grant funding; \$28,000 in DATCP's SWRM grant program funding; and \$31,800 in nonpoint contract funding.

<u>Alternative 2c</u>	<u>SEG</u>
1997-98 POSITIONS (Change to Base)	- 1.00
[Change to Bill]	- 1.00]

d. Delete approximately 3% of annual expenditures as follows: \$48,000 with 1.0 position associated with DATCP's SWRM program administration; \$192,200 in nonpoint source pollution abatement grant funding; \$28,000 in DATCP's SWRM grant program funding; and \$31,800 in nonpoint contract funding.

<u>Alternative 2d</u>	<u>SEG</u>
1997-98 POSITIONS (Change to Base)	- 1.00
[Change to Bill]	- 1.00]

3. In addition to the Governor's recommendation, delete \$600,000 SEG in 1997-98 under one of the following:

<u>Alternative 3</u>	<u>SEG</u>
1997-99 FUNDING (Change to Base)	- \$600,000
[Change to Bill]	- \$600,000]

a. Delete \$600,000 SEG in 1997-98 in nonpoint grant funding (\$6,505,300 in base funding would be available for the 1999-2001 biennium).

b. Delete 7% in 1997-98 grant and contract funding as follows: \$457,500 from the nonpoint grant program; \$66,800 from the SWRM grant program; and \$75,700 in nonpoint contract funding.

c. Delete 6% of 1997-98 expenditures as follows: \$48,000 from both DNR and DATCP associated with program administration (\$96,000 total); \$384,300 in nonpoint source pollution abatement grant funding; \$56,100 in DATCP's SWRM grant program funding; and \$63,600 in nonpoint contract funding.

4. Maintain current law (the agencies would have to administratively reduce expenditures from the nonpoint account to avoid a \$1.8 million deficit).

<u>Alternative 4</u>	<u>SEG</u>
1997-99 FUNDING (Change to Base)	\$0
[Change to Bill]	\$1,200,000]

Prepared by: Al Runde

MO# Alt 3b

JENSEN	<input checked="" type="checkbox"/>	N	A
OURADA	<input checked="" type="checkbox"/>	N	A
HARSDORF	<input checked="" type="checkbox"/>	N	A
ALBERS	<input checked="" type="checkbox"/>	N	A
GARD	<input checked="" type="checkbox"/>	N	A
KAUFERT	<input checked="" type="checkbox"/>	N	A
LINTON <i>Muscat</i>	<input checked="" type="checkbox"/>	N	A
COGGS	<input checked="" type="checkbox"/>	N	A

BURKE	<input checked="" type="checkbox"/>	N	A
DECKER	<input checked="" type="checkbox"/>	N	A
GEORGE	<input checked="" type="checkbox"/>	N	A
JAUCH	<input checked="" type="checkbox"/>	N	A
WINEKE	<input checked="" type="checkbox"/>	N	A
SHIBILSKI	<input checked="" type="checkbox"/>	N	A
COWLES	<input checked="" type="checkbox"/>	N	A
PANZER	<input checked="" type="checkbox"/>	N	A

AYE 16 NO 0 ABS

NATURAL RESOURCES (Paper #627)

UW-Extension Nonpoint Contracts

Motion:

Move to require that DNR expend a minimum of \$500,000 annually from the funds currently appropriated for the nonpoint program contracts for contracts with the UW-Extension to conduct educational and technical assistance related to the nonpoint source pollution abatement program activities.

Note:

SB 77 provides \$1,076,100 SEG (a reduction of \$423,900 from the \$1,500,000 in base level funding) from the nonpoint account of the environmental fund to contract for water quality monitoring, education, and research activities that support the nonpoint program. Contract funding has supported the development of watershed maps, water pollution abatement demonstration projects, fish inventories, lab analysis and various informational and educational activities. Contractors have included the UW-Extension, the State Laboratory of Hygiene, the U.S. Geological Survey, counties and other DNR programs.

The motion would require that at least \$500,000 of the existing contract funding to be used only for UW-Extension educational and technical assistance related to the nonpoint source pollution abatement program activities. UW-Extension has received approximately \$600,000 in contract funding to support the nonpoint program in recent years.

MO# 1600

JENSEN	Y	<del>N</del>	A
OURADA	Y	<del>N</del>	A
HARSDORF	<del>Y</del>	N	A
ALBERS	Y	<del>N</del>	A
GARD	Y	<del>N</del>	A
KAUFERT	<del>Y</del>	N	A
LINTON <i>Murat</i>	<del>Y</del>	N	A
COGGS	<del>Y</del>	N	A

BURKE	<del>Y</del>	N	A
DECKER	<del>Y</del>	N	A
GEORGE	<del>Y</del>	N	A
JAUCH	<del>Y</del>	N	A
WINEKE	<del>Y</del>	N	A
SHIBILSKI	<del>Y</del>	N	A
COWLES	<del>Y</del>	N	A
PANZER	Y	N	A

AYE 11 NO 5 ABS

To: Joint Committee on Finance  
From: Bob Lang, Director  
Legislative Fiscal Bureau

## ISSUE

### Water Pollution Credit Trading (DNR -- Water Quality)

[LFB Summary: Page 443, #19]

## CURRENT LAW

DNR administers the Wisconsin Pollution Discharge Elimination System (WPDES) permit program which sets the concentrations and mass limits of specific chemicals and organisms for permitted (point) sources of water pollution discharges.

## GOVERNOR

**Governor:** Provide \$50,000 annually to fund a project to evaluate the trading of water pollution credits as follows:

**Projects.** Require DNR to administer one or more projects involving the trading of water pollution credits among sources of water pollution. The project would authorize a permitted source of water pollution discharges to increase the discharge of pollutants above the levels that would otherwise be authorized in the permit, provided the permitted source does one of the following:

a. Reaches an agreement with another permitted source under which the other source agrees to reduce the discharge of pollutants in the project area below the levels that would otherwise be required in the permit;

b. Reaches an agreement with another person who is not required to obtain a water pollution discharge permit under which the other person agrees to reduce the amount of water pollution it causes in the project area below the level of pollution it caused when the agreement is reached; or

c. Reaches an agreement with DNR, or a local unit of government, under which the source pays money to DNR or a local unit of government that would be used to reduce water pollution in the project area.

Require DNR to amend the permits of the sources entering into the project agreement in order to enable the agreement to be implemented. Further, the Department would be allowed to select a watershed or water basin as a project area if all the following apply:

a. The watershed or water basin contains at least one impaired water body that DNR has identified to the U.S. Environmental Protection Agency;

b. The watershed contains both agricultural and municipal sources of water pollution and both are point or nonpoint sources of pollution; and

c. Potential participants in the watershed or water basin exhibit interest in participating in a project.

**Local Committees.** Require DNR to appoint a local committee for each project to advise the Department concerning the project. The local committee would include a representative of each person in the project area who holds a water pollution discharge permit. A local priority watershed or lake committee could serve as the project committee if it includes representatives for each permitted source within the project area.

**Appropriations.** Create the following appropriations: (a) a continuing, segregated appropriation (funded at \$50,000 annually) from the nonpoint account of the environmental fund to assist in funding water pollution credit trading projects; and (b) a continuing, program revenue appropriation for all moneys received from agreements reached with sources of water pollution in project areas for activities to reduce pollution in the project area.

**Reports.** Beginning no later than September 1, 1998, and annually thereafter, require that DNR submit a report to the Governor, the Secretary of DOA and the LWCB on the progress and status of each project in achieving water quality goals and coordinating state and local efforts to improve water quality.

## DISCUSSION POINTS

1. The federal Clean Water Act requires states to develop the total maximum daily load (TMDL) of specific pollutants and analyze the maximum amount of point and nonpoint source contributions of the pollutant that a water body can receive to assure compliance with water quality standards. The TMDL approach involves comparing and evaluating the environmental benefits and costs of different control strategies for different pollutants. That is, DNR is required to identify all sources of pollutants to a water body and develop the point, nonpoint and other controls necessary to allow the water body to support its designated use (for example, fishable and swimmable).

2. As part of the TMDL approach required under the Clean Water Act, DNR and individual businesses, local governments and environmental groups will develop strategies on the most affordable and effective ways to achieve the needed pollutant reductions in particular water bodies. One of the potential strategies that has been identified involves trading of water pollution credits among the various pollution sources to potentially achieve improved water quality at a lower cost. For example, allowing a permitted source to forgo a capital improvement necessary to meet its potential permit requirements and, in turn, contract with other sources emitting to the same water body to reduce their discharges in order to achieve an equal or greater level of water quality at a lower cost.

3. The bill would develop a program that would create a pollutant credit trading mechanism. Under the bill a permitted source would be allowed to exceed its allowable discharge levels if that source (a) enters into an agreement with another permitted source or a non-permitted (primarily nonpoint sources) whereby the other source agrees to reduce its pollutant discharges to the project area, or (b) agrees to pay DNR or a local unit of government that would be used to reduce water pollution in the project area. Essentially, DNR would be required to initiate a project whereby discharges of pollutants are reallocated among the various sources within the project area in order to achieve water quality at a lower cost.

4. While the concept of water pollution credit trading is generally agreed upon as a viable strategy to meet the federal Clean Water Act requirements, the program as drafted may not comply with the federal law. DNR indicates that allowing a permitted source to exceed an existing permit requirement may violate the federal Clean Water Act. However, they indicate that the terms and limitations of future permits could incorporate the concept of pollutant credit trading.

5. Further, while the program would allow one source to go above its allowable discharge levels, the program, as proposed, would not require that the agreement result in a comparable or greater reduction in the overall discharge of pollutants to the project area. DNR argues that to be consistent with the TMDL concept and federal requirements, the program should require a "net gain" in the reduction of pollutants or improvements to water quality as a result of any agreement entered into by a permitted source.

6. As a result, while DNR agrees with the concept of the pilot program, the Department recommends that the proposed program be modified to ensure that it is consistent with the federal Clean Water Act and to ensure that any agreements entered into by permitted sources under the program result in a net improvement to water quality.

7. It is unclear how the agreements involving nonpoint sources would be enforced. DNR has limited enforcement authority over nonpoint sources of water pollution (the critical sites provisions of the nonpoint program--which has never been invoked--and the NR 243 animal waste regulatory authority) compared to its authority over point sources. Therefore, it is unclear whether DNR or the permitted source would be required to enforce a water pollution credit trading agreement involving a nonpoint source. For example, it is unclear whether DNR would take the regulatory actions necessary to require a nonpoint source to meet the reduction levels outlined in the agreement or whether DNR would take regulatory action against the permitted source and that source would then have to pursue a private action against the nonpoint source.

8. While the administration refers to the proposed program as a "pilot" program, the bill places no restriction on the number of agreements or projects that could be entered into, nor is there a sunset date in SB 77. Further, no estimate of program revenues under the program is provided. If a pilot project is intended, the bill could be amended to restrict the program to no more than three projects or be sunset on June 30, 1999.

9. The \$50,000 annually in nonpoint SEG would be used for travel, to contract for technical and legal expertise and for project evaluation of agreements involving pollutant credit trading. However, it is not clear to what extent costs associated with the agreements would be charged to participants and received as program revenues. Since the level of funding necessary to facilitate the projects is uncertain at this time, and the need for project evaluation may, or may not, occur during the 1997-99 biennium, the funding may not be necessary at this time. Further, it should be noted that \$100,000 SEG in the biennium would be funded from the nonpoint account which would have a deficit of approximately \$600,000 on June 30, 1999, under SB 77 expenditure levels.

10. The bill would require DNR to appoint a local committee for each project to advise the Department concerning the project that would include a representative of each person in the project area who holds a water pollution discharge permit.

11. While representation of permitted sources on the local committees is warranted, it may not be necessary to include each permitted source as a member of the local committee. Depending on the size of the project area, the number of permittees could be substantial.

## ALTERNATIVES TO BASE

1. Approve the Governor's recommendation to: (a) provide \$50,000 annually from the nonpoint account of the environmental fund for a program to evaluate the trading of water pollution credits; (b) create a SEG and PR appropriation; (c) require DNR to appoint a local committee for each project that would include a representative of each person in the project area who holds a water pollution discharge permit; and (d) require DNR to submit a report on the progress and status of each project in achieving water quality goals.

Alternative 1	SEG
1997-99 FUNDING (Change to Base)	\$100,000
[Change to Bill]	\$0

2. In addition to the Governor's recommendation, do one or more of the following:

a. Require that the program be implemented consistent with the federal Clean Water Act and that the projects lead to an improvement in water quality in the project area.

b. Require that the local committee include one or more representatives of persons holding permits in the project area.

c. Restrict the program to no more than three projects.

d. Require that no projects may be undertaken after June 30, 1999.

e. Delete SEG funding (\$50,000 annually).

Alternative 2e	SEG
1997-99 FUNDING (Change to Base)	\$0
[Change to Bill]	-\$100,000

3. Maintain current law.

Alternative 3	SEG
1997-99 FUNDING (Change to Base)	\$0
[Change to Bill]	-\$100,000

MO# Alt# 2a+b

/ JENSEN	Y	N	A
OURADA	Y	N	A
HARSDORF	Y	N	A
ALBERS	Y	N	A
GARD	Y	N	A
KAUFERT	Y	N	A
LINTON <i>Muract</i>	Y	N	A
COGGS	Y	N	A

2 BURKE	Y	N	A
DECKER	Y	N	A
GEORGE	Y	N	A
JAUCH	Y	N	A
WINEKE	Y	N	A
SHIBILSKI	Y	N	A
COWLES	Y	N	A
PANZER	Y	N	A

Prepared by: Al Runde

AYE 16 NO 0 ABS

PAPER #1628

MO# AIH#2d

JENSEN	Y	N	A
OURADA	Y	N	A
HARSDORF	Y	N	A
ALBERS	Y	N	A
GARD	Y	N	A
KAUFERT	Y	N	A
LINTON <i>Murat</i>	Y	N	A
COGGS	Y	N	A

BURKE	Y	N	A
DECKER	Y	N	A
GEORGE	Y	N	A
JAUCH	Y	N	A
WINEKE	Y	N	A
SHIBILSKI	Y	N	A
COWLES	Y	N	A
PANZER	Y	N	A

AYE 12 NO 4 ABS

NATURAL RESOURCES

Water Pollution Credit Trading (Paper #628)

Motion:

Move to require that any water pollution credit trading agreement authorized under the program be sunset within five years of the date of the agreement.

Note:

SB 77 provide DNR \$50,000 SEG annually to conduct a pollution credit trading program but does not set a time limit under which agreements could be reached or how long agreement could last. The motion would require that any agreements authorized under the program could be for a maximum of five years.

MO# 1605

JENSEN	<input checked="" type="checkbox"/>	N	A
OURADA	<input checked="" type="checkbox"/>	N	A
HARSDORF	<input checked="" type="checkbox"/>	N	A
ALBERS	<input checked="" type="checkbox"/>	N	A
GARD	<input checked="" type="checkbox"/>	N	A
KAUFERT	<input checked="" type="checkbox"/>	N	A
LINTON <i>Murat</i>	<input checked="" type="checkbox"/>	N	A
COGGS	<input checked="" type="checkbox"/>	N	A

BURKE	<input checked="" type="checkbox"/>	N	A
DECKER	<input checked="" type="checkbox"/>	N	A
GEORGE	<input checked="" type="checkbox"/>	N	A
JAUCH	<input checked="" type="checkbox"/>	N	A
WINEKE	<input checked="" type="checkbox"/>	N	A
SHIBILSKI	<input checked="" type="checkbox"/>	N	A
COWLES	<input checked="" type="checkbox"/>	N	A
PANZER	<input checked="" type="checkbox"/>	N	A

AYE 16 NO 0 ABS

NATURAL RESOURCES

Water Pollution Credit Trading (Paper #628)

Motion:

Move to require that any pollution credit trading agreement authorized under the program involve the same pollutant or water quality standard. Further, require that only those water bodies listed on the impaired waters list submitted to the U.S. Environmental Protection Agency (EPA) under the Clean Water Act requirements be eligible project areas for the program.

MO# 1604

JENSEN	<del>Y</del>	N	A
OURADA	<del>Y</del>	N	A
HARSDORF	<del>Y</del>	N	A
ALBERS	<del>Y</del>	N	A
GARD	<del>Y</del>	N	A
KAUFERT	<del>Y</del>	N	A
LINTON <i>Murat</i>	<del>Y</del>	N	A
COGGS	<del>Y</del>	N	A

<del>2</del> BURKE	<del>Y</del>	N	A
DECKER	<del>Y</del>	N	A
GEORGE	<del>Y</del>	N	A
JAUCH	<del>Y</del>	N	A
WINEKE	<del>Y</del>	N	A
SHIBILSKI	<del>Y</del>	N	A
<del>1</del> COWLES	<del>Y</del>	N	A
PANZER	<del>Y</del>	N	A

AYE 16 NO 0 ABS \_\_\_\_\_

NATURAL RESOURCES

Water Pollution Credit Trading  
[Paper #628]

Motion:

Move to require that City of Cumberland (Barron County) within the South Fork Hay River Watershed be designated as one of the project areas for the pollution credit trading program.

Note:

SB 77 provides DNR \$50,000 annually from the nonpoint account of the environmental fund for a pollution credit trading program.

MO# 3019

JENSEN	Y	<del>N</del>	A
OURADA	Y	<del>N</del>	A
HARSDORF	<del>Y</del>	N	A
ALBERS	Y	<del>N</del>	A
GARD	Y	<del>N</del>	A
KAUFERT	Y	<del>N</del>	A
LINTON <i>Murcast</i>	<del>Y</del>	N	A
COGGS	<del>Y</del>	N	A
BURKE	<del>Y</del>	N	A
2 DECKER	<del>Y</del>	N	A
GEORGE	<del>Y</del>	N	A
1 JAUCH	<del>Y</del>	N	A
WINEKE	<del>Y</del>	N	A
SHIBILSKI	<del>Y</del>	N	A
COWLES	<del>Y</del>	N	A
PANZER	Y	<del>N</del>	A

AYE 10 NO 6 ABS \_\_\_\_\_

NATURAL RESOURCES -- WATER QUALITY

Watershed Stewardship Center

Motion:

Move to provide \$50,000 SEG annually from the water resources account for a four-year project beginning in 1997-98 to establish a nongovernmental Watershed Stewardship Center to: (a) encourage and facilitate the formation and development of local watershed groups; (b) serve as an education and information clearinghouse; (c) administer start-up funding and provide technical assistance to local groups; and (d) administer a local stewardship competitive grants program to provide grants of up to \$5,000 for the formation and development of local watershed groups. The grants would be allocated by a Watershed Stewardship Council comprised of state agencies and local watershed interests.

Note:

Grants would be used for organizational development and education. Expenses might include printing and postage for brochures and newsletters, local landowner surveys, facilitator and training costs. The motion would create an annual appropriation within DNR to fund these activities.

[Change to Base: \$100,000 SEG]

[Change to Bill: \$100,000 SEG]

MO# 3021

JENSEN	<del>Y</del>	N	A
OURADA	<del>Y</del>	N	A
HARSDORF	Y	<del>N</del>	A
ALBERS	Y	<del>N</del>	A
GARD	Y	<del>N</del>	A
KAUFERT	<del>Y</del>	N	A
LINTON <i>Murat</i>	<del>Y</del>	N	A
COGGS	<del>Y</del>	N	A

<sup>1</sup> BURKE	<del>Y</del>	N	A
DECKER	<del>Y</del>	N	A
GEORGE	<del>Y</del>	N	A
<sup>2</sup> JAUCH	<del>Y</del>	N	A
WINEKE	<del>Y</del>	N	A
SHIBILSKI	<del>Y</del>	N	A
COWLES	<del>Y</del>	N	A
PANZER	<del>Y</del>	N	A

AYE 13 NO 3 ABS \_\_\_\_\_

NATURAL RESOURCES

Water Pollution Credit Trading (Paper #628)

Motion:

Move to prohibit an entity involved in metallic or nonmetallic mining or prospecting activities from entering into agreements under the water pollution credit trading program.

MO# 3023

JENSEN	<input checked="" type="checkbox"/>	N	A
OURADA	<input checked="" type="checkbox"/>	N	A
HARSDORF	<input checked="" type="checkbox"/>	N	A
ALBERS	<input checked="" type="checkbox"/>	N	A
GARD	<input checked="" type="checkbox"/>	N	A
KAUFERT	<input checked="" type="checkbox"/>	N	A
LINTON <i>Murat</i>	<input checked="" type="checkbox"/>	N	A
COGGS	<input checked="" type="checkbox"/>	N	A

BURKE	<input checked="" type="checkbox"/>	N	A
DECKER	<input checked="" type="checkbox"/>	N	A
GEORGE	<input checked="" type="checkbox"/>	N	A
JAUCH	<input checked="" type="checkbox"/>	N	A
WINEKE	<input checked="" type="checkbox"/>	N	A
2 SHIBILSKI	<input checked="" type="checkbox"/>	N	A
COWLES	<input checked="" type="checkbox"/>	N	A
PANZER	<input checked="" type="checkbox"/>	N	A

AYE 15 NO 1 ABS \_\_\_\_\_

NATURAL RESOURCES

Nonpoint Source Water Quality Standards

Motion:

Move the following:

(1) Direct the Department of Natural Resources (DNR) to do the following:

a. set performance standards and prohibitions for facilities and practices for nonpoint sources of water pollution that are not agricultural for the purpose of achieving water quality standards by limiting the nonpoint source water pollution.

b. establish a process, exempt from administrative rules, for the development and dissemination of technical standards to implement the performance standards and prohibitions for facilities and practices that are not agricultural facilities and practices, and are nonpoint sources.

c. Require the DNR to develop alternatives where technical standards are capable of implementing the performance standards and prohibitions.

d. in consultation with the Department of Agriculture, Trade and Consumer Protection (DATCP), establish performance standards and prohibitions for agricultural facilities and practices that are nonpoint sources for the purpose of achieving water quality standards by limiting the nonpoint source water pollution. At a minimum, the prohibitions shall provide that livestock operations shall have no:

- overflow of manure storage structures.
- unconfined manure piles in water quality management areas.
- direct runoff from feedlots or stored manure into waters of the state.
- unlimited access by livestock to waters of the state where high concentrations of animals prevent adequate sod cover maintenance.

(2) Direct DATCP to do the following:

a. in consultation with DNR, establish conservation practices and technical standards for nonpoint source agricultural practices and facilities to implement the performance standards and prohibitions promulgated by the DNR.

b. require DATCP to promulgate rules relating to the conservation practices and a process for the development, and dissemination of the technical standards.

c. to promulgate rules, that at a minimum, establish conservation practices and technical standards for animal waste management, nutrients applied to the soil and cropland sediment delivery are capable of implementing the DNR's nonpoint source performance standards and prohibitions. Direct the DATCP to develop statewide agricultural nutrient management policies. Provide that the policies include components such as technical standards, incentives, educational and outreach strategy, and compliance requirements.

(3) expand the erosion control planning program in s. 92.10 and rename the program the land and water resource management planning program and provide that the program encompass all activities of the county land conservation department regarding nonpoint source water pollution.

(4) require that the performance standards and prohibitions for agricultural facilities and practices set by DNR and the conservation practices and technical standards set by DATCP apply to the following:

priority watershed program.

county land and water resource management planning program.

farmland preservation cross-compliance.

animal feeding operations.

remedies under the right to farm statute.

(5) Local authority related to regulation of livestock operations.

a. provide that a local governmental unit may promulgate regulations that are consistent with and do not exceed the performance standards, prohibitions, conservation practices and technical standards promulgated by DNR and DATCP.

b. provide that the local governmental unit may exceed the performance standards, prohibitions, conservation practices and technical standards applicable to livestock operations promulgated by DNR and DATCP only if the local governmental unit demonstrates to the satisfaction of DNR or DATCP that more stringent regulations by the local governmental unit are necessary to achieve water quality standards promulgated by DNR.

c. require DNR and DATCP to promulgate procedures for review and approval of requests by local governmental units for more stringent regulations.

d. provide that a livestock operation that is required to apply for a permit under s. 283.31 (Wisconsin Pollution Discharge Elimination System permit) or an existing livestock operation that receives notice from the DNR of the requirement to comply with rules promulgated under ch. 283 (notice of discharges under NR 243 process) applicable to livestock operations,

may continue to operate at that location regardless of any city, village, town or county zoning ordinance under s. 59.69, 60.61, 60.62, 61.35 or 62.23(7) if the livestock operation is a lawful use or a legal nonconforming use.

(6) Requirements for cost sharing for conservation practices and prohibitions.

a. compliance with the performance standards, prohibitions, conservation practices and technical standards for agricultural facilities and practices for the abatement of nonpoint source water pollution caused or threatened to be caused by existing agricultural facilities and practices is not required until cost-sharing is available to the owner or operator.

b. direct DNR and DATCP to determine the requirements for "availability" of cost-sharing with respect to state enforcement of the nonpoint source performance standards, prohibitions, conservation practices and technical standards.

c. require that cost sharing requirements when any local government regulation shall be set in such local regulations.

d. provide \$2.0 million in general fund supported borrowing for nonpoint source water pollution abatement program activities for cost sharing for agricultural facilities to meet the nonpoint source prohibitions.

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Note:

Under current law, DNR sets the state's water quality standards and develops the technical practices that may be used to meet those standards. The motion would require that DNR set specific water quality and performance standards for nonpoint source pollution. However, DNR would only set the standards for practices necessary to meet those nonpoint source water quality standards for non-agricultural nonpoint source activities. DATCP would be allowed to establish the technical standards for practices for agricultural nonpoint sources.

The motion would also require DNR, in consultation with DATCP, to establish prohibitions (similar to those established by DNR and DATCP led animal waste advisory committee) for certain agricultural practices or facilities causing nonpoint source pollution. This would provide additional regulation of such practices and facilities. The DNR and DATCP committee, while not taking into account existing funding available under the nonpoint and other programs, indicated the cost of the regulation could be substantial. However, the regulations contained in the motion, including any prohibitions, related to agricultural facilities do not apply to existing agricultural facilities unless cost-sharing is available to that owner or operator to meet the regulations.

Local units of government would be allowed to exceed the state water quality and performance standard, prohibitions, conservation and technical practice standard if the local government demonstrate to DNR and DATCP that the more stringent standards are necessary to achieve DNR's water quality standard. Further, any livestock facility that is required to apply for permit or is subject to DNR's NR 243 process would be allowed to continue to operate regardless of any local ordinance or the livestock facility is lawful use or a legal nonconforming use.

The bonding provided in the motion would be restricted to livestock operation to meet any prohibitions necessary to achieve water quality standards.

Terms related to the motion include:

1. "Agricultural facility" means any structure associated with an agricultural practice.
2. "Agricultural practice" means beekeeping; commercial feedlots; dairying; egg production; floriculture; fish or fur farming; forest and game management; grazing; livestock raising; orchards; plant greenhouses and nurseries; poultry raising; raising of grain, grass, mint and seed crops; raising of fruits, nuts and berries; sod farming; placing land in federal program in return for payments in kind; owning land, at least 35 acres of which is enrolled in the conservation reserve program under 16 USC 3831 to 3836 and vegetable raising.
3. "Livestock operation" means a feedlot or other facility or a pasture where animals are fed, confined, maintained or stabled.
4. "Local governmental unit" means a political subdivision of this state, a special purpose district in this state, an instrumentality or corporation of such a political subdivision or special purpose district, a combination or subunit of any of the foregoing or an instrumentality of the state and any of the foregoing.
5. "Navigable waters" has the meaning given in s. 281.31(2)(d).
6. "Nonpoint source" means a facility or practice that causes or has the potential to cause nonpoint source water pollution.
7. "Nonpoint source water pollution" means pollution of waters of the state that does not result from a point source as defined in s. 283.01(12).
8. "Water quality management area" means any of the following areas:
  - a. The area within 1,000 feet from the ordinary high-water mark of navigable waters that consist of a lake, pond or flowage. If the navigable water is a glacial pothole lake, this distance shall be measured from the high-water mark of the lake.

b. The area within 300 feet from the ordinary high-water mark of navigable waters that consist of a river or stream.

c. Specific sites that are susceptible to groundwater contamination or that have the potential to be a direct conduit to groundwater.

9. "Waters of the state" has the meaning given under s. 283.01(20).

[Change to Base: \$2,000,000 BR]

[Change to Bill: \$2,000,000 BR]

MO# 1609

JENSEN	Y	<del>N</del>	A
OURADA	<del>Y</del>	N	A
HARSDORF	<del>Y</del>	N	A
ALBERS	<del>Y</del>	N	A
GARD	<del>Y</del>	N	A
KAUFERT	Y	<del>N</del>	A
<del>EINTON</del> <i>Murat</i>	<del>Y</del>	N	A
COGGS	<del>Y</del>	N	A
<del>1</del> BURKE	<del>Y</del>	N	A
<del>2</del> DECKER	<del>Y</del>	N	A
GEORGE	<del>Y</del>	N	A
JAUCH	<del>Y</del>	N	A
WINEKE	<del>Y</del>	N	A
SHIBILSKI	<del>Y</del>	N	A
COWLES	Y	N	A
PANZER	<del>Y</del>	N	A

AYE 14 NO 2 ABS \_\_\_\_\_

NATURAL RESOURCES -- WATER QUALITY

Construction Site Erosion Control

Motion:

Move to exclude construction sites from any nonpoint source water quality or performance standards created under Motion #1609. Any existing construction site erosion control standards and regulations would continue to apply.

MO# 1620

ZJENSEN	<del>Y</del>	N	A
OURADA	<del>Y</del>	N	A
HARSDORF	<del>Y</del>	N	A
ALBERS	<del>Y</del>	N	A
GARD	<del>Y</del>	N	A
KAUFERT	<del>Y</del>	N	A
LINTON <i>Murat</i>	<del>Y</del>	N	A
COGGS	<del>Y</del>	N	A

BURKE	Y	<del>N</del>	A
DECKER	Y	<del>N</del>	A
GEORGE	Y	<del>N</del>	A
JAUCH	Y	<del>N</del>	A
WINEKE	Y	<del>N</del>	A
SHIBILSKI	Y	<del>N</del>	A
COWLES	<del>Y</del>	N	A
PANZER	<del>Y</del>	N	A

AYE 8 NO 8 ABS

NATURAL RESOURCES

Nonpoint Water Quality

Motion:

(GPR)  
Move to provide \$500,000 annually to implement the nonpoint water quality standards and performance requirements in Motion #1609.

MO# 3032

JENSEN	Y	<del>N</del>	A
OURADA	Y	<del>N</del>	A
HARSDORF	Y	<del>N</del>	A
ALBERS	Y	<del>N</del>	A
GARD	Y	<del>N</del>	A
KAUFERT	Y	<del>N</del>	A
LINTON <i>Murat</i>	Y	<del>N</del>	A
COGGS	Y	<del>N</del>	A

<del>BURKE</del>	<del>Y</del>	<del>N</del>	A
DECKER	Y	<del>N</del>	A
GEORGE	Y	<del>N</del>	A
JAUCH	Y	<del>N</del>	A
WINEKE	Y	<del>N</del>	A
SHIBILSKI	Y	<del>N</del>	A
COWLES	Y	<del>N</del>	A
PANZER	Y	<del>N</del>	A

AYE 6 NO 10 ABS \_\_\_\_\_

To: Joint Committee on Finance

From: Bob Lang, Director  
Legislative Fiscal Bureau

## ISSUE

### Permit Guarantee Program (DNR -- Water Quality)

[LFB Summary: Page 444, #20]

## CURRENT LAW

DNR administers several environmental programs that require approval of an application for a license, permit or other Department approvals.

## GOVERNOR

Require that DNR promulgate rules that would specify the allowable time limits for departmental approval of an application for a license, permit or other approval. The rules would require the Department to refund fees paid by applicants if the Department fails to approve an application prior to the time limit established under the rule. Require that a permit guarantee program be established for at least the permits, licenses or other required departmental approvals in the following program areas:

- a. navigable waters projects;
- b. well construction projects;
- c. certification of operators of water systems, wastewater treatment plants, and septage servicing vehicles and regulation of septage projects;
- d. discharges of mercury compounds;
- e. water pollution discharges (point sources);
- f. air pollution discharges;
- g. solid waste management facilities licenses; and
- g. regulation of hazardous waste facilities.

Require DNR to submit proposed rules for the permit guarantee program to Legislative Council staff for review no later than the first day after the 13th month beginning after the effective date of the bill.

## DISCUSSION POINTS

1. The permit guarantee program would impact several DNR permits, licenses or other approvals required by the Department. Examples of some of the large permit programs that would be subject to the permit guarantee program include: (a) permits for projects affecting navigable waters (approximately 3,000 permits annually); (b) the Wisconsin Pollution Discharge Elimination System (WPDES) permits (363 permits in 1995-96); (c) stormwater construction permits (350 in 1995-96); (d) air emissions related construction permits (162 in 1995-96); (e) air emissions related operating permits (154 in 1995-96); and (f) industrial stormwater permits (130 in 1995-96).

2. It should be noted that not all permit applications require a specific permit fee. However, the permittees do pay fees based on emission levels of various pollutants (such as the WPDES permittees). Therefore, it may be difficult to determine the fee amount that DNR would be required to repay in the event the permit guarantee agreement is not met. However, DNR indicates that the Department, under administrative rule, could determine the amount to be refunded for such permit applications.

3. DNR indicates that continuing operating permit applications that do not receive timely approval due to Department workload are generally provided an extension and are allowed to continue operations while awaiting permit approval. In many respects some of these approvals are similar to license approvals, in that the permits have to be renewed and often do not involve a large amount of review compared to initial permits or permits for expansions or construction.

4. It could be argued that requiring DNR to approve certain permits within a specified period of time could improve the service DNR provides to permittees. Further, knowing the time period necessary to receive approval of permit requests could allow permit applicants to better plan for projects requiring a permit.

5. Conversely, requiring DNR to guarantee permit applications within a specified time period could hinder the service DNR provides to permit applicants. That is, currently, if a permit applicant provides an incomplete application or does not take all the steps necessary to fulfill permit requirements, DNR generally works with the applicant throughout the permit approval process to complete the application and obtain the necessary information rather than rejecting the applicant's permit request based on incomplete or insufficient information. Under the permit guarantee program, if the "clock is ticking" on the permit guarantee, DNR may be forced to reject such applications for being incomplete or insufficient.

6. However, DNR indicates that the Department could, under administrative rules, allow for a temporary suspension of the approval process if both DNR and the permittee agree, so as to allow the permittee to sufficiently complete the application or respond to DNR inquiries regarding the permit application.

7. Further, permit applicants could knowingly slow the process by submitting an incomplete application or by not responding to Department inquiries regarding a permit application. However, DNR would continue to have the right to reject an incomplete project application or an unresponsive applicant.

8. Concerns have also been raised that setting a specific time frame could diminish the level of review that the Department would otherwise provide. However, DNR indicates that the bill provides the Department with the authority to establish the rules necessary to administer the program and provide the necessary review.

9. Currently, the permit program is generally handled on a first come-first served basis. Because DNR would be required to approve a permit within a specified period of time or forfeit the fee associated with the permit, DNR could potentially be forced to reallocate staff to those areas where permit guarantees are made. As a result, applicants for a permit that is not subject to the permit guarantee program, or is subject to a longer permit guarantee period, may have to wait longer for service.

10. Further, DNR has had a significant backlog under some of its permit programs (such as the WPDES) in the past, therefore it is uncertain the length of the permit guarantee period that would be established in order to alleviate such backlog. However, it should be noted that in September, 1994, a consultant study, ordered by the Legislature, recommended changes to DNR's permitting process. DNR is in the process of carrying out the consultant's recommendations. As a result of these recommendations and other process and policy changes, the backlog for several of the Department's permits has decreased substantially. For example, DNR has reduced its WPDES permit backlog by 78% since the fourth quarter of 1993.

11. Further, requiring DNR to issue a permit or other approval or risk losing revenue associated with the permit or approval could create a justification for additional staff to process permits subject to the guarantee program. Additional staff would likely result in increased fees to those applying for permits or other approvals. Also, if a significant level of refunds are made, fees paid by the remaining applicants could increase accordingly.

**ALTERNATIVES TO BASE**

1. Approve the Governor's recommendation to require DNR to promulgate rules that would specify the allowable time limits for departmental approval of an application for a specified license, permit or other approval.

2. Maintain current law.

Prepared by: Al Runde

MO# AH# 1

JENSEN	<del>Y</del>	N	A
OURADA	<del>Y</del>	N	A
HARSDORF	<del>Y</del>	N	A
ALBERS	<del>Y</del>	N	A
GARD	<del>Y</del>	N	A
KAUFERT	<del>Y</del>	N	A
LINTON <i>Murat</i>	<del>Y</del>	N	A
COGGS	<del>Y</del>	N	A
BURKE	<del>Y</del>	N	A
DECKER	<del>Y</del>	N	A
GEORGE	<del>Y</del>	N	A
JAUCH	<del>Y</del>	N	A
WINEKE	<del>Y</del>	N	A
SHIBILSKI	<del>Y</del>	N	A
COWLES	<del>Y</del>	N	A
PANZER	<del>Y</del>	N	A
AYE <u>8</u>	NO <u>8</u>	ABS	

*FAIL*  
*See Motion # 2024 =*  
*AH# 1 w/ Modification*

*FAIL*

NATURAL RESOURCES

Permit Guarantee Program (Paper #629)

Motion:

Move to require that any entity applying for a DNR permit or approval that is involved in metallic or nonmetallic mining or prospecting activities be ineligible to participate in the permit guarantee program.

Note:

Under SB 77 mining permits would not be eligible for the permit guarantee program. However, a mining operation may also be the holder of a permit that is eligible for the permit program, such as a Wisconsin Pollution Elimination Discharge or a navigable waters permit. Under the motion, such an operation would not be allowed to receive a permit guarantee on any application for a DNR permit or other approval.

MO# 3022

JENSEN	<input checked="" type="checkbox"/>	N	A
OURADA	<input checked="" type="checkbox"/>	N	A
HARSDORF	<input checked="" type="checkbox"/>	N	A
ALBERS	<input checked="" type="checkbox"/>	N	A
GARD	<input checked="" type="checkbox"/>	N	A
KAUFERT	<input checked="" type="checkbox"/>	N	A
LINTON <i>Murat</i>	<input checked="" type="checkbox"/>	N	A
COGGS	<input checked="" type="checkbox"/>	N	A

<sup>2</sup> BURKE	<input checked="" type="checkbox"/>	N	A
DECKER	<input checked="" type="checkbox"/>	N	A
GEORGE	<input checked="" type="checkbox"/>	N	A
JAUCH	<input checked="" type="checkbox"/>	N	A
WINEKE	<input checked="" type="checkbox"/>	N	A
SHIBILSKI	<input checked="" type="checkbox"/>	N	A
COWLES	<input checked="" type="checkbox"/>	N	A
PANZER	<input checked="" type="checkbox"/>	N	A

AYE 16 NO 0 ABS \_\_\_\_\_

NATURAL RESOURCES -- WATER QUALITY

Permit Guarantee Program

Motion:

Move to delete air operating and emission permits from the permit guarantee program.

MO# 16016

JENSEN	<del>Y</del>	<del>N</del>	A
OURADA	<del>Y</del>	<del>N</del>	A
HARSDORF	<del>Y</del>	<del>N</del>	A
ALBERS	<del>Y</del>	<del>N</del>	A
GARD	<del>Y</del>	<del>N</del>	A
KAUFERT	<del>Y</del>	<del>N</del>	A
LINTON <i>Murat</i>	<del>Y</del>	<del>N</del>	A
COGGS	<del>Y</del>	<del>N</del>	A
BURKE	<del>Y</del>	<del>N</del>	A
DECKER	<del>Y</del>	<del>N</del>	A
GEORGE	<del>Y</del>	<del>N</del>	A
JAUCH	<del>Y</del>	<del>N</del>	A
WINEKE	<del>Y</del>	<del>N</del>	A
SHIBILSKI	<del>Y</del>	<del>N</del>	A
COWLES	<del>Y</del>	<del>N</del>	A
PANZER	<del>Y</del>	<del>N</del>	A

AYE 14 NO 2 ABS

NATURAL RESOURCES

Permit Guarantee Program (Paper #629)

Motion:

Move to modify the Governor's recommendation for a permit guarantee program to require that if a permit is not approved within the time frame specified by DNR rule the permit would be presumed approved. Further, establish a deadline by rule for which all information related to a permit or approval can be requested by DNR.

Note:

Under current law, DNR administers several environmental programs that require the issuance of a license, permit or other DNR approval. The permits and licenses that would be subject to the SB 77 permit guarantee program (and this motion) would involve water and air pollution discharges, solid and hazardous waste facilities, water systems, wastewater treatment and navigable waters and wetlands projects.

The air and water discharge permit program are federal programs that have been delegated to the state by EPA. If EPA would not approve a presumptive approval permit program Wisconsin industries and municipalities might have to obtain EPA permits. Further, the U.S. Environmental Protection Agency (EPA) retains authority under federal law to veto or appeal any permit it determines did not receive adequate approval by the state. It may be difficult for DNR to defend an EPA appeal under the motion.

The motion would also impact permits or approvals for projects or activities impacting navigable waters and wetlands (such as projects that place obstructions in navigable streams). Allowing a permit to be approved if DNR does not act within a specified time frame or requiring a time period for which all information must be received could limit the data DNR may be able to collect on the impacts such projects have on the state's streams or wetlands. However, DNR would retain the right to reject any application for which it does not have complete information.

MO# 2024

JENSEN	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>
OURADA	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>
HARSDORF	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>
ALBERS	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>
GARD	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>
KAUFERT	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>
LINTON <i>Murcut</i>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>
COGGS	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>

BURKE	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>
DECKER	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>
GEORGE	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>
JAUCH	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>
WINEKE	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>
SHIBILSKI	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>
COWLES	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>
PANZER	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>

Motion #2024

AYE 6 NO 10 ABS

To: Joint Committee on Finance

From: Bob Lang, Director  
Legislative Fiscal Bureau

## ISSUE

### **Expedited Service for Permitees (DNR -- Water Quality)**

[LFB Summary: Page 445, #21]

## CURRENT LAW

DNR approves permits or makes other approvals for construction activities and other projects that affect navigable waters and wetlands.

## GOVERNOR

Provide 3.0 PR positions annually to administer a newly-created expedited permit service program. Allow the Department to establish a supplemental fee for various permits or approvals provided by the Department. The supplemental fee could only be assessed if the applicant requests, in writing, that the permit or approval be issued within a time period that is shorter than the existing period allowed for issuance and the Department verifies that it will be able to comply with the applicant's request.

Require DNR to promulgate rules to administer the program and establish the fee. In addition, require that rules specify a time limit allowed for making a determination as to whether or not to grant each type of permit or approval.

Permits or approvals in the following program areas would be affected:

a. projects that affect navigable waters (for example, placing of dams, deposits or other obstructions in a navigable stream); and

b. projects that affect wetlands for which the Department has to make a determination that the project complies with state water quality standards.

Any revenues associated with the supplemental fees would be deposited to the Department's water regulation and zoning program revenue continuing appropriation.

## DISCUSSION POINTS

1. DNR approves approximately 3,000 permits annually for projects affecting navigable waters and approximately 300 approvals for projects for which the Department has to make a determination that the project complies with state water quality standards.

2. DNR estimates that it would take approximately \$160,000 annually to fund the three positions provided under the bill to administer the program. Further, DNR estimates that approximately 80 permittees (or approximately 2.5% of the annual permits or approvals) would make use of the expedited service program. This estimate is based on the number of large projects (over \$100,000 in costs) that would likely be interested in the expedited service and the annual complaint rates related to the permits or approvals.

3. At 80 permits per year, a \$2,000 flat rate fee would be needed to cover the staff costs associated with administering the program. Currently DNR charges between \$30 and \$300 for permits affecting navigable waters depending on the cost of the project and the amount of staff time required to approve the permit. DNR indicates that it is conceivable the 80 persons seeking permits or approvals per year would pay the \$2,000 rate. Further, DNR could structure the fee on a sliding scale based on the size of the project which could allow a fee of less than \$2,000 for small projects and a greater fee for large projects. However, to the extent that a sliding scale expedited fee structure results in a substantial increase in those applying for expedited service additional staff may be needed or staff may be reallocated from the non-expedited permit program.

4. The revenues associated with the expedited service fees would be deposited to the Department's water regulation and zoning permit program revenue account. The program revenue account is expected to end the biennium with a minimal balance and annual expenditures from the account are only slightly less than revenues. Therefore, it is unlikely that account could support any of the three positions provided under the bill to administer the expedited service program until revenues associated with the expedited fee accrue. Further, it is likely that the revenues associated with the expedited fees would not be received until 1998-99, at the earliest, and a significant demand for the expedited service may not occur until even later.

5. DNR indicates that existing staff would promulgate the rules and establish the program and the staff provided in the bill would not be hired until the program is in place. Further, it is uncertain whether three positions would be needed to provide expedited service for

perhaps 80 expedited permits annually. If the positions were not provided at this time, DNR could request appropriate staff under s. 16.505/515 when revenues and workload are known.

6. Concerns have been raised that setting a specific time frame could diminish the level of review that the Department would otherwise provide. However, the bill would allow DNR the opportunity to verify that the Department would be able to comply with the applicant's request for expedited service. Further, DNR would be provided authority to establish the rules necessary to administer the program and provide the necessary review.

### ALTERNATIVES TO BASE

1. Approve the Governor's recommendation to: (a) provide 3.0 positions annually to administer a newly-created expedited permit service program; and (b) allow the Department authority to promulgate rules to administer the program and establish a supplemental fee for various permits or approvals provided by the Department.

<u>Alternative 1</u>	<u>SEG</u>
1998-99 POSITIONS (Change to Base)	3.00
[Change to Bill]	0.00]

2. Provide DNR the authority to promulgate rules to administer the program and establish a supplemental fee for various permits or approvals provided by the Department (no staff would be provided at this time).

<u>Alternative 2</u>	<u>SEG</u>
1998-99 POSITIONS (Change to Base)	0
[Change to Bill]	-3.00]

3. Maintain current law.

<u>Alternative 3</u>	<u>SEG</u>
1998-99 POSITIONS (Change to Base)	0.00
[Change to Bill]	-3.00]

MO# *1442*

JENSEN	Y	N	A
OURADA	Y	N	A
HARSDORF	Y	N	A
ALBERS	Y	N	A
GARD	Y	N	A
KAUFERT	Y	N	A
LINTON <i>Murat</i>	Y	N	A
COGGS	Y	N	A

BURKE	Y	N	A
DECKER	Y	N	A
GEORGE	Y	N	A
JAUCH	Y	N	A
WINEKE	Y	N	A
SHIBILSKI	Y	N	A
COWLES	Y	N	A
PANZER	Y	N	A

AYE *1* NO *1* ABS *1*

Prepared by: Al Runde

MO# 1111

JENSEN	Y	N	A
OURADA	Y	N	A
HARSDORF	Y	N	A
ALBERS	Y	N	A
GARD	Y	N	A
KAUFERT	Y	N	A
LINTON <i>Murat</i>	Y	N	A
COGGS	Y	N	A

BURKE	Y	N	A
DECKER	Y	N	A
GEORGE	Y	N	A
JAUCH	Y	N	A
WINEKE	Y	N	A
SHIBILSKI	Y	N	A
COWLES	Y	N	A
PANZER	Y	N	A

AYE 16 NO 0 ABS

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