

**1999 DRAFTING REQUEST**

**Assembly Amendment (AA-ASA1-AB133)**

Received: **06/23/99**

Received By: **traderc**

Wanted: **Soon**

Identical to LRB:

For: **Assembly Republican Caucus**

By/Representing: **Kratochwill**

This file may be shown to any legislator: **NO**

Drafter: **traderc**

May Contact: **LFB**

Alt. Drafters:

Subject: **Environment - miscellaneous**

Extra Copies:

**Pre Topic:**

ARC:.....Kratochwill - Am # 306,

**Topic:**

Clean sweep grants trust fund

**Instructions:**

See Attached

**Drafting History:**

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Typed</u>	<u>Proofed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
/?	traderc 06/24/99	wjackson 06/24/99		_____			
/1			hhagen 06/24/99	_____	ismith 06/24/99		
/2	traderc 06/25/99	wjackson 06/25/99	hhagen 06/26/99	_____	lrb_docadmin 06/26/99		

FE Sent For:

<END>

**1999 DRAFTING REQUEST**

**Assembly Amendment (AA-ASA1-AB133)**

Received: 06/23/99

Received By: traderc

Wanted: Soon

Identical to LRB:

For: Assembly Republican Caucus

By/Representing: Kratochwill

This file may be shown to any legislator: NO

Drafter: traderc

May Contact: LFB

Alt. Drafters:

Subject: Environment - miscellaneous

Extra Copies:

**Pre Topic:**

ARC:.....Kratochwill - Am # 306,

**Topic:**

Clean sweep grants trust fund

**Instructions:**

See Attached

**Drafting History:**

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Typed</u>	<u>Proofed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
/?	traderc 06/24/99	wjackson 06/24/99		_____			
/1		12 6/25 WLj	hhagen 06/24/99	_____	ismith 06/24/99		

FE Sent For:

<END>

**1999 DRAFTING REQUEST**

**Assembly Amendment (AA-ASA1-AB133)**

Received: 06/23/99

Received By: traderc

Wanted: Soon

Identical to LRB:

For: Assembly Republican Caucus

By/Representing: Kratochwill

This file may be shown to any legislator: NO

Drafter: traderc

May Contact: LFB

Alt. Drafters:

Subject: Environment - miscellaneous

Extra Copies:

**Pre Topic:**

ARC:.....Kratochwill - Am # 306,

**Topic:**

Clean sweep grants trust fund

**Instructions:**

See Attached

**Drafting History:**

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Typed</u>	<u>Proofed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
1?	traderc	11 WLJ 6/24		Amh J KSh 6/24			

FE Sent For:

<END>

ARC

AM # 306

Pass

Representative Gard  
Representative Grothman  
Representative Suder  
Representative Gundrum

**SPENDING REDUCTIONS**

**Commerce, Justice, MWBAC, Natural Resources, Tourism and Taxes**

1. *DNR--Nonpoint Source Program.* Delete \$500,000 GPR annually in DNR nonpoint funding. Overall funding for the combined DNR and DATCP programs would increase from \$47.1 million in 1997-99 to \$71 million in the 1999-01 biennium (a 51% increase).

2. *DNR--Clean Sweep Grants (Menard, Inc.) Trust Fund.* Prohibit DNR from making any further expenditures from the \$500,000 received in a court-ordered agreement with Menard, Inc. for the purposes of household hazardous waste (clean sweep) grants to local governments. Require that the remaining trust fund balance be lapsed to the Common School Fund as of December, 2002, as specified in the court-ordered agreement. Modify Chapter 20.907 of the Statutes to require that all state agencies receive approval from the Joint Committee on Finance for receipt of all funds from court-ordered agreements (in addition to gifts, grants, bequests and devises currently) and to report by December 1 annually, to the Committee and the Department of Administration on expenditures made by the agency during the preceding year from such funds. to JTK

3. *DNR--TMDL Staffing.* Delete 1.5 regional water resource management positions and \$111,700 GPR in 1999-2000 and \$119,800 GPR in 2000-01 from DNR for developing total maximum daily load (TMDL) standards for 550 waterbodies that DNR designated as impaired in 1998.

4. *DNR--Parks account Lapse.* Lapse an additional \$1.0 million each year of the 1999-01 biennium from the parks account to the general fund. Also delete the Joint Finance Committee provision allowing DNR to seek up to \$1.4 million in additional expenditure authority under s. 13.10 without the finding of an emergency. The June 30, 2001, parks account balance would be estimated at \$1.2 million.

5. *DNR--Forestry Account for Stewardship Debt.* Shift an additional \$1.0 million annually in stewardship debt service related to the purchase and development of state forest lands from GPR to SEG from the forestry account of the conservation fund. The forestry account would be expected to have a June 30, 2001, balance of \$0.9 million.

6. *DNR--All-Terrain Vehicle Account Lapse.* Lapse \$500,000 from the ATV account to the general fund in 1999-00. The June 30, 2001, balance of the ATV account would be \$0.4 million.

**Senator Gary R. George**  
 118 South, State Capitol  
 P.O. Box 7882  
 Madison, WI 53707  
 Phone: 608-266-2500



**Representative Carol Kelso**  
 16 West, State Capitol  
 P.O. Box 8952  
 Madison, WI 53708  
 Phone: 608-266-0485

## JOINT COMMITTEE ON AUDIT

May 27, 1999

The Honorable Brian Burke, Co-Chairperson  
 Joint Committee on Finance  
 316 South, State Capitol  
 Madison, WI 53702

The Honorable John Gard, Co-Chairperson  
 Joint Committee on Finance  
 315 North, State Capitol  
 Madison, WI 53702

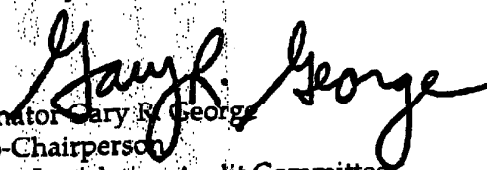
Dear Senator Burke and Representative Gard:

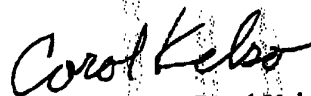
Enclosed is a letter that was recently released by the Legislative Audit Bureau identifying a number of fiscal control and budgetary issues that warrant legislative attention. These include the following:

- the identification of \$3.6 million from the General Fund's cancelled state checks reserve the auditors believe is available, on a one-time basis, for appropriation;
- the proper accounting for more than \$1.5 million in federal reimbursement for interest earnings related to the administration of federal grants;
- the use of a \$500,000 trust fund established by the Department of Natural Resources under a court-ordered plea agreement with Menard, Inc.; and
- the disposition of \$446,000 in the Bond Security and Redemption Fund that has accumulated because of errors in billing state agencies for debt service payment.

We bring these issues to your attention and recommend they receive your careful review. The auditors have identified a significant amount of available funding at a critical juncture in the budget process. Conservatively, over \$5.2 million of these funds could be made available for general appropriation. Consequently, we strongly recommend the funds identified be lapsed to the State's General Fund.

Sincerely,

  
 Senator Gary R. George  
 Co-Chairperson  
 Joint Legislative Audit Committee

  
 Representative Carol Kelso  
 Co-Chairperson  
 Joint Legislative Audit Committee

Enclosure



State of Wisconsin

LEGISLATIVE AUDIT BUREAU

May 19, 1999

JANICE MUELLER  
STATE AUDITOR  
SUITE 402  
131 WEST WILSON STREET  
MADISON, WISCONSIN 53703  
(608) 266-2818  
FAX (608) 267-0410

Senator Gary R. George and  
Representative Carol Kelso, Co-chairpersons  
Joint Legislative Audit Committee  
State Capitol  
Madison, Wisconsin 53702

Dear Senator George and Representative Kelso:

During the course of our annual audit of the State of Wisconsin's financial statements, we identified four fiscal control and budgetary issues for your attention. The first concerns a statutory requirement to hold funds in reserve for six years to cover cancelled state checks that have not been cashed. If the Legislature were to amend this requirement, the State could both maintain a prudent level of reserves for canceled checks and, on a one-time basis, lapse \$3.6 million from the canceled drafts reserve to the General Fund for appropriation.

The second issue concerns accounting for more than \$1.5 million in federal reimbursements for lost interest earnings related to the administration of federal grants. We had expected these funds to be accounted for as general purpose revenue in the General Fund. However, the Department of Administration accounted for them in a federal program revenue appropriation. The Legislature could direct the Department of Administration to lapse this \$1.5 million, as well as all future federal interest reimbursements, to the General Fund for general appropriation.

The third issue relates to a \$500,000 trust fund established by the Department of Natural Resources (DNR) under a court-ordered plea agreement with Menard, Inc., which DNR has not reported to the Joint Committee on Finance or included in its fiscal year 1999-2001 budget request. Under the plea agreement, DNR is to use the trust fund to support "clean sweep" grants that allow municipalities to establish, operate, or maintain household hazardous waste disposal programs; the State may not use the trust fund to reduce its current funding levels for clean sweep grants; and any money remaining in the trust fund after five years is to be transferred to the Common School Fund, which supports low-interest loans both to schools and to other governments. During budget deliberations, the Legislature could authorize DNR to use the trust fund to expand the clean sweep program. Alternatively, the Legislature could direct DNR not to spend trust fund assets, but instead to allow the trust fund to accumulate interest until the end of calendar year 2002, when the balance may be transferred to the Common School Fund.

Our final issue relates to accounting for the State's building program. We note that \$446,000 has accumulated in the Bond Security and Redemption Fund, apparently as a result of errors in accounting for debt service payments. The Legislature may wish to consider directing the

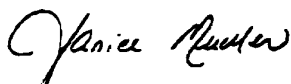
Senator Gary R. George and  
Representative Carol Kelso, Co-chairpersons  
Page 2  
May 19, 1999

Department of Administration to transfer these funds to the General Fund and other funds that originally made the debt service payments.

We also followed up on the status of \$1.9 million in undistributed interest earnings in the Capital Improvement Fund, which we described to the Audit Committee in January 1998. The Building Commission selected one of the options we proposed and, in February 1999, transferred the funds—which then exceeded \$2.1 million—to the State Building Trust Fund.

We hope that you find this information useful. If you have any questions or comments, please contact me.

Sincerely,



Janice Mueller  
State Auditor

JM/BN/jb

cc: Senator Judith Robson  
Senator Brian Burke  
Senator Peggy Rosenzweig  
Senator Mary Lazich

Mark D. Bugher, Secretary  
Department of Administration

George E. Meyer, Secretary  
Department of Natural Resources

Jack C. Voight, State Treasurer  
Office of the State Treasurer

Representative Stephen Nass  
Representative John Gard  
Representative Robert Ziegelbauer  
Representative David Cullen

## FISCAL CONTROL AND BUDGETARY ISSUES

During the course of our annual audit of the State's financial statements, we perform work at the Department of Administration, the Office of the State Treasurer, and many other state agencies. Management letters to agencies include our recommendations for improved accounting and internal control. In this letter, we address fiscal matters that merit legislative attention.

### Canceled Drafts Reserve

Each year, some checks the State writes to employees, aid recipients, vendors, contractors, and others are not presented for payment. The State is liable for these checks for six years. Statutes require the State to cancel any checks that have not been cashed after the first year and to transfer a corresponding amount to canceled draft reserve accounts. For the next five years, cancelled checks may be reissued and paid from these reserve accounts if the original checks are presented or if payees can prove they are entitled to payment. After a total of six years, funds for checks that remain uncashed are lapsed from the canceled drafts reserves to the General Fund or the segregated funds that were originally charged for these checks.

Ideally, the State should maintain reserves that are sufficient to pay all reissued checks without unnecessarily restricting funds that could otherwise be available for appropriation. However, a review of balances in the canceled drafts reserve accounts suggests that current statutory accounting requirements for canceled checks may be unduly conservative. The Legislature could amend the statutory accounting requirements to provide a prudent balance in the canceled drafts reserves and, at the same time, make approximately \$3.6 million—on a one-time basis—available to be appropriated for other purposes.

Article VIII, Section 2 of the Wisconsin Constitution obligates the State to pay checks and other claims presented for payment within six years of their date of issue. The Department of Administration (DOA), the Office of the State Treasurer, and the various state agencies share responsibility for accounting for state checks that may be lost, stolen, forgotten, or uncashed for other reasons. DOA and the treasury cancel those checks not presented for payment within one year and, in accordance with s. 20.912(2), Wis. Stats., credit reserves for canceled drafts to the General Fund and each of the State's segregated funds. As of June 30, 1998, the General Fund reserve for canceled drafts totaled \$7.3 million; other funds' reserves were substantially less than that amount.

Statutes are written to ensure that sufficient funds are set aside to pay potential claims against all outstanding canceled drafts. However, only about 60 percent of drafts that have been canceled are later presented for payment, and the vast majority of these are presented within two years of cancellation. Table 1 shows a five-year history of the canceled drafts reserve account for the General Fund. As shown in Table 1, newly canceled drafts typically offset the amounts of reissued checks.



**Table 1**  
**General Fund**  
**Canceled Drafts Reserve Account**

	<u>FY 1993-94</u>	<u>FY 1994-95</u>	<u>FY 1995-96</u>	<u>FY 1996-97</u>	<u>FY 1997-98</u>
Balance:					
Beginning of the Year	\$5,431,692	\$5,839,738	\$6,417,745	\$5,399,041	\$6,268,574
Add: Canceled Checks	2,299,501	2,674,583	2,178,210	2,548,078	2,969,103
Less: Checks Reissued	<u>1,120,098</u>	<u>1,186,523</u>	<u>1,023,207</u>	<u>711,333</u>	<u>1,526,949</u>
	6,611,095	7,327,796	7,572,748	7,235,786	7,710,728
Lapse	<u>771,357</u>	<u>910,051</u>	<u>2,173,707</u>	<u>967,212</u>	<u>383,900*</u>
Balance at End of the Year	\$5,839,738	\$6,417,745	\$5,399,041	\$6,268,574	\$7,326,828

\* Lapse adjusted to correct for prior years' errors.

The State earns interest on balances in the cancelled draft reserves. However, because current statutes require cancelled draft reserve funds be set aside for the entire six-year period, even though there is little likelihood all reserve funds will be needed to pay reissued checks, these funds are not available for appropriation until the entire six-year period has elapsed.

Statutes could be amended to reduce the level of the canceled check reserves while still continuing to fulfill the State's constitutional obligation to pay any checks presented within six years. Two options could be considered.

First, the Legislature could eliminate the reserve requirement completely, and instead authorize sum-sufficient appropriations to pay for the reissuance of previously canceled drafts. Since sum-sufficient appropriations provide budget authority to expend any amount necessary to fulfill their purpose, this option would allow DDA and the treasury to reissue any previously canceled drafts that are presented for payment within six years of issuance. This option would also provide for the largest one-time lapse to the General Fund and segregated funds. However, complete elimination of the reserves may not be prudent because sufficient funds may not be readily available if a higher-than-expected number of canceled drafts is presented for payment.

A preferred option may be to reduce—rather than eliminate—the reserve requirement. For example, the Legislature could amend s. 20.912(2), Wis. Stats., to require that the balance in the reserve for canceled drafts at the end of each fiscal year equal a specified percentage, such as

50 percent, of the value of outstanding canceled drafts. Had this requirement been in place at the end of fiscal year (FY) 1997-98, \$3.6 million would have lapsed from the reserve for canceled drafts to the General Fund and would have been available, on a one-time basis, for appropriation. Smaller amounts would have lapsed to the State's segregated funds. For example, on a one-time basis, \$450,000 would have lapsed to the Transportation Fund, \$95,000 to the Patients Compensation Fund, and \$83,000 to the Fixed Retirement Trust Fund.

If the preferred option is implemented, the Legislature will need to create sum-sufficient appropriations for use in the event the amount of canceled drafts actually presented for payment exceeds the funds available in the reserves.

### Federal Interest Reimbursements

Each year, the State seeks more than \$4 billion from the federal government as reimbursement for federal grant program expenditures paid by the State. DOA is responsible for requesting federal reimbursement on behalf of most state agencies, and federal rules provide that the State may be paid interest if reimbursements are received after grant-related checks clear the State's bank. We are concerned because DOA accounted for more than \$1.5 million in federal interest reimbursements using a federal program revenue appropriation rather than the General Fund. As a result, these funds are not available for general appropriation by the Legislature.

Federal rules require the State to minimize the period between the time it incurs federal grant expenditures and the time it receives, or draws down, federal reimbursements. The federal Cash Management Improvement Act requires the State and the federal government to agree on draw-down patterns for 28 of the largest federal grant programs that ensure neither party will earn interest at the expense of the other. If the State receives federal reimbursement before the agreed-upon date, the State earns excess interest that it is required to return to the federal government. It is more common, however, for the State to receive federal reimbursement after the agreed-upon date and thus lose potential interest earnings.

Statutes do not specifically address how DOA is to account for federal interest reimbursements. Therefore, s. 20.906, Wis. Stats., requires these funds to be accounted for as general purpose revenue of the General Fund and made available for general appropriation by the Legislature. However, DOA has instead used the federal program revenue appropriation authorized under s. 20.505(1)(ma), Wis. Stats., to account for federal interest reimbursements.

DOA makes annual calculations of the effect that differences between the agreed-upon pattern and the actual reimbursement date have on interest earnings. Based on these calculations, DOA received interest reimbursement from the federal government for four of the past five years. As shown in Table 2, the General Fund received more than \$1.5 million in federal interest reimbursements from FY 1994-95 through FY 1998-99.

**Table 2**  
**General Fund**  
**Federal Interest Reimbursements**

<u>Fiscal Year</u>	<u>Interest Reimbursements Received</u>
1994-95	\$ 380,350
1995-96	319,855
1996-97	(6,474)
1997-98*	259,710
1998-99	<u>605,076</u>
Total	\$1,558,517

\* Includes \$5,260 received from the Wisconsin Transportation Fund.

We believe DOA's accounting treatment is inappropriate because the federal program revenue appropriation it uses was authorized for specific federal grants and contracts awarded to DOA and did not provide for the crediting of interest reimbursements. DOA argues that interest credits should remain in the federal accounts in case the State must pay interest to the federal government.

We also note that in FY 1995-96, without requesting permission from the Joint Committee on Finance, DOA transferred \$250,000 in interest reimbursements to the appropriation authorized in s. 20.505(1)(k), Wis. Stats., to partially fund financial services provided by the State Controller's Office. However, we believe this is an unauthorized use of the interest reimbursements and that DOA should have recovered the full costs of operations through user charges to state agencies.

If it wished to do so, the Legislature could direct that the remaining \$1,308,517 in federal interest credits, as well as any future credits, be lapsed to the General Fund for general appropriation. In addition, the Legislature could create a sum-sufficient appropriation for use in the event the State is required to pay the federal government interest credits, and it could direct DOA to request authority from the Joint Committee on Finance before making such payment.

### Clean Sweep Grants

State agencies are authorized to administer various programs through the state budget process, under which the Legislature appropriates program funding. Occasionally, state agencies also receive gifts, grants, and other unexpected funding. To ensure that these funds are taken into account when the State's budget is developed, s. 20.907, Wis. Stats., requires the Joint Committee on Finance to approve their receipt and requires state agencies to report to both the Joint Legislative Committee on Finance and DOA on their expenditure. We are concerned that over the next four years, the Department of Natural Resources (DNR) may use funds it received through a legal settlement—but has not reported to the Joint Committee on Finance or included in its current budget request—to significantly expand the "clean sweep" grants it makes available to local governments through the Household Hazardous Wastes Grant Program.

Since the 1991-93 biennium, the Legislature has appropriated \$150,000 annually from the Environmental Fund to DNR for the Household Hazardous Wastes Grant Program. This appropriation, which is currently authorized under s. 20.370(6)(bs), Wis. Stats., is intended to assist municipalities in funding programs for the collection and disposal of household hazardous waste materials. DNR awards each qualifying municipality a clean sweep grant of up to \$15,000 annually under a competitive application process.

In December 1997, the State entered into a plea agreement with Menard, Inc., to resolve a charge of unlicensed transportation of hazardous waste. As part of this agreement, Menard, Inc., was required to pay \$500,000 to a trust fund that DNR was to establish for funding the same clean sweep grants for which the Legislature appropriates funding. The plea agreement stipulates that trust fund money may be used only if the State maintains its current funding for these programs. Any money remaining in the trust fund as of December 2002 is to be paid to the Common School Fund, which supports low-interest loans to schools and to other governments.

In late January 1998, DNR received a check for \$500,000 from Menard, Inc., which could not be commingled with other state funds under the terms of the plea agreement. However, DNR failed to establish the required trust fund until eight months later, in August 1998. Depositing the check at that time resulted in a loss of at least \$12,500 in potential interest earnings (assuming a 5 percent return) during 1998.

More significantly, DNR has not directly informed the Joint Committee on Finance of its receipt of the \$500,000, nor has it sought legislative approval to spend the money on clean sweep programs or disclosed these funds in its biennial budget request. In the proposed FY 1999-2001 budget that the Legislature is now considering, DNR again requests \$150,000 annually for clean sweep grants.

DNR has already awarded the majority of its \$150,000 appropriation for FY 1998-99, as well as an additional \$30,000 of trust fund assets. However, as shown in Table 3, DNR allowed funds appropriated for clean sweep grants to lapse to the Environmental Fund from FY 1994-95 through FY 1997-98.

Table 3

**Department of Natural Resources  
Household Hazardous Wastes Grant Program  
Lapsed Spending Authority**

<u>Fiscal Year</u>	<u>Amount Lapsed</u>
1997-98	\$22,163
1996-97	14,999
1995-96	6,682
1994-95	10,409

Because DNR had not expended its full appropriation for clean sweep grants in recent years, it would appear that \$150,000 annually may be sufficient to fulfill program objectives. The Legislature may therefore wish to direct DNR not to expend assets in the trust fund, but rather to allow them to accumulate interest until the end of calendar year 2002, when they may be transferred to the Common School Fund.

Alternatively, the Legislature could either allow DNR to spend all available trust fund assets but direct it to seek approval for the trust fund from the Joint Committee on Finance and to report expenditures annually, or it could direct DNR to seek specific legislative approval, through the budget process, before expending all or any portion of the \$500,000 available in the trust fund.

#### Accounting for the State's Building Program

Statutes require the Legislative Audit Bureau to calculate and certify the State's net indebtedness and to audit the Bond Security and Redemption Fund and the Capital Improvement Fund as of January 1 of each year. We also audit the State Building Trust Fund, which accounts for a portion of the State's building program. During our current audit of the State's building program, we identified a balance of \$446,084 in the Bond Security and Redemption Fund that has accumulated because of errors in billing state agencies for debt service payment.

The State issues general obligation bonds to fund state agency building projects, home loans administered by the Department of Veterans Affairs, and pollution abatement and other grant programs administered by DNR. To pay the debt service costs, including interest, on these general obligation bonds, the Legislature authorizes various sum-sufficient appropriations that are funded by general purpose revenue, program revenue, and segregated fund revenue. The State Controller's Office within DOA is responsible for maintaining accounts for each bond issue.

To ensure that funds are available to make debt service payments, state agencies are required to pay their share of debt service costs to the Bond Security and Redemption Fund at least 15 days before the required due date, or 45 days before the due date if certain operating note payments are also due. These agency payments—which are charged against the agencies' sum-sufficient appropriations for debt service costs—earn interest in the Bond Security and Redemption Fund until bond holders are paid on the due date. The State Controller's Office offsets agencies' future debt service payment amounts by the amount of accumulated interest earnings.

However, the State Controller's Office made errors when determining the amount of interest by which state agencies' shares of debt service costs were to be offset. Because some agencies may have been overcharged for debt service costs, and other agencies undercharged, \$446,084 in interest earnings that have not been used to offset debt service payments had accumulated in the Bond Security and Redemption Fund as of December 31, 1998.

Section 18.09(3), Wis. Stats., requires that one year after the bonds are retired, any accumulated balance in the Bond Security and Redemption Fund will be transferred to the State Building Trust Fund for building program purposes. However, we are concerned because the various sum-sufficient appropriations authorized to pay for debt service have been overcharged by a net amount of \$446,084. We did not calculate the exact overcharge for each appropriation; however, it appears that about two-thirds of the accumulated interest is related to General Fund appropriations, and one-third is related to the Veterans Mortgage Loan Repayment Fund.

In a future management letter to the State Controller's Office, we will recommend improvements to procedures for billing state agencies for debt service payments. In the mean time, the Legislature could direct DOA to determine which agencies were overcharged or undercharged for debt service payments and then either transfer the net amount of \$446,084 from the Bond Security and Redemption Fund to the appropriate funding sources, or else reduce future debt service payment charges appropriately and thereby make \$446,084 available for appropriation. Alternatively, the Legislature could allow the balance of \$446,084 to remain in the Bond Security and Redemption Fund until one year after the underlying bond issues are closed, at which time the funds would be transferred to the State Building Trust Fund.

As part of these audits, we follow up on our January 1998 letter to the Joint Legislative Audit Committee concerning a \$1.9 million balance in the Capital Improvement Fund. This balance, which had accumulated because of undistributed interest that was earned before September 30, 1983, reached over \$2.1 million in January 1999. One of the options we had proposed for these funds in 1998 was transfer to the State Building Trust Fund for use in the building program. On February 11, 1999, the Building Commission authorized such a transfer: \$600,000 to be used at the Building Commission's discretion for preventive maintenance programs, and \$1.5 million to be used at the Building Commission's discretion to fund maintenance, health and safety, energy conservation, advanced planning, and minor projects.

\*\*\*\*

STATE OF WISCONSIN

CIRCUIT COURT

EAU CLAIRE COUNTY

STATE OF WISCONSIN  
123 West Washington Avenue  
Madison, Wisconsin 53707-7857,

Plaintiff,

v.

Case No. 97 CF 657

MENARD, INC.  
4777 Menard Drive  
Eau Claire, Wisconsin 54703,

Defendant.

---

**STIPULATION REGARDING PLEA**

---

It is agreed and stipulated by and between the State of Wisconsin, plaintiff, by James E. Doyle, Attorney General, and Jeffrey M. Gabrysiak and James C. McKay, Jr., Assistant Attorneys General, and defendant Menard, Inc., by Dewitt, Ross & Stevens, S.C., and Attorney Peter A. Peshek, as follows:

1. Defendant Menard, Inc., will enter pleas of no contest to counts one through fifteen of the information filed against it (six counts of unlicensed transportation of hazardous wastes from Menard, Inc., to Lamplighter Court in violation of sec. 291.97(2)(b)2., Stats.; five counts of unlicensed disposal of hazardous wastes at Lamplighter Court in violation of sec. 291.97(2)(b)2., Stats.; two counts of unlicensed transportation of hazardous wastes from the Menard, Inc., Eau Claire production facility to Waste Management's Chippewa Falls transfer facility in

violation of sec. 291.97(2)(b)2., Stats.; and two counts of unlicensed disposal of hazardous waste from the Menard, Inc., Eau Claire production facility in violation of sec. 291.97(2)(b)2., Stats.). All of the crimes to which a plea of no contest will be entered are felony violations punishable by a fine of not less than \$1,000 nor more than \$100,000 or imprisonment for not more than five years, or both.

2. In consideration of defendant Menard, Inc.'s entry of pleas of no contest to counts one through fifteen of the information, the State of Wisconsin agrees to take no further legal action, civil or criminal, against the defendant, its predecessors, successors, subsidiaries, affiliates, officers, employees, agents, partners, and/or shareholders, based on the facts alleged in the criminal complaint filed herein or for any other unlawful management of waste incinerator/boiler ash generated by Menard, Inc., until the date of the entry of a judgment of conviction in this case.

3. Upon the court's acceptance of defendant Menard, Inc.'s no contest pleas, and upon the entry of a judgment of guilty, both parties will request the court to immediately hold a sentencing hearing.

4. At the sentencing hearing both the State of Wisconsin and defendant Menard, Inc., will jointly recommend that defendant Menard, Inc., be sentenced as follows:

A. That defendant Menard, Inc., pay a total amount of \$1,000,000 in satisfaction of all fines, penalties, and



assessments (including, but not limited to, the 23% penalty assessment pursuant to sec. 165.87(2), Stats., the 10% environmental assessment pursuant to sec. 299.93(1), Stats., a \$50 per count crime victim-witness fee, a \$5 court automation fee, a \$20 court service fee, and a 1% jail assessment pursuant to sec. 302.46, Stats.), within 60 days of sentencing.

B. That Defendant Menard, Inc., pay \$500,000 to a trust fund established by the Wisconsin Department of Natural Resources (DNR) at the Firststar Bank, Madison, the assets of said trust to be used for the purpose of providing grants to Wisconsin municipalities to help fund their efforts in establishing, operating, and/or maintaining house hold hazardous waste disposal or "clean sweep" programs. The funds shall be invested in interest bearing accounts and shall be managed by Firststar Bank. Funds shall be disbursed from the trust fund at the direction of the DNR directly to qualified municipal applicants at the DNR's discretion. The DNR will follow the criteria set forth in Wisconsin Administrative Code Ch. NR 187 in distributing grants to qualified municipal programs. Money for such grants shall be disbursed from the trust fund so long as DNR maintains its existing funding levels that now exist for such programs. Any money remaining in the trust fund after five years from the date of the entry of judgement of conviction in this case shall be paid to the state's school fund. The money shall be paid by check written to "Firststar

Bank Clean Sweep Trust Fund" and mailed or delivered to the state's undersigned counsel with 60 days of the entry of a judgment of conviction.

C. That defendant Menard, Inc., pay \$50,000 to WasteCap Wisconsin, a nonprofit corporation dedicated to provide waste reduction and recycling assistance through business-to-business peer exchanges. The funds shall be used for the purpose of educating one thousand (1,000) of Wisconsin's medium to large businesses on the merits, benefits and methods of reducing the amounts of hazardous and solid wastes which are generated and disposed of in the state by means of reduction, reuse and recycling. WasteCap shall use the money to fund educational programs consisting of regional workshops, mentoring and direct mailings. It is further required that the educational program funded by this payment set a goal of reaching 300 businesses through workshops and 700 through direct mailing and that it identify and train 20 to 30 businesses and industry leaders who will become mentors in turn teaching their peers. Any money not spent for the afore described purposes within one year from the date of the entry of judgement of conviction in this case shall be paid to the state's school fund. The funds shall be paid by check written to "WasteCap Wisconsin" and mailed or delivered to the state's undersigned counsel with 60 days of the entry of a judgment of conviction.

5. No argument, other than statements and representations in support of the jointly recommended sentence, shall be offered at the sentencing hearing by either party.

6. Defendant Menard, Inc., represents and acknowledges that it understands that it is giving up and forever waiving the following rights in pleading no contest to the charges in the amended criminal complaint:

a. The right to require the state to prove that it committed each element of the crimes charged. The defendant understands that at a trial the state must convince each member of the jury beyond a reasonable doubt that all of the elements of the crimes exist before the defendant can be found guilty of those crimes.

b. The constitutional right not to incriminate itself, which means, the defendant has a right not to admit to a crime and not to say anything that will subject it to a criminal penalty. The defendant understands that by pleading no contest, it waives this privilege not to incriminate itself and if the court accepts its pleas of no contest, it will be convicted and sentenced for these crimes.

c. The constitutional right to be tried by a jury. The defendant understands that if the court accepts its pleas of no contest and it is adjudicated guilty, it will not be tried by a jury. It waives or gives up its right to a jury trial.

d. The constitutional right to confront its accusers, which means the defendant has a right to face the witnesses against

it, to hear their sworn testimony, and to cross-examine them by asking questions, to test the truth and accuracy of their testimony. If the court accepts the defendant's pleas of no contest, it will surrender the right to confront his accusers.

e. The right to present evidence on its own behalf and to require witnesses to come to court and testify for it. The defendant understands that it is giving up this right.

f. The right to a unanimous verdict, that is, all of the jurors would have to agree that the state has proven the defendant's guilt beyond a reasonable doubt before they could return a guilty verdict on any of the charges against the defendant.

7. That in entering said pleas of no contest, and thereby waiving the above rights, defendant Menard, Inc., acknowledges and represents that no threats have been made to it to induce these pleas and waivers, and no promises or agreements have been made to it outside of this document to induce the same.

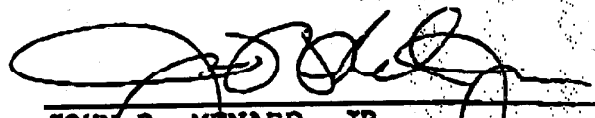
8. Defendant Menard, Inc., acknowledges that it understands that the court is not a party to or bound in any way to either this agreement or by recommendations at sentencing made by either the state or himself and is free upon conviction to impose the maximum

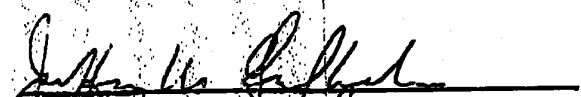
sentence provided by law which is a fine of \$100,000 and imprisonment for six months, for each count.

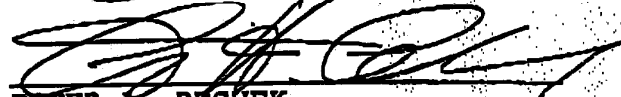
Dated: Dec 10, 1997


Dated: Dec 10, 1997

JAMES E. DOYLE  
Attorney General

  
JOHN R. MENARD, JR.  
President, Menard, Inc.

  
JEFFREY M. GABBYSIAK  
Assistant Attorney General

  
PETER A. PESHEK  
Attorney for Defendant

  
JAMES C. MCKAY, JR.  
Assistant Attorney General

Attorneys for Plaintiff

Wisconsin Department of Justice  
123 West Washington Avenue  
Post Office Box 7857  
Madison, WI 53708-7857

Dewitt, Ross & Stevens,  
Two East Mifflin Street  
Suite 600  
Madison, WI 53703-2865

1999

Date (time) needed SOON

LRB b 1172 1 1

**CAUCUS BUDGET AMENDMENT  
[ONLY FOR CAUCUS]**

RW : Wlj :

See form **AMENDMENTS — COMPONENTS & ITEMS.**

**CAUCUS AMENDMENT  
TO ASSEMBLY SUBSTITUTE AMENDMENT 1  
TO 1999 ASSEMBLY BILL 133**

>>FOR CAUCUS SUPERAMENDMENT — NOT FOR INTRODUCTION<<

At the locations indicated, amend the substitute amendment as follows:

#. Page 1541, line 10.: after that line insert:

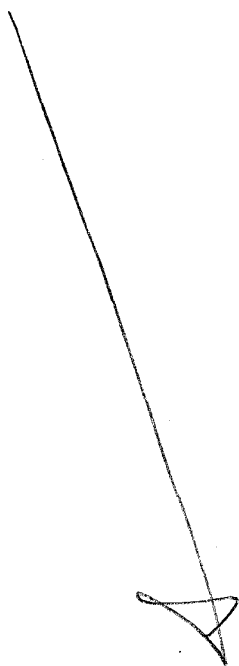
#. Page . . . . , line . . . . :

#. Page . . . . , line . . . . :

#. Page . . . . , line . . . . :

#. Page . . . . , line . . . . :

#. Page . . . . , line . . . . :







State of Wisconsin  
1999 - 2000 LEGISLATURE

SOON

LRBb11721# 2  
RCT:wlj:ksh

RMR

ARC:.....Kratochwill - Am # 306, Clean sweep grants trust fund  
FOR 1999-01 BUDGET — NOT READY FOR INTRODUCTION  
CAUCUS AMENDMENT  
TO ASSEMBLY SUBSTITUTE AMENDMENT 1,  
TO 1999 ASSEMBLY BILL 133

DNde

1 At the locations indicated, amend the substitute amendment as follows:

2 1. Page 1541, line 10: after that line insert:

3 "(11m) USE OF TRUST FUND. The department of natural resources may not direct  
4 that any funds in the trust fund established under the case of *State v. Menard, Inc.*,  
5 Eau Claire County Circuit Court case number 97 CF 657, be used to provide grants  
6 for municipal household hazardous waste disposal programs. The department shall  
7 ensure that <sup>any</sup> the funds remaining in the trust fund on December 31, <sup>2002</sup> ~~2000~~, are paid  
8 into the common school fund."

9 (END)



6/172/2dn

RET:WLJ

ff This redraft corrects the date in ~~the~~ line 7.

RET

---

**DRAFTER'S NOTE**  
**FROM THE**  
**LEGISLATIVE REFERENCE BUREAU**

LRBb1172/2dn  
RCT:wlj:ksh

June 26, 1999

This redraft corrects the date in line 7.

Rebecca C. Tradewell  
Managing Attorney  
Phone: (608) 266-7290  
E-mail: [Becky.Tradewell@legis.state.wi.us](mailto:Becky.Tradewell@legis.state.wi.us)



State of Wisconsin  
1999 - 2000 LEGISLATURE

LRBb1172/2  
RCT:wlj:ksh

ARC:.....Kratochwill - Am # 306, Clean sweep grants trust fund

FOR 1999-01 BUDGET — NOT READY FOR INTRODUCTION

**CAUCUS AMENDMENT**

**TO ASSEMBLY SUBSTITUTE AMENDMENT 1,**

**TO 1999 ASSEMBLY BILL 133**

1 At the locations indicated, amend the substitute amendment as follows:

2 **1.** Page 1541, line 10: after that line insert:

3 “(11m) USE OF TRUST FUND. The department of natural resources may not direct  
4 that any funds in the trust fund established under the case of *State v. Menard, Inc.*,  
5 Eau Claire County Circuit Court case number 97 CF 657, be used to provide grants  
6 for municipal household hazardous waste disposal programs. The department shall  
7 ensure that any funds remaining in the trust fund on December 31, 2002, are paid  
8 into the common school fund.”

9 (END)