

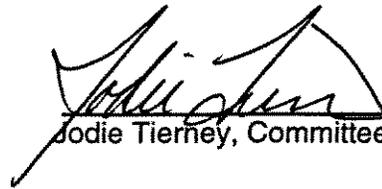
A

Joint Committee on Finance Attendance Sheet

Place: MLK

Date: 5/6/97

	Present	Absent
Rep. Jensen	✓	
Rep. Ourada	✓	
Rep. Harsdorf	✓	
Rep. Albers	✓	
Rep. Gard	✓	
Rep. Kaufert	✓	
Rep. Linton	✓	
Rep. Coggs	✓	
Sen. Burke	✓	
Sen. Decker	✓	
Sen. George	✓	
Sen. Jauch	✓	
Sen. Wineke	✓	
Sen. Shibilski	✓	
Sen. Cowles	✓	
Sen. Panzer	✓	


Jodie Tierney, Committee Clerk



Legislative Fiscal Bureau

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May 2, 1997

TO: Members
Joint Committee on Finance

FROM: Bob Lang, Director

SUBJECT: Budget Issue Papers

Attached are budget issue papers, prepared by this office, on the following agencies:

- Department of Natural Resources -- Departmentwide and Administrative Services
- Lower Wisconsin State Riverway Board
- Minnesota-Wisconsin Boundary Area Commission
- Department of Commerce -- Building and Environmental Regulation
- District Attorneys
- Judicial Commission
- Department of Employment Relations
- Shared Revenue and Property Tax Relief -- Direct Aid Payments
- Shared Revenue and Property Tax Relief -- Property Tax Credits

These agencies have been scheduled for executive action by the Joint Committee on Finance. The meeting will be held at 10:00 a.m. on Tuesday, May 6, in 119 MLK Building, Joint Finance (back of Senate Chambers).

BL/sas
Attachments

1997-99 BUDGET PAPERS

May 6, 1997

Paper

Natural Resources -- Departmentwide

- 575 Minor Policy and Technical Changes -- Agency Reorganization
- 576 Public Intervenor Support
- 577 Vehicle and Equipment Pools

Lower Wisconsin State Riverway Board

Minnesota-Wisconsin Boundary Area Commission

Commerce -- Building and Environmental Regulation

- 265 PECFA Awards
- 266 PECFA -- Expert Witness Costs
- 267 PECFA -- Home Heating Oil Award Set-Aside
- 268 PECFA -- Change in Remediation Activities
- 269 PECFA -- Interest Cost Reimbursement
- 270 PECFA -- Service Providers
- 271 PECFA -- Ineligible Costs
- 272 PECFA -- Aboveground Tank Eligibility
- 273 PECFA -- Eligibility for Non-Upgraded Tanks
- 274 PECFA -- Priority for Brownfields
- 275 Aviation Fuel Petroleum Inspection Fee Allowance

District Attorneys

- 345 Sexual Predator Prosecutors
- 346 Statutory Rape Prosecutor
- 347 Special Prosecutors
- 348 Additional Prosecutors

Judicial Commission

Paper #

Employment Relations

- 370 Minor Policy and Technical Changes
- 371 Additional Collective Bargaining Position
- 372 Training Position Funding Conversion and Associated Expenditure Authority
- 373 Excess Division Administrator Appointment Authority

Shared Revenue and Property Tax Relief -- Direct Aid Payments

- 740 Direct Aid Payments -- Funding Level
- 741 Minimum and Maximum Payment Provisions
- 742 Payments for Municipal Services -- Garbage and Trash Disposal and Collection
- 743 Payments for Municipal Services -- Agency Chargebacks

Shared Revenue and Property Tax Relief -- Property Tax Credits

- 745 Transfers from Property Tax Relief Fund to General Fund
- 746 Homestead Tax Credit Reestimate
- 747 Homestead Tax Credit -- Definition of Household Income

Natural Resources

Departmentwide and Administrative Services

(LFB Budget Summary Document: Page 388)

LFB Summary Items for Which Issue Papers Have Been Prepared

<u>Item #</u>	<u>Title</u>
2	Minor Policy and Technical Changes -- Agency Reorganization (Paper #575)
15	Public Intervenor Support (Paper #576)
18	Vehicle and Equipment Pools (Paper #577)

MO# Modifications
under A & B

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	X	N	A
COGGS	X	N	A

To: Joint Committee on Finance

From: Bob Lang, Director
Legislative Fiscal Bureau

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

AYE 15 NO 0 ABS 1

ISSUE

**Minor Policy and Technical Changes -- Agency Reorg
Departmentwide and Administrative Services)**

[LFB Summary: Page 389, #2]

A. LAND PROGRAM GENERAL OPERATIONS APPROPRIATIONS

Modification to Base

Delete several subappropriation lines within the segregated and federal general program operations appropriations for the Land Division.

Explanation: SB 77 erroneously leaves in subappropriation lines in the Land program appropriations for functions which had been funded under the former Resource Management program but which will be funded from other programs under the reorganization.

B. SOLID AND HAZARDOUS WASTE PROGRAM

Modification to Base

Retain \$45,800 PR annually and 1.0 PR position as brownfields-related program revenues rather than solid waste program revenues under the bill.

Explanation: SB 77 erroneously transfers the funding source for a position from brownfields-related remediated property program revenues to solid and hazardous waste management program revenues when the CAER Division cooperative environmental assistance program is created.

Prepared by: Russ Kava and Kendra Bonderud

To: Joint Committee on Finance

From: Bob Lang, Director
Legislative Fiscal Bureau

ISSUE

Public Intervenor Support (DNR -- Departmentwide and Administrative Services)

[LFB Summary: Page 395, #15]

CURRENT LAW

The Secretary of the Department of Natural Resources designates an attorney as the Public Intervenor. The Public Intervenor has the authority to intervene in rule-making and other administrative proceedings, at the direction of the Public Intervenor Board, consistent with the duty to protect public rights in water or natural resources. In carrying out these duties, the Public Intervenor may, with the approval of the Public Intervenor Board, initiate actions and proceedings before any agency in order to raise issues, present evidence and testimony and make arguments. The Public Intervenor cannot, however, file or intervene in court actions.

The eight-member Public Intervenor Board, also attached to DNR, is comprised of members appointed for four-year terms. The members have backgrounds or demonstrated experience in natural resource conservation or environmental protection. The members are appointed as follows: (a) two members appointed by the Governor with the advice and consent of the Senate; (b) two members appointed by the Governor without the advice and consent of the Senate (these two members were to be appointed by the Attorney General with Senate confirmation under enrolled AB 150, but the Governor's item veto of Act 27 converted them to gubernatorial appointments); and (c) one member each appointed by the majority and minority leaders of both houses of the Legislature.

GOVERNOR

Provide \$15,000 GPR annually for supplies and services for the Office of the Public Intervenor for reimbursement of expenses of members of the Public Intervenor Board, the hiring of expert assistance and law clerk support.

DISCUSSION POINTS

1. One attorney position and part of the authority of the Office of the Public Intervenor was transferred from the Department of Justice to DNR on September 1, 1995. The current Public Intervenor was appointed to her position in April, 1996. The Public Intervenor Board met for the first time in October, 1996. The Board currently has six members, with the remaining two members having been appointed by the Governor but awaiting Senate confirmation.

2. The Public Intervenor indicates that her primary function to date has been responding to calls for assistance from state residents on various environmental and natural resources issues. She has filed written comments in one administrative rule hearing (on NRs 103, 299 and 504 regarding wetland regulation). She indicates that her current workload is primarily a result of the fact that she did not have a Board to authorize her actions until last October, and that the Board is still in the process of determining the new role of the Public Intervenor. The Public Intervenor indicates that the Board has given preliminary indications that it wishes for her to intervene in administrative proceedings as well as serving in her current ombudsman role.

3. There is currently \$6,800 in base funding for supplies and services for the Public Intervenor. The bill would add \$15,000 annually for three components: (a) \$5,000 for expert assistance; (b) \$5,600 for expenses for Board meetings; and (c) \$4,400 for a law clerk position in the Office.

4. Expert assistance. \$5,000 was recommended by the Governor for hiring expert assistance for those rule-making hearings and administrative proceedings in which the Board chooses to intervene. Such expert assistance could become necessary, particularly if the Board chooses to intervene in relatively complex issues, such as the proposed Crandon mining operation in Forest County.

5. Conversely, by statute, DNR personnel are required to make investigations, studies, and reports as the Public Intervenor may request in connection with administrative proceedings, either before or after a formal intervention. In addition, personnel of state agencies shall, at the Public Intervenor's request, provide information, serve as witnesses in proceedings and otherwise cooperate in the carrying out of the Public Intervenor's duties. Given that the Public Intervenor, by law, could call on virtually any state agency to provide assistance, it could be argued that additional funding for this purpose may not be necessary.

6. Board expenses. The Governor recommended \$5,600 to cover the expenses of the Public Intervenor Board for mileage, lunch, parking and other meeting related expenditures. The \$5,600 recommended would cover costs for six meetings per year for eight members at a rate of \$115 per meeting per person. Based on allowable state reimbursement levels, board meeting costs could be reestimated at \$2,100 annually to allow for five, one-day Board meetings and for one overnight meeting or conference in the state.

7. Law clerk. The Public Intervenor currently shares one support staff position with other attorneys in the Bureau of Legal Services. The Governor also recommended \$4,400 for a law clerk to assist the Public Intervenor in her duties. This would allow the clerk to be paid a salary of \$9.75 per hour (the salary of other law clerks in Bureau of Legal Services in DNR) for approximately eight hours per week. This law clerk position would assist the Public Intervenor with legal research, citizens inquiries and other duties.

8. In the 1995-97 biennial budget, \$353,400 and 3.0 positions (2.0 attorney positions and 1.0 support position) were eliminated from the Department of Justice with 1.0 attorney position and an associated \$6,800 in supplies being transferred to DNR. No funds directly related to Board expenses or legal expenses were deleted from DOJ. If the funding for the current Office of the Public Intervenor is inadequate, it could be argued that insufficient funding was transferred from DOJ in the 1995-97 budget.

9. DOJ officials indicate that expenses relating to the Public Intervenor, which remained in DOJ, totalled approximately \$6,000. This includes \$5,000 in expert witness expenses under DOJ's legal expenses appropriation (case account), and \$1,000 in reimbursement for Board members' meeting costs under DOJ's legal services general operations appropriation. However, funds related to Public Intervenor litigation expenses have been absorbed by other DOJ cases. Case account expenses have exceeded appropriated amounts in the 1995-97 biennium (the appropriation has been supplemented twice in 1996-97, through the s. 13.10 process). Based on current and projected 1997-99 caseload, case account funds would not be available for transfer to DNR. In addition, given legal services supplies and services reductions in the 1995-97 biennium, and additional 1997-99 reductions under the Governor's budget bill, DOJ officials argue that additional funding should not be transferred from DOJ to DNR.

10. Further, issues have been raised regarding continued funding of the Public Intervenor. Some have questioned whether, given the limited statutory authority, the position is necessary. Others argue the position may only be justified if the original authority is restored.

11. Prior to the 1995-97 biennial budget, the Attorney General designated one or more assistant attorneys general within the Department of Justice as Public Intervenors to formally initiate actions and intervene (on the Public Intervenor's own initiative or upon the request of any committee of the Legislature) in proceedings before any state agency or any court for the protection of public rights relating to water and other natural resources. At the Public Intervenor's request, state agencies were required to provide information, serve as witnesses in proceedings

ALTERNATIVES TO BASE

A. Office of the Public Intervenor

1. Approve the Governor's recommendation, as reestimated, to provide \$11,500 GPR annually for the Office of the Public Intervenor.

<u>Alternative 1</u>	<u>GPR</u>
1997-99 FUNDING (Change to Base)	\$23,000
[Change to Bill	-\$7,000]

2. Provide \$6,500 GPR annually for the Public Intervenor (\$5,000 for expert assistance would not be provided).

<u>Alternative 2</u>	<u>GPR</u>
1997-99 FUNDING (Change to Base)	\$13,000
[Change to Bill	-\$17,000]

3. Transfer \$6,000 annually from DOJ to DNR for the Office of Public Intervenor.

<u>Alternative 3</u>	<u>GPR</u>
1997-99 FUNDING (Change to Base)	\$0
[Change to Bill	-\$30,000]

4. Delete \$56,100 in 1997-98 and \$74,800 in 1998-99 and 1.0 position annually and eliminate the Office of the Public Intervenor and Board effective October 1, 1997.

<u>Alternative 4</u>	<u>GPR</u>
1997-99 FUNDING (Change to Base)	- \$130,900
[Change to Bill	- \$160,900]
1998-99 POSITIONS (Change to Base)	- 1.00
[Change to Bill	- 1.00]

5. Effective October 1, 1997, shift the Public Intervenor and Board from DNR to DOJ (\$56,100 in 1997-98 and \$74,800 in 1998-99 and 1.0 position and incumbent). Further, restore the authority of the Public Intervenor to that which was held prior to 1995 Act 27. (This

would allow the Attorney General to appoint the Public Intervenor and allow the Public Intervenor to formally intervene in court cases.)

<u>Alternative 5</u>	<u>GPR</u>
1997-99 FUNDING (Change to Base)	\$0
[Change to Bill	-\$30,000]

FAV
6.

In addition to Alternative 5, provide \$60,900 GPR in 1997-98 and \$90,900 GPR in 1998-99 and 2.0 positions in DOJ to restore the former staffing level to DOJ (two attorneys and a legal secretary).

<u>Alternative 6</u>	<u>GPR</u>
1997-99 FUNDING (Change to Base)	\$151,800
[Change to Bill	\$121,800
1998-99 POSITIONS (Change to Base)	2.00
[Change to Bill	2.00]

7. Maintain current law.

<u>Alternative 7</u>	<u>GPR</u>
1997-99 FUNDING (Change to Base)	\$0
[Change to Bill	-\$30,000]

B. Public Intervenor Board Membership

1. Alter the composition of the Public Intervenor Board effective October 1, 1997, to delete two members appointed by the Governor without the advice and consent of the Senate and provide for two members appointed by the Attorney General with the advice and consent of the Senate.

2. Restore the Public Intervenor Board to its previous advisory capacity.

3. Maintain current law (four members appointed by the Governor, four members appointed by the Legislature, none appointed by the Attorney General).

MO# *ALT # 540*

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

Prepared by: Russ Kava

BURKE	Y	N	A
2. 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	7	NO	8
ABS			

Over →

MO: Alt #4
PAPER #516

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	<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 11 NO 5 ABS D

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

ISSUE**Vehicle and Equipment Pools (DNR -- Departmentwide and Administrative Services)**

[LFB Summary: Page 398, #18]

CURRENT LAW

The Department of Natural Resources is provided an account within the conservation fund for intradepartmental moneys received from the car, truck, airplane and heavy equipment pools for the operation, replacement, maintenance and purchase of vehicles and equipment.

GOVERNOR

Add the information technology pool to the list of vehicle and equipment pools from which DNR can spend moneys received from within the Department for the operation, maintenance, replacement and purchase of that equipment. Require DNR to submit a report to the Department of Administration no later than January 1, 1998, detailing the Department's proposed expenditures of these funds necessary to conform to the information technology guidelines established by DOA.

Also, add DNR's vehicle and equipment pool SEG appropriation to the list of specified appropriations from which DNR can expend conservation fund SEG in an amount not exceeding the depreciated value of the vehicles and equipment financed from the pool.

DISCUSSION POINTS

1. The main revenues to the Department's vehicle pool account are: (a) the per mile fee paid when an employe drives a vehicle purchased from the pool; (b) the per hour fee paid when an employe uses a piece of heavy equipment purchased from the pool; and (c) funds raised when DOA auctions used vehicles in the pool that have completed their life cycle. Fees are set to cover equipment and maintenance costs and to generate sufficient revenues to replace items on a periodic basis (generally every three to five years for cars and light trucks and 20 to 25 years for heavy equipment, depending on the usage of the particular machine).

2. The main source of revenue to the radio pool account (typically two-way radios in patrol vehicles) is an annual fee based on the device used (radio or base station). These fees cover the salary of communication technicians, operations, maintenance and replacement costs of individual units as well as the costs of overall radio system replacement on a periodic basis.

3. The main source of revenue to the aircraft pool account is an hourly charge for flights on aircraft leased and maintained by DOA. These revenues are used to pay DOA aircraft lease costs, airplane maintenance done by either DOA or DNR and other supply costs.

4. The following table shows the balances in the pool accounts as of March 31, 1997. The projected balance in the accounts as of June 30, 1997, is also shown.

	Cash Balance <u>March, 1997</u>	Estimated Balance <u>June, 1997</u>
Vehicle	\$2,186,800	\$3,000,000
Radio	1,205,400	1,300,000
Aircraft	<u>-85,000</u>	<u>0</u>
Total	\$3,307,200	\$4,300,000

Equipment Pool Purchases

5. Currently, near the end of June, the DNR Bureau of Finance certifies the amount of money available in the pool for capital equipment replacement for the upcoming fiscal year to the Department's fleet manager. The fleet manager can then place purchase orders in the fall, and the equipment is generally delivered in the winter. DNR may thus only make purchases based on actual revenue in the account at the time of purchase. (These standards do not apply to the aircraft pool, since these purchases are made by DOA.)

6. Under the Governor's recommendation, the Department would be able to spend money from the pool account in an amount not exceeding the depreciated value of equipment financed from the pool. DNR program staff indicate they would manage the vehicle and

equipment pool purchase system to maintain a positive balance in the account at the end of any fiscal year. That is, DNR could place purchase orders and pay for equipment even if the pool account is in deficit during the fiscal year as long as enough revenue is generated during the year to result in the desired positive balance in the pool accounts at the end of the year.

7. The proposed method is currently used for several Department of Transportation and Department of Administration pool accounts. The proposed method of managing the pool accounts is less fiscally conservative and may allow for a smaller margin to provide for equipment in case of any unexpected contingencies.

8. However, DNR staff indicate they have enough historical information and control over purchases to successfully manage the accounts under the proposed system. In addition, the provision would allow for greater flexibility in purchasing. This could allow the Department to more readily take advantage of favorable market conditions as they occur.

Information Technology Pool

9. Revenues and expenditures from the information technology pool account is currently managed and tracked in a separate appropriation. Each DNR Bureau pays a fee for each computer user, which includes network and mainframe operation and maintenance costs, but not for a replacement fund.

10. The Governor's recommendation would add the information technology pool to the other vehicle and equipment pools. DNR program staff indicate that the overall management and tracking of the various pool accounts would not change significantly from current practice.

11. The Governor's recommendation would also allow for the use of the equity in the newly-combined pools (including equity in non-computer related pools) to pay for computers as DNR moves toward compliance with the statewide information technology standards set by DOA. The release of the funding would be contingent upon DOA approval of a report detailing the Department's proposed expenditures of these funds. As part of this report, DNR program staff anticipate detailing how much they intend to spend from the pool accounts and how much will remain for other vehicle and equipment purchases.

12. In other words, the bill would allow the funding of computer purchases from funds generated for the purpose of replacing vehicles, radios and heavy equipment. Therefore, under the bill, money generated for one purpose (vehicle replacement) could be used for another (computers). For example, DNR staff indicate that they have been considering using money in the radio pool to fund a new statewide VHF trunking radio network (under which multiple radio users could connect on the same frequency, unlike the current system where only one pair of users is able to communicate on a single frequency). Whether these funds would ultimately be used for radios or computers would presumably be dealt with as part of DNR's report to DOA.

13. The question of equity among funds within DNR would have to be determined in the report. DNR indicates that the funds contribute to the various pool accounts in the following proportions:

<u>Vehicles</u>		<u>Heavy Equipment</u>		<u>Radio</u>	
Fish and Wildlife	52%	Fish and Wildlife	51%	Fish and Wildlife	40%
Forestry	18	Forestry	31	Forestry	31
Parks	8	Parks	16	Parks	23
Other	<u>22</u>	Other	<u>2</u>	Other	<u>6</u>
Total	100%	Total	100%	Total	100%

DNR would have to determine whether to use pool account funds for computers in proportion to the amount that each fund contributed to the accounts or to propose spending these funds without respect to the fund from which they originated. Further, it could be argued that, if funds are available to purchase computers from the vehicle or radio pools, the charges to the users of these items should instead be reduced to reflect the actual cost of the service provided.

14. Under the Governor's recommendation, the Legislature would have no oversight or input into how these funds are spent. Given the uncertainty of how much money will be spent and in what manner, the Committee could delete this recommendation. The issue could be reconsidered in the future when more detailed information is available. Alternately, the Committee could require DNR to submit the plan for the Committee's consideration, detailing the condition of the pool accounts and proposed rates and expenditures from the pool accounts.

ALTERNATIVES TO BASE

A. Equipment Pool Purchases

1. Approve the Governor's recommendation to allow DNR to expend funds from its vehicle and equipment pool in an amount not exceeding the depreciated value of the vehicles and equipment financed from the pool.
2. Maintain current law.

B. Information Technology Pool

1. Approve the Governor's recommendation to: (a) add the information technology pool to the list of vehicle and equipment pools from which DNR can spend moneys for the operation, maintenance, replacement and purchase of that equipment; and (b) require DNR to submit a

report to DOA no later than January 1, 1998, detailing the Department's expenditures of these funds to conform to the information technology guidelines.

2. Modify the Governor's recommendation by requiring DNR to submit a request for expenditure to DOA and the Joint Committee on Finance for consideration no later than the Committee's third quarterly meeting under s. 13.10 (March, 1998), including: (a) the balances in the Department's vehicle and equipment pools accounts; (b) the Department's proposed expenditures of these funds necessary to conform to the information technology guidelines established; (c) how any one-time expenditure of funds would affect the rates charged for and the long-term solvency of the accounts; (d) any proposed purchases of other equipment that had to be foregone to purchase information technology equipment; and (e) the sources and recipients within the Department of any funding from the pool accounts used to purchase information technology equipment.

3. Maintain current law.

Prepared by: Russ Kava

MO#

AH#A1#62

ZJENSEN	X	N	A
OURADA	X	N	A
HARSDORF	X	N	A
ALBERS	X	N	A
GARD	X	N	A
KAUFERT	Y	N	A
LINTON	X	N	A
COGGS	X	N	A

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 15 NO 1 ABS

NATURAL RESOURCES

Grandfather Falls Recreation Area

Motion:

Move to direct the Department of Natural Resources to purchase, at a price of up to \$2,138,000, approximately 1,485 acres of land commonly known as the Grandfather Falls Recreation Area in Lincoln County. Direct the expenditures to be made from the existing Warren Knowles-Gaylord Nelson stewardship program allocations notwithstanding the specific authorization for each component.

Note:

This motion would direct the Department of Natural Resources to expend up to \$2,138,000 in stewardship bonding to purchase 1,485 acres in the Grandfather Falls Recreation Area of the Wisconsin River from the Wisconsin Public Service Corporation. The property has an appraised value of \$2,138,000. DNR would choose which components of the stewardship program the purchase would be credited against.

MO# 1529

JENSEN	<input checked="" type="checkbox"/>	N	A
ZOURADA	<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	<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

Provision of Access to Landlocked Owners

Motion:

Move to require that all state governmental units and any organization that receives government funding via grants or loans provide access to any landowner that is landlocked as a result of the government's or the organization's land purchase.

Note:

This motion would require all state, county, town, municipal and other government units and any organization that receives government funding to allow access to property that becomes landlocked as a result of a land purchase made by that government or organization. This could include providing an easement to the landowner for such purposes.

MO# 1049

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	Y	X	A
COGGS	Y	X	A

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

AYE 12 NO 4 ABS _____

NATURAL RESOURCES

Departmentwide and Administrative Services

LFB Summary Items for Which No Issue Papers Have Been Prepared

<u>Item #</u>	<u>Title</u>	<u>MO# Items</u>			
1	Standard Budget Adjustments				
2	Agency Reorganization	JENSEN	X	N	A
3	Unclassified Division Administrators	OURADA	X	N	A
4	Internal Reallocation	HARSDORF	X	N	A
6	Program Revenue Reestimates	ALBERS	X	N	A
7	Segregated Revenue Reestimates	GARD	X	N	A
8	Federal Aid Reestimates	KAUFERT	X	N	A
9	Statewide Information Technology Standards	LINTON	X	N	A
10	Rent Increases	COGGS	X	N	A
11	Administration and Technology Operations Reductions	BURKE	X	N	A
12	Integrated Science Services Staff Reduction	DECKER	X	N	A
13	Federal-State Relations Chargebacks	GEORGE	X	N	A
14	Facilities and Lands Operating Budget Reduction	JAUCH	X	N	A
16	Transfers Between Programs and Subprograms	WINEKE	X	N	A
19	Repeal Indirect Cost Reimbursement Appropriation	SHIBILSKI	X	N	A
		COWLES	X	N	A
		PANZER	X	N	A
		AYE 16 NO 0 ABS			

LFB Summary Item to be Addressed in a Subsequent Paper

<u>Item #</u>	<u>Title</u>
5	Debt Service Reestimate

LFB Summary Item for Introduction as Separate Legislation

<u>Item #</u>	<u>Title</u>
17	Denial of Licenses for Child Support and Tax Delinquency

Lower Wisconsin State Riverway Board

(LFB Budget Summary Document: Page 374)

No Issue Papers Have Been Prepared

LOWER WISCONSIN STATE RIVERWAY BOARD

LFB Summary Items for Which No Issue Papers Have Been Prepared

<u>Item #</u>	<u>Title</u>
1	Standard Budget Adjustments
2	GPR Shift to the Conservation Fund
3	Computer Services
4	Travel Costs

Ourada → Forestry Fund Amendment

MO#			
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	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 _____ NO _____ ABS _____

Minnesota-Wisconsin Boundary Area Commission

(LFB Budget Summary Document: Page 383)

No Issue Papers Have Been Prepared

MINNESOTA-WISCONSIN BOUNDARY AREA COMMISSION

LFB Summary Items for Which No Issue Papers Have Been Prepared

<u>Item #</u>	<u>Title</u>
1	GPR Shift to the Conservation Fund
2	Computer Services
3	Mississippi River Stewardship Project
4	Supplies and Salaries Increases

Commerce

Building and Environmental Regulation

(LFB Budget Summary Document: Page 149)

LFB Summary Items for Which Issue Papers Have Been Prepared

<u>Item #</u>	<u>Title</u>
2	PECFA Awards (Paper #265)
4	PECFA -- Expert Witness Costs (Paper #266)
5	PECFA -- Home Heating Oil Award Set-Aside (Paper #267)
6	PECFA -- Change in Remediation Activities (Paper #268)
7	PECFA -- Interest Cost Reimbursement (Paper #269)
8	PECFA -- Service Providers (Paper #270)
9	PECFA -- Ineligible Costs (Paper #271)
11	PECFA -- Aboveground Tank Eligibility (Paper #272)
12	PECFA -- Eligibility for Non-Upgraded Tanks (Paper #273)
15	PECFA -- Priority for Brownfields (Paper #274)
23	Aviation Fuel Petroleum Inspection Fee Allowance (Paper #275)

To: Joint Committee on Finance

From: Bob Lang, Director
Legislative Fiscal Bureau

ISSUE

PECFA -- Expert Witness Costs (Commerce -- Building and Environmental Regulation)

[LFB Summary: Page 150, #4]

CURRENT LAW

Under the Petroleum Environmental Cleanup Fund Award (PECFA) program, the statutes and administrative rules specify eligible and ineligible costs. Commerce is required to deny reimbursement of ineligible costs. PECFA claimants may appeal a Commerce decision to deny part or all of a PECFA claim.

GOVERNOR

Provide \$150,000 SEG annually from the petroleum inspection fund for expert witness expenses in legal matters under the PECFA program. Place the funds in unallotted reserve to be released upon approval by DOA.

DISCUSSION POINTS

1. When a PECFA claimant appeals a Commerce PECFA decision, the appeal is heard by a Department of Workforce Development hearing examiner as part of an inter-agency agreement between Commerce and DWD.

2. Commerce would use the funds provided in SB 77 to hire technical or environmental experts to provide information at administrative hearings in support of a Commerce decision to deny a PECFA claim or ineligible costs included in a claim.

3. Commerce hired two experts in one case to prepare information for an administrative hearing. It denied a \$1,000,000 PECFA claim based on owner gross negligence because Commerce claimed the owner continued to use tanks after the tanks failed a tightness test. The Department hired: (a) a technical expert in tank leak detection systems and petroleum inventory control; and (b) an environmental auditing firm (which is currently under contract to do audits of environmental work) to review the environmental work done at the site. The Department spent approximately \$9,000 for preliminary work by the two experts. The case was settled prior to the hearing with cost savings of \$200,000. (If the claim had gone to hearing and the state had lost, PECFA would have had to pay the owner \$1,000,000. If the state would have won a hearing, it still would have had to pay the lender \$1,000,000 under the lender hold harmless provision of the statutes, although Commerce could seek recovery of costs from the owner). Commerce estimates that if the case had gone to hearing, a total of \$25,000 would have been spent (an additional \$16,000) because the two experts would have testified at the hearing; thus, the \$9,000 spent on technical experts saved \$200,000 in PECFA costs.

4. Commerce paid for the technical experts from current PECFA administrative funds. The administrative appropriation does not have base level funding for this purpose, therefore, the Department reallocated funds used for PECFA claim reviewers and supplies.

5. Based on Commerce estimates, the recommended funds would be sufficient to hire experts for approximately six appeals that go to hearing annually, or a greater number of appeals that are settled before the hearing. However, the estimates are based on the Department's "best guess" with only the single case of actual data.

6. Commerce does not have plans to utilize technical experts for current appeals cases and does not know what the program need will be in the future. The Department would like to have funds available in anticipation of potential future appeals. Under the bill, Commerce would have to request DOA release of the funds from unallotted reserve.

7. It could be argued that \$150,000 annually is not warranted for expert witnesses based on actual expenses incurred to date of \$9,000. Provision of a smaller amount would provide a base level of funding which could be adjusted through budget or s. 13.10 requests if future program need warrants it. For example, \$25,000 would provide for a base level of expert witness expenditures for several investigations or at least one case that goes to hearing.

8. Under current funding levels, if Commerce decides to hire technical experts for activities related to appeals, it would have to reallocate funds from PECFA claims review activities such as salary and supplies budgets. Commerce lapsed funding for supplies totalling \$13,100 in 1995-96 and \$42,200 in 1994-95.

9. Under the bill, DOA would have to release the funds from unallotted reserve before Commerce could hire expert witnesses or use the funds for any other purpose. If the funds would not be needed for expert witness costs, DOA states the balance would lapse to the petroleum inspection fund at the end of the fiscal year.

ALTERNATIVES TO BILL

1. Approve the Governor's recommendation to provide \$150,000 SEG annually in unallotted reserve for expert witness expenses in legal matters under the PECFA program.

2. Provide \$25,000 SEG annually in unallotted reserve for expert witness expenses in legal matters under the PECFA program.

<u>Alternative 2</u>	<u>SEG</u>
1997-99 FUNDING (Change to Bill)	- \$250,000

3. Maintain current law.

<u>Alternative 3</u>	<u>SEG</u>
1997-99 FUNDING (Change to Bill)	- \$300,000

Prepared by: Kendra Bonderud

MO# Alt #2

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	X	N	A
COGGS	X	N	A

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

AYE 13 NO 3 ABS

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

ISSUE

PECFA -- Home Heating Oil Award Set-Aside (Commerce -- Building and Environmental Regulation)

[LFB Summary: Page 151, #5]

CURRENT LAW

Commerce is required to allocate not more than \$500,000 of the Petroleum Environmental Cleanup Fund Award (PECFA) program awards appropriation in each fiscal year from the biennial appropriation for awards for home heating oil tank system discharges. Awards are to be made in the order that the applications are received. Commerce may conditionally approve awards if the \$500,000 in any fiscal year has been reached, and make those awards first in the following fiscal year. The maximum home heating oil award is \$7,500, and the owner is required to pay a deductible equal to 25% of cleanup costs.

Commerce is required to allocate not more than 5% of the PECFA awards appropriation in each fiscal year for awards for public school district tanks that store heating oil for consumptive use on the premises. Any of the 5% set-aside that is not needed during 1995-97 for school district tanks will be available for commercial underground or aboveground tanks.

GOVERNOR

Eliminate the \$500,000 annual maximum allocation for home heating oil tank awards. Instead, specify that the current set-aside of 5% of the PECFA awards appropriation for public school district heating oil tanks would also include home heating oil tanks.

DISCUSSION POINTS

1. As of April 1, 1997, Commerce completed review of 321 home heating oil tank claims for \$1,839,000 during 1995-97. In May, 1996, payments for 170 sites reached the \$1,000,000 maximum allocation for home heating oil tank PECFA awards for the 1995-97 biennium. Commerce is holding 151 home heating oil PECFA claims totalling \$839,000 to be paid on or after July 1, 1997, with funds from the 1997-99 biennial appropriation.

2. The Department reviews home heating oil tank claims on a "fast track" basis as soon as they are received. If Commerce continues to receive claims at the current rate, a total of \$1.1 million in home heating oil tank claims could be waiting to be paid on July 1, 1997, and estimated 1997-99 demand of \$2.1 million for home heating oil tank claims would be expected.

3. Commerce has paid a cumulative total of \$3.2 million for 582 home heating oil tank PECFA claims as of March, 1997. Contamination from 733 home heating oil tanks has been cleaned up with a cost of \$4.1 million under the program, including the 582 paid sites and the 151 sites that have been reviewed but not yet paid. As of December, 1996, Commerce was aware of approximately 900 home heating oil tank PECFA sites and estimated that there are an additional 600 potential home heating oil tank PECFA sites, for a cumulative total of 1,500 sites. Thus, almost half of the expected PECFA claims for home heating oil tanks have been reviewed and PECFA claims can be expected for an additional 770 home heating oil tanks with future PECFA costs of approximately \$4.3 million.

4. As of April 1, 1997, Commerce paid \$1.5 million for 67 public school district tank claims during 1995-97. If claims continue to be paid at the current rate, a total of \$1.7 million in school district claims would be expected during 1997-99. Most school district claims are reviewed on a "fast track" priority because the investigation and cleanup is completed with a cost of less than \$50,000. These fast track claims are then put at the end of the line of claims that have been reviewed and are waiting to be paid when funds are available.

5. Five percent of the PECFA awards appropriation would provide up to \$4,556,600 under the bill in each year, or \$9,113,200 during the 1997-99 biennium for both school district tanks and home heating oil tanks. A combined total of \$3.8 million (\$4.9 million with the \$1.1 million awaiting payment on July 1, 1997) for the two categories of claims would be expected during 1997-99, which would not exceed the \$9.1 million that would be available in the 5% set-aside.

6. Under the bill, the additional amounts that would be spent on home heating oil tank claims (approximately \$2.2 million during 1997-99) would reduce the amount that would be available for commercial underground and aboveground tanks.

7. The \$500,000 annual maximum allocation for home heating oil tank claims was established when the PECFA program was enacted in 1989 Act 399. The PECFA awards

appropriation was \$7,393,400 in 1988-89, so the \$500,000 allocation for home heating oil tank claims was 6.8% of the awards appropriation. The PECFA awards appropriation has increased to \$84,031,700 in 1996-97 (and would increase to \$91,131,700 under the bill), but the maximum allocation for home heating oil claims has not changed. The \$500,000 maximum annual allocation is 0.6% of the 1996-97 appropriation.

8. Home heating oil tank claims include a relatively small amount of money (maximum \$7,500 per claim) in comparison to commercial underground and aboveground tank sites. However, the amount may have a larger proportional impact on the finances of some homeowners than on some businesses. While commercial site owners may submit multiple claims during a time period of a few years before cleanup is completed, home heating oil tank claims are generally submitted as one claim for the entire cleanup. Home heating oil tank cleanups are usually completed at the time that a home heating system is converted from oil to another source such as natural gas or when a home is sold.

9. Under the bill, home heating oil and public school district tank claims would continue to receive fast track priority review when the investigation and cleanup is completed for less than \$50,000. Both types of claims would then be put at the end of the line of claims that have been reviewed and are waiting to be paid when funds are available. It is probable that this would result in considerably longer waits for payment of home heating oil tank claims than under current law.

10. It would be possible to fund all anticipated home heating oil tank claim demand during 1997-99 and retain the current priority for payment of the claims in two ways. First, the \$500,000 annual maximum could be increased to \$1,600,000 annually, which would fund the estimated \$1.1 million July 1, 1997, backlog and estimated \$2.1 million 1997-99 demand. Under this method, if home heating oil tank claim demand exceeds \$3.2 million during 1997-99, claims would be held for payment in July, 1999.

11. Alternatively, both the current maximum allocation and proposed percentage set-aside could be deleted and instead, all home heating oil tank claims would be paid as soon as they are received. It could be argued that this alternative would simplify the processing and review of home heating oil tank claims and home heating oil tank claims could be paid more quickly than under the bill. Approximately \$3.2 million would be spent on home heating oil tank claims in 1997-99, which would equal 1.8% of the 1997-99 PECFA awards appropriation.

12. On the other hand, it could be argued that the \$500,000 maximum allocation or 5% set-aside should limit the amount of funds spent for home heating oil and school district tanks in order to ensure that the majority of PECFA funds would be used for commercial, federally-regulated tanks.

ALTERNATIVES TO BILL

1. Approve the Governor's recommendation to eliminate the \$500,000 annual maximum allocation for home heating oil tank PECFA awards and to include home heating oil tanks within the current set-aside of 5% for public school district tanks.
2. Delete the Governor's recommendation and change the \$500,000 annual maximum allocation for home heating oil tank PECFA awards to \$1,600,000.
3. Delete the Governor's recommendation and the current \$500,000 cap. Rather, specify that home heating oil tank claims shall be reviewed and paid as soon as they are received.
4. Maintain current law.

Prepared by: Kendra Bonderud

MO# Alt # 3

JENSEN	X	N	A
ZOURADA	X	N	A
HARSDORF	X	N	A
ALBERS	X	N	A
GARD	X	N	A
KAUFERT	X	N	A
LINTON	X	N	A
COGGS	X	N	A
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 6 NO 0 ABS

To: Joint Committee on Finance

From: Bob Lang, Director
Legislative Fiscal Bureau

ISSUE

PECFA -- Change in Remediation Activities (Commerce -- Building and Environmental Regulation)

[LFB Summary: Page 151, #6]

CURRENT LAW

No provision.

GOVERNOR

Authorize Commerce to make additional PECFA payments for costs to enhance the approved remedial action activities or implement new remedial action activities if the originally approved remedial action activities failed to remedy the discharge. The total amount of the original award plus additional PECFA payments would be subject to the current maximum award limits.

DISCUSSION POINTS

1. The provision of SB 77 is intended to clarify that PECFA can reimburse costs of improvements to remedial systems that have not achieved their initial objectives.
2. Commerce has statutory authority to promulgate administrative rules to determine eligible costs under the program. Currently, the Department approves reimbursement for changes or additions to existing working remedial systems that make the system work better or faster, for example, adding technology to existing systems. However, Commerce believes that the statutory

provision is needed to approve changes to an initial remedial approach which was properly designed and engineered but which failed to reach required cleanup standards. For example, an engineered system may have been properly designed after a thorough investigation, but failed to cleanup the contamination. Therefore, changes to the system or a different remedial approach are needed to cleanup the site. Currently, the costs of these changes cannot be reimbursed, but could be under the bill.

3. There are some 1,300 to 1,400 sites currently undergoing a PECFA cleanup with use of engineered remedial systems. Engineered remedial systems use machines to pump petroleum products and other contamination out of the groundwater, to extract petroleum vapors or other contamination from the soil, or use a combination of mechanical techniques. Some of these remedial systems may not achieve cleanup of the site. A revised remedial action plan could lead to a more cost effective cleanup. For example, an existing engineered remedial system that extracts petroleum vapors from contaminated soil but reaches its limit of effectiveness may be replaced with excavation of remaining pockets of contaminated soil or by natural attenuation, which means allowing naturally-occurring processes to reduce contamination over time.

4. DNR is working on a 14-month project (May 1, 1996, to June 30, 1997) to evaluate the effectiveness of all PECFA sites with operating engineered remedial systems. Commerce and DNR are identifying sites for review (partially based on a Commerce survey of consultants). DNR is evaluating sites to determine whether sites can be closed, modified to reduce operating costs, or converted to natural attenuation of petroleum contamination. As of April 17, 1997, DNR had evaluated 927 sites and made cost savings recommendations for half of them. DNR estimated \$35.5 million in reduced future costs with their recommendations. Among DNR's findings for the 470 sites with cost savings are that: (a) 113 systems should continue to operate, with modifications such as decreased monitoring or reporting; (b) 82 sites should be closed; (c) 71 sites should be changed from an engineered system to natural attenuation; (d) 50 systems were closed between the time they were identified for review and the time DNR reviewed them (consultants had earlier estimated the sites would operate for a longer time); (e) 43 sites were closed as a result of the evaluation; (f) 38 systems should continue operation but with changes to improve the effectiveness; and (g) 73 sites received a variety of other recommendations.

5. DNR indicates that it does not have the authority to require site owners to choose a specific remedy or the lowest cost remedy, but makes recommendations of changes that can be made to complete a cleanup faster or at lower cost. However, Commerce states that it is informing site owners who have received cost efficiency recommendations from DNR that PECFA will only reimburse for the actions recommended by DNR.

6. The effect of the SB 77 provision on PECFA program costs would depend on the extent to which a second or subsequent remediation method increases or decreases overall costs of cleaning the site. Switching to a different remediation methodology after incurring substantial costs using the original method may result in overall savings at some sites, but is likely to

increase overall costs at other sites. Commerce and DNR officials argue that if a more efficient remediation method can be used at the site, close out may be accomplished sooner, resulting in cost savings by eliminating continued expenditures for the original cleanup method.

7. While it is unclear what overall program costs or savings would result from the statutory change, it is possible that the change could result in some cleanups being completed in a shorter period of time with cleanup of greater amounts of contamination than under current law.

8. Commerce indicates that it would determine whether to pay for the enhanced or new remedial activities by comparing the additional cost and the cost of the continued operation of the original design. However, the bill does not require Commerce to make this determination. In addition, the bill does not require Commerce to approve only those enhanced or new remedial activities that do not increase the overall costs of remedying the discharge. The bill only requires that the total amount of the original award and additional costs approved under the bill not exceed the current maximum award.

9. The provision is identical to language included in 1995 AB 1089, which contained several changes to the PECFA program. In May, 1996, the Joint Committee on Finance passed Assembly Substitute Amendment 1 and the Assembly passed Assembly Substitute Amendment 2 which both modified the language in the original AB 1089 to add that Commerce must determine that the enhancements or changes will remedy the discharge without increasing the overall costs of the cleanup. The Senate adjourned without considering the bill.

ALTERNATIVES TO BILL

1. Approve the Governor's recommendation to authorize Commerce to make additional PECFA payments for costs to enhance the approved remedial action activities or implement new remedial action activities if the originally approved remedial action activities failed to remedy the discharge, subject to the current maximum award limits.

2. Approve the Governor's recommendation, but authorize Commerce to approve reimbursement for changes in remedial action activities only after the Department determines that the changes will remedy the discharge without increasing the overall costs of the cleanup.

3. Maintain current law.

Prepared by: Kendra Bonderud

MO#	<u>ALP#2</u>				
JENSEN	X	N	A	BURKE	X N A
OURADA	X	N	A	DECKER	X N A
HARSDORF	X	N	A	GEORGE	X N A
ALBERS	X	N	A	JAUCH	X N A
GARD	X	N	A	WINEKE	X N A
KAUFERT	X	N	A	SHIBILSKI	X N A
LINTON	X	N	A	COWLES	X N A
COGGS	X	N	A	PANZER	X N A
				AYE	16
				NO	0
				ABS	

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

ISSUE

PECFA -- Interest Cost Reimbursement (Commerce -- Building and Environmental Regulation)

[LFB Summary: Page 151, #7]

CURRENT LAW

There is no statutory limit on reimbursement under the Petroleum Environmental Cleanup Fund Award (PECFA) program for interest costs incurred by PECFA claimants who obtain loans to complete PECFA-eligible cleanup work. Administrative rule ILHR 47 limits reimbursable interest rates for loans secured after January 31, 1993, to no more than 2% above the prime rate. Rules also allow reimbursement of loan origination fees at no more than two points of the loan principal and reimbursement of loan renewal fees at no more than 1% of the unreimbursed amount and remaining available loan balance.

GOVERNOR

Require that PECFA reimbursement for interest costs incurred by a claimant may not exceed the prime rate. Direct Commerce to promulgate emergency rules to implement the provision. The provision would first apply to interest costs incurred on the first day of the fifth month after the effective date of the budget act.

DISCUSSION POINTS

1. The current administrative rule limitations of interest costs, loan origination fees and loan renewal fees were enacted when Chapter ILHR 47 was created as an emergency rule

effective January 1, 1993. The permanent rule was effective March 1, 1994. Commerce established a PECFA administrative code revision advisory committee which began to meet in February, 1997. The advisory committee is planning to discuss changes in interest cost reimbursement as part of the current code revision process.

2. While the bill would limit the interest rate eligible for reimbursement under ILHR 47, it would not affect current administrative rule limitations on loan origination fees and renewal loan fees. Loan renewal fees are sometimes charged on the anniversary of the loan origination, whether or not the loan will be repaid shortly after the anniversary.

3. Since Commerce currently has administrative rules which limit PECFA reimbursement for interest costs, Commerce could promulgate a revision to further limit reimbursement for interest costs, whether or not the provision in the bill is enacted. This rule authority would extend beyond the interest cost limitation included in the bill to also include the limitation on loan origination fees and renewal loan fees included in current administrative rules.

4. Commerce indicates that only a few lenders charge an interest rate lower than the maximum prime plus 2% rate allowed in the current rule.

5. The administrative rules do not specify how Commerce would calculate 2% over the prime rate. The prime rate fluctuates over time. Currently, Commerce bases the prime rate on the rate published in The Wall Street Journal, which is an index representing the base rate on corporate loans posted by at least 75% of the nation's 30 largest banks. On May 1, 1997, the prime rate was 8.5% (and had been since March 26, 1997), which would allow PECFA reimbursement for loans at 10.5% currently, or 8.5% under the bill. However, because the bill does not address reimbursement of loan origination fees or loan renewal fees, the effective annual percentage interest rate would likely be higher. Under the bill, it is possible that banks would charge interest at the prime rate, then increase other allowable fees related to the loan.

6. The PECFA program depends on private lenders to provide up-front funds for cleanup work. Typically, lenders establish a line of credit or maximum loan amount for PECFA site owners or operators and pay bills as cleanup work progresses. Because state funds are not sufficient to eliminate the backlog of \$180.4 million of PECFA claims waiting to be paid as of April 1, 1997, the program has increasing dependence on lenders and increasing interest costs. Commerce officials believe that there may currently be over \$400 million in outstanding PECFA loans, including work in the existing backlog and work in progress for which a PECFA claim has not yet been submitted.

7. From January 1, 1994, through June 30, 1996, 7.1% of PECFA award payments were for loan interest costs. In comparison, during the same period, 35.7% of PECFA award payments were for consultants, 17.3% for soil treatment, 12.5% for remedial equipment, 9.3% for laboratory tests, 6.6% for monitoring, 4.6% for excavation, 3.4% for trucking, 2.2% for backfill and 1.3% for other costs. Data is not available to calculate the fiscal impact of the bill's

proposal. A review of the 600 PECFA claims processed from November 1, 1996, through February 28, 1997, shows that interest costs have increased from 7.1% of payments to 10.7% (\$4.9 million of the \$45.8 million in claims processed during the four months). The percentage of total PECFA funds spent for interest costs is expected to continue to increase as the backlog of claims waiting to be paid increases.

8. Statutorily reducing reimbursement for interest costs from the 2% over prime to no more than the prime rate would decrease the amount of funds that the PECFA program spends on interest costs.

9. The bill may increase costs for some PECFA claimants. While the administrative rule limits reimbursement for interest costs associated with loans secured after January 31, 1993, the bill would limit reimbursement for interest costs incurred on the first day of the fifth month after the effective date of the budget act. Therefore, PECFA claimants would likely incur interest costs for loans that were secured prior to the effective date that set interest above the prime rate. Unless these affected claimants could negotiate a loan interest rate reduction with their lenders, they would be responsible for interest costs in excess of the amount eligible for PECFA reimbursement. It is doubtful that lenders would choose to reduce the interest rate for loans that were secured prior to the effective date of the interest cost reimbursement reduction.

10. Interest cost reimbursements could be decreased without increasing costs for PECFA claimants who currently have loans at 2% over the prime rate by changing the effective date to be loans secured instead of costs incurred on the first day of the fifth month after the effective date of the budget act. However, this would result in less PECFA cost savings in the short-term compared to the bill. If this change would be made, a delayed effective date of five months would not be necessary and could result in a rush by lenders to secure loans at the current higher interest rate. Alternatively, the decrease in interest cost reimbursement could be made for loans secured on the effective date of the biennial budget act, which would immediately lower the reimbursable interest rate for loans secured after the effective date.

11. An additional way to reduce PECFA interest cost reimbursement would be to statutorily modify the other interest cost reimbursement limitations established in administrative rule Chapter ILHR 47. For example: (a) loan origination fees could be eliminated or limited to no more than one point of the loan principal instead of the current two points of the loan principal; and (b) loan renewal fees reimbursement could be eliminated. However, limiting or eliminating reimbursement of certain loan origination fees and loan renewal fees might prompt some lenders to limit PECFA lending.

12. It is not known, under the bill, whether lenders will: (a) decrease their interest rate for PECFA loans to the prime rate; (b) continue to lend at 2% over prime with the PECFA claimant being responsible for paying the interest costs not reimbursed by PECFA; or (c) a combination of the two lending practices.

13. Lenders typically lend at the prime rate only to their best customers. It could be argued that the state should pay no more than the interest rate that the best customers pay lenders. Lenders have the assurance that the PECFA program will reimburse eligible costs, even if banks have to wait two years or longer for reimbursement. Therefore, it is possible that when the state reimburses interest costs at 2% over prime, it is encouraging banks to raise interest charges to meet the allowable reimbursement.

14. PECFA claimants, not the state, must obtain bank loans for PECFA work. It is common for PECFA site owners to obtain a loan to upgrade the tanks from the local bank with whom the owner has a day-to-day working relationship. Owners often obtain a loan to complete PECFA remediation work from a bank with whom the claimant does not have a day-to-day working relationship because there are fewer lenders willing to make environmental cleanup loans. Commerce indicates that some lenders currently reduce the interest rate from 2% above prime to prime for costs that exceed the maximum PECFA award limit.

15. The bill has unknown impacts on lending activity for the PECFA program. It is possible that the bill would reduce lending to PECFA claimants because some lenders could refuse to provide PECFA loans at prime. It is also possible that some lenders may continue to provide PECFA loans but at rates higher than the prime rate. On the other hand, lenders who provide PECFA loans at the prime rate may increase their amount of lending if other lenders choose to decrease PECFA lending or continue to lend at a rate higher than prime.

16. If lending decreases under the bill, it may lessen the short-term demand for PECFA funds. However, owners would still have to upgrade their sites and some owners who have not yet upgraded their gas station tanks might have trouble obtaining a loan to do PECFA-eligible work before the December 22, 1998, federal upgrading deadline.

ALTERNATIVES TO BILL

1. Approve the Governor's recommendation to limit PECFA reimbursement for interest costs incurred by a PECFA claimant to not more than the prime rate for interest costs incurred on or after the first day of the fifth month after the effective date of the budget act.

2. Modify the Governor's recommendation to specify that the interest cost reimbursement limitation would first apply to loans secured on the first day of the fifth month after the effective date of the budget act.

3. Specify that on the effective date of the budget act: (a) the interest cost reimbursement limitation would first apply to loans secured (instead of to interest costs incurred); (b) loan origination fees would be limited to no more than one point of the loan principal; and (c) reimbursement of loan renewal fees would be eliminated.

4. Modify the Governor's recommendation to specify that on the effective date of the budget act: (a) the interest cost reimbursement limitation would first apply to loans secured instead of to interest costs incurred; and (b) reimbursement of loan origination fees and loan renewal fees would be eliminated.

5. Maintain current law. (Commerce could address the issue through the administrative rule process.)

Prepared by: Kendra Bonderud

MO# 1483

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	X	N	A
COGGS	Y	N	A

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

AYE 12 NO 4 ABS

To: Joint Committee on Finance

From: Bob Lang, Director
Legislative Fiscal Bureau

ISSUE

PECFA -- Service Providers (Commerce -- Building and Environmental Regulation)

[LFB Summary: Page 151, #8]

CURRENT LAW

Under the current Petroleum Environmental Cleanup Fund Award (PECFA) program administrative rules in ILHR 47, owners or operators with commingled contamination may voluntarily combine sites, or "bundle" them into one project, for purposes of bidding remedial activities or operation and maintenance activities.

GOVERNOR

Authorize Commerce to promulgate administrative rules to deny reimbursement of costs incurred for a specific service (specified in the rule) if the owner or operator of the PECFA site did not use the same service provider approved by Commerce.

Further, authorize Commerce to promulgate administrative rules under which the Department would select service providers to provide investigation or remedial action services in specified areas. Allow Commerce to: (a) deny PECFA reimbursement to an owner or operator who uses a service provider other than the one approved by Commerce for the area; or (b) limit PECFA reimbursement to the amount that the selected service provider would have charged for the service.

DISCUSSION POINTS

1. Examples of possible implementation of the provision denying reimbursement for a specified service if the owner or operator does not obtain the service from the same provider approved by Commerce could include the following: (a) requiring two or more adjacent site owners or operators with commingled contamination to use the same provider (for example for operation and maintenance services); and (b) creating an approved list of services and providers and requiring owners or operators to use one of the providers on the list. Commerce indicates this could allow the Department to exclude providers who are unusually expensive or who provide substandard work.

2. Examples of possible implementation of the provision denying reimbursement for area-wide providers ("bundling") not selected by the Department, or limiting reimbursement to the amount that the selected provider would have charged, could include the following: (a) selecting providers for all investigations and remedial actions done in an area; (b) requiring any sites needing soil or groundwater monitoring in a particular county or geographic region to use a provider selected by Commerce; (c) conducting a bid process to designate the lowest cost provider for investigations, cleanup or operation and maintenance for an area; (d) requiring existing sites to change from their existing provider to one selected by the Department; and (e) refusing to select certain service providers who provide substandard or improper work.

3. While Commerce indicates the two provisions would provide somewhat similar authority, the first provision appears broader in that it does not limit the Department to "specified areas." Further, the first provision only allows Commerce to deny reimbursement if an unapproved provider is used. However, the Department believes that the second provision is broader and provides greater authority because it would allow the Department to: (1) select providers; (2) define the size of "specified areas;" (3) deny or limit the charges of the selected provider; and (4) open a bidding process to seek lower cost alternatives than exist in current contracts. Commerce indicates that both provisions are meant to allow considerable flexibility in developing administrative rules in order to contain program costs. Since the authority provided in the first provision may be largely included in the second provision, the first provision could be deleted.

4. Current administrative rules authorize voluntary bundling of sites. The bill would authorize Commerce to limit PECFA reimbursement to the amount paid to a provider who is selected by Commerce. The Commerce PECFA administrative code revision advisory committee is discussing bidding and bundling of activities.

5. Commerce indicates that the provision is intended to reduce PECFA costs. However, no estimate of the fiscal impact is made. Initially, Commerce intends to implement the provisions for two types of activities: (a) cleanup activities; and (b) operation and maintenance (for example, for engineered remedial systems that extract petroleum vapors from contaminated soil or contaminated groundwater).

6. Implementation of the provisions could require site owners to rebid existing contracts for work done after a specified date (to be determined by rule). The provisions could potentially affect 5,000 or more active PECFA sites. Some consultants and contractors might experience a loss of current contracts while others would experience an increase in work if they are successful low bidders.

7. Site owners might have less flexibility to choose the contractor to work on their site if service providers are selected by Commerce. The Department would have to determine which firms would be qualified to compete for selection as a provider for services specified in the rule.

8. Arguably, the cost savings goals could be met by limiting reimbursement to owners or operators who do not use the service provider selected to the amount charged by the selected provider, but not denying reimbursement if the owner or operator uses another provider. Commerce may limit reimbursement under the second provision but may only deny claims under the first. Requiring Commerce to limit allowable expenditures (but not to deny claims) would retain the flexibility for owners to retain existing contracts and to select their own service provider. However, Commerce argues that the ability to select a provider and deny reimbursement to owners and operators who do not use the selected provider is an important way of lowering program costs by selecting lower cost providers than under existing contracts and denying reimbursement for higher cost providers. Further, the Department argues that allowing only the limitation of costs to that of selected providers could result in administrative difficulties in reviewing claims to determine identical services.

ALTERNATIVES TO BILL

1. Approve the Governor's recommendation to authorize Commerce to promulgate administrative rules to deny reimbursement of costs incurred for a specific service if the owner or operator of the PECFA site did not use a service provider approved by Commerce. Further, allow Commerce to promulgate administrative rules under which the Department would select service providers to provide investigation or remedial action services in specified areas and: (a) deny PECFA reimbursement to an owner or operator who uses a service provider other than the one approved by Commerce for the area; or (b) limit PECFA reimbursement to the amount that the selected service provider would have charged for the service.

2. Modify the Governor's recommendation to authorize Commerce to select service providers to provide investigation and remedial action services in specified areas and either deny reimbursement to an owner or operator who uses a provider other than the selected provider or limit reimbursement to no more than the amount charged by service providers selected by Commerce. (This would delete the first provision which would deny reimbursement of costs incurred for a specific service if an owner or operator does not use a provider approved by Commerce.)

Burke
 3. Modify the Governor's recommendation to only authorize Commerce to limit PECFA reimbursement to an owner or operator who uses a service provider other than the one selected by the Department, to the amount that the selected provider charges. (This would delete the authorization to deny reimbursement of costs incurred: (a) for a specific service if an owner or operator does not use a provider approved by Commerce; or (b) if an owner or operator does not use a provider selected by Commerce for a specified area.)

4. Maintain current law.

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JENSEN	X	N	A
1 OURADA	X	N	A
HARSDORF	X	N	A
2 ALBERS	X	N	A
GARD	X	N	A
KAUFERT	X	N	A
LINTON	Y	X	A
COGGS	Y	X	A

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

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