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**AGENCY:** Department of Health and Family Services

**LFB PAPER #:** 511

**ISSUE:** Priority for Mental Health & Substance Abuse Services for Youth Leaving Out-of-Home Care

**ALTERNATIVE:** Alt 3 (Plache motion if that fails)

*Gard - 1*

**SUMMARY:**

The advocates would live Alt. 2, but realize the futility of offering that motion. So, they'll settle for Alt. 3, which would expand MA services for 19 & 20 year olds that age out of the Foster Care system. Alt. 3 would have this provision take effect on 1/1/03.

Plache's motion, if Alt. 2 fails, will cover 19 year olds only starting 1/1/03.

**BY:** Cindy



## Legislative Fiscal Bureau

One East Main, Suite 301 • Madison, WI 53703 • (608) 266-3847 • Fax: (608) 267-6873

May 31, 2001

Joint Committee on Finance

Paper #511

### **Priority for Mental Health and Substance Abuse Services for Youths Leaving Out-of-Home Care (DHFS -- Children and Families)**

[LFB 2001-03 Budget Summary: Page 396, #18]

#### **CURRENT LAW**

County departments of community programs are required to give first priority for alcohol and other drug abuse services to pregnant women who suffer from alcoholism or alcohol abuse or who are drug dependent if state, federal and county funding for substance abuse treatment services is insufficient to meet the needs of all eligible individuals. Current law does not require county departments of community programs to give priority for mental health services to any group of people if state, federal and county funding for mental health services these departments provide is insufficient to meet the needs of all individuals.

Under federal law, children in out-of-home care, up to 19 years of age that meet the financial eligibility criteria established under Title IV-E of the federal Social Security Act, are automatically eligible for medical assistance (MA). Additionally, Wisconsin exercises its option, under federal law, to extend MA coverage to children in out-of-home care that do not meet the Title IV-E criteria, if the child meets other MA financial criteria. After turning 19 years of age, an individual that had been in out-of-home care could be eligible for MA if they are disabled or have dependent children and meet all other financial eligibility criteria. Under MA, children in out-of-home care receive comprehensive health care services, including mental health and substance abuse services.

#### **GOVERNOR**

Require county departments of community programs to give first priority for mental health services to independent foster care adolescents, as defined in federal law, if state, federal and county funding from mental health services these departments provide is insufficient to meet

the needs of all individuals. Under federal law, an independent foster care adolescent is an individual who is at least 18 years of age but less than 21 years of age and who was in foster care on his or her 18<sup>th</sup> birthday.

In addition, require county departments of community programs to give second priority for alcohol and other drug abuse services to independent foster care adolescents, as defined in federal law, if state, federal and county funding for alcohol and other drug abuse treatment services is insufficient to meet the needs of all eligible individuals.

## DISCUSSION POINTS

1. Approximately 500 youth "age out" of out-of-home care each year. Funding for support services for youth in out-of-home care terminates when the youth becomes 18 years of age, unless he or she is the recipient of an independent living grant or is continuing high school.

2. A study of foster youth transitions to adulthood, conducted by the University of Wisconsin-Madison, examined the experiences of youth after they were discharged from out-of-home care in Wisconsin. The study concluded that these youth are more likely to experience physical and sexual victimization, unemployment and underemployment, homelessness, incarceration and public assistance utilization than youth in this age cohort who have not been placed in the child welfare system.

3. In addition, the study showed that this population has higher than average health care needs, particularly mental health care needs, than youth in this age cohort who have not been placed in out-of-home care. The study reported that 47% of youth participating in the study received mental health services in the year before leaving foster care. In the year after leaving out-of-home care, 21% of these youth received mental health services. However, the study reported no change in their mental well-being from the previous year, when they were still in the child welfare system. The study concluded that, "although the receipt of mental health services decreased dramatically over time, there is no evidence that the young adults' need for services decreased."

4. The study also reported that 44% of participating youth had difficulty obtaining medical care most or all of the time after leaving foster care. The most frequently cited reasons for difficulty in accessing medical care were that they had no insurance coverage (51%) or not enough money to pay for the medical care (38%). The study reported that youth who have left out-of-home care are unlikely to have the income or savings to access needed health care -- 46% reported having over \$250 in savings upon leaving out-of-home care. Additionally, unlike other youth, these individuals do not have access to the same social resources (such as family members) that could assist them in accessing health services as youth in this age cohort who have not been placed in out-of-home care.

5. In its 2001-03 budget submission, DHFS proposed expanding MA services to these youth. The Governor did not include the DHFS request in his budget recommendations. However, the Governor's proposal is intended to address the need identified in the study. The Committee

could approve the Governor's recommendations to give service priority to these individuals, similar to the priority for substance abuse services that is currently granted to pregnant women. This could ensure that the mental needs of this population are addressed, and would not require additional funding to address this need.

6. However, the county departments of community programs, which provide mental health and substance abuse treatment services to eligible individuals, receive state and federal funding to support these services through community aids and supplemental funding provided by the county. Approving the Governor's recommendation would remove local control of these human services funds and could be viewed as a state mandate.

7. The federal Chaffee Foster Care Independence Act of 1999 authorized states to extend MA coverage for individuals 18 through 21 years of age who had been in out-of-home care on their 18<sup>th</sup> birthday. The state could exercise this option by expanding MA eligibility for individuals that were in out-of-home care on their 18<sup>th</sup> birthday so that they could remain eligible for MA through 21 years of age. Under this option, the Committee could specify this change would take effect January 1, 2002, and would first apply to individuals leaving out-of-home care, effective January 1, 2002.

The estimated cost to provide MA coverage to these individuals would be \$132,400 (\$54,900 GPR and \$77,500 FED) in 2001-02 and \$945,600 (\$392,400 GPR and \$553,200 FED) in 2002-03. This estimate assumes that 42 individuals per month would be eligible under this provision, at a monthly cost of \$150.10.

8. Providing MA coverage to these individuals has several advantages compared to the Governor's proposal. First, it would ensure that these individuals have access to all health services, rather than just mental health and substance abuse services, as under the Governor's recommendation. Second, it would reduce county costs of providing mental health and substance abuse services to these individuals after they leave out-of-home care. Finally, providing MA coverage would secure federal MA matching funding for the cost of services provided to these individuals.

9. However, the Committee should be aware of the estimated annualized cost of this proposal, once it is fully implemented. It is estimated that it would take three years before the full cost of this proposal would be realized. The estimated annualized cost of this proposal would be \$2,723,400 (\$1,130,100 GPR and \$1,593,300 FED).

10. Alternatively, if the Committee wanted to extend MA coverage to these individuals but wished to reduce the fiscal effect of the proposal in the 2001-03 biennium, it could delay the effective date to January 1, 2003. The estimated cost of this alternative would be \$132,400 (\$54,900 GPR and \$77,500 FED) in 2002-03.

**ALTERNATIVES TO BILL**

1. Approve the Governor's recommendations.
2. Delete the provision. Instead, provide \$54,900 GPR and \$77,500 FED in 2001-02 and \$392,400 GPR and \$553,200 FED in 2002-03 to extend MA coverage to youths leaving out-of-home care, effective January 1, 2002, and specify that this would first apply to individuals leaving out-of-home care on January 1, 2002.

| <u>Alternative 2</u>             | <u>GPR</u> | <u>FED</u> | <u>TOTAL</u> |
|----------------------------------|------------|------------|--------------|
| 2001-03 FUNDING (Change to Bill) | \$447,300  | \$630,700  | \$1,078,000  |

3. Delete the provision. Instead, provide \$54,900 GPR and \$77,500 FED in 2002-03 to extend MA coverage to youths leaving out-of-home care, effective January 1, 2003, and specify that this would first apply to individuals leaving out-of-home care on January 1, 2003.

| <u>Alternative 3</u>             | <u>GPR</u> | <u>FED</u> | <u>TOTAL</u> |
|----------------------------------|------------|------------|--------------|
| 2001-03 FUNDING (Change to Bill) | \$54,900   | \$77,500   | \$132,400    |

4. Maintain current law.

MO# A 11 2

MO# \_\_\_\_\_

|           |                                  |                                  |   |           |   |   |   |
|-----------|----------------------------------|----------------------------------|---|-----------|---|---|---|
| BURKE     | <input checked="" type="radio"/> | N                                | A | BURKE     | Y | N | A |
| DECKER    | <input checked="" type="radio"/> | N                                | A | DECKER    | Y | N | A |
| MOORE     | <input checked="" type="radio"/> | N                                | A | MOORE     | Y | N | A |
| SHIBILSKI | <input checked="" type="radio"/> | N                                | A | SHIBILSKI | Y | N | A |
| PLACHE    | <input checked="" type="radio"/> | N                                | A | PLACHE    | Y | N | A |
| WIRCH     | <input checked="" type="radio"/> | N                                | A | WIRCH     | Y | N | A |
| DARLING   | Y                                | <input checked="" type="radio"/> | A | DARLING   | Y | N | A |
| WELCH     | Y                                | <input checked="" type="radio"/> | A | WELCH     | Y | N | A |
| GARD      | Y                                | <input checked="" type="radio"/> | A | GARD      | Y | N | A |
| KAUFERT   | Y                                | <input checked="" type="radio"/> | A | KAUFERT   | Y | N | A |
| ALBERS    | Y                                | <input checked="" type="radio"/> | A | ALBERS    | Y | N | A |
| DUFF      | Y                                | <input checked="" type="radio"/> | A | DUFF      | Y | N | A |
| WARD      | Y                                | <input checked="" type="radio"/> | A | WARD      | Y | N | A |
| HUEBSCH   | Y                                | <input checked="" type="radio"/> | A | HUEBSCH   | Y | N | A |
| HUBER     | <input checked="" type="radio"/> | N                                | A | HUBER     | Y | N | A |
| COGGS     | <input checked="" type="radio"/> | N                                | A | COGGS     | Y | N | A |

Prepared by: Yvonne M. Arsenault

AYE 8 NO 8 ABS \_\_\_\_\_

AYE \_\_\_\_\_ NO \_\_\_\_\_ ABS \_\_\_\_\_

HEALTH AND FAMILY SERVICES -- CHILDREN AND FAMILIES

Youths Leaving Out-of-Home Care

[LFB Paper #511]

Motion:

Move to provide \$54,900 GPR and \$77,500 FED in 2002-03 to extend MA coverage to individuals leaving out-of-home care, effective January 1, 2003, and specify that this would first apply to individuals leaving out-of-home care on January 1, 2003. Specify that individuals would be eligible until they become 20 years of age, after which they would no longer be eligible for MA under this provision. In addition, require county departments of community programs to give first priority for mental health services to individuals who were eligible for MA under the MA expansion described in this motion, if state, federal and county funding for mental health services these departments provide is insufficient to meet the needs of all individuals. In addition, require county departments of community programs to give second priority for alcohol and other drug abuse services to individuals, who were eligible for MA under the MA expansion described in this motion, effective January 1, 2003, if state, federal and county funding for alcohol and other drug abuse treatment services is insufficient to meet the needs of all eligible individuals. These individuals would only be eligible for service priority while they are 20 years of age.

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Note:

This motion would extend MA coverage to individuals who leave out-of-home care, effective January 1, 2003, through 20 years of age, at an annualized cost of \$1,815,600 (\$753,400 GPR and \$1,062,200 FED). This would first apply to individuals leaving out-of-home care on January 1, 2003. In addition, this motion would require county departments of community programs to give service priority for mental health and substance abuse treatment services to individuals eligible for MA under the MA expansion described in this motion. These individuals would only be eligible for service priority while they are 20 years of age.

[Change to Bill: \$54,900 GPR and \$77,500 FED]

MO#

|           |   |   |   |
|-----------|---|---|---|
| BURKE     | Y | N | A |
| DECKER    | Y | N | A |
| MOORE     | Y | N | A |
| SHIBILSKI | Y | N | A |
| PLACHE    | Y | N | A |
| WIRCH     | Y | N | A |
| DARLING   | Y | N | A |
| WELCH     | Y | N | A |
|           |   |   |   |
| GARD      | Y | N | A |
| KAUFERT   | Y | N | A |
| ALBERS    | Y | N | A |
| DUFF      | Y | N | A |
| WARD      | Y | N | A |
| HUEBSCH   | Y | N | A |
| HUBER     | Y | N | A |
| COGGS     | Y | N | A |

AYE 8 NO 8 ABS

HEALTH AND FAMILY SERVICES – CHILDREN AND FAMILIES

Foster Care Rate Increase

Motion:

Move to provide \$884,900 (\$561,100 GPR and \$323,800 FED) in 2001-02 and \$1,638,200 (\$997,500 GPR and \$640,700 FED) in 2002-03 and increase the uniform foster care rate as identified in the following table.

**Monthly Uniform Foster Care Rate**

| <u>Child's Age</u> | <u>Current Rate</u> | <u>Beginning<br/>January, 2002</u> | <u>Beginning<br/>January, 2003</u> |
|--------------------|---------------------|------------------------------------|------------------------------------|
| 0-4 yrs            | \$302               | \$311                              | \$320                              |
| 5-11 yrs           | 329                 | 339                                | 349                                |
| 12-14 yrs          | 375                 | 386                                | 398                                |
| 15 and older       | 391                 | 403                                | 415                                |

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Note:

This motion would provide a 3% increase in the uniform foster care rates, effective January 2002, and an additional 3% increase, effective January, 2003. Funding would be provided to fund DHFS and county costs resulting from the increase.

[Change to Bill: \$1,558,600 GPR and \$964,500 FED]



MO#

|           |   |   |   |
|-----------|---|---|---|
| BURKE     | Y | N | A |
| DECKER    | Y | N | A |
| MOORE     | Y | N | A |
| SHIBILSKI | Y | N | A |
| PLACHE    | Y | N | A |
| WIRCH     | Y | N | A |
| DARLING   | Y | N | A |
| WELCH     | Y | N | A |
|           |   |   |   |
| GARD      | Y | N | A |
| KAUFERT   | Y | N | A |
| ALBERS    | Y | N | A |
| DUFF      | Y | N | A |
| WARD      | Y | N | A |
| HUEBSCH   | Y | N | A |
| HUBER     | Y | N | A |
| COGGS     | Y | N | A |

AYE 8 NO 8 ABS

HEALTH AND FAMILY SERVICES -- CHILDREN AND FAMILIES

Foster Care Rate Increase

Motion:

Move to provide \$705,600 (\$447,700 GPR and \$257,900 FED) in 2001-02 and \$1,202,800 (\$737,200 GPR and \$465,600 FED) in 2002-03 and increase the uniform foster care rate as identified in the following table.

Monthly Uniform Foster Care Rate

| Child's Age  | Current Rate | Beginning<br>January, 2002 | Beginning<br>January, 2003 |
|--------------|--------------|----------------------------|----------------------------|
| 0-4 yrs      | \$302        | \$308                      | \$314                      |
| 5-11 yrs     | 329          | 336                        | 342                        |
| 12-14 yrs    | 375          | 383                        | 390                        |
| 15 and older | 391          | 399                        | 407                        |

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Note:

This motion would provide a 2% increase in the uniform foster care rates, effective January 2002, and an additional 2% increase, effective January, 2003. Funding would be provided to fund DHFS and county costs resulting from the increase.

[Change to Bill: \$1,184,900 GPR and \$723,500 FED]

MO#

|           |   |   |   |
|-----------|---|---|---|
| BURKE     |   |   |   |
| DECKER    | Y | N | A |
| MOORE     | Y | N | A |
| SHIBILSKI | Y | N | A |
| PLACHE    | Y | N | A |
| WIRCH     | Y | N | A |
| DARLING   | Y | N | A |
| WELCH     | Y | N | A |
|           |   |   |   |
| GARD      | Y | N | A |
| KAUFERT   | Y | N | A |
| ALBERS    | Y | N | A |
| DUFF      | Y | N | A |
| WARD      | Y | N | A |
| HUEBSCH   | Y | N | A |
| HUBER     | Y | N | A |
| COGGS     | Y | N | A |

AYE 8 NO 8 ABS

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HEALTH AND FAMILY SERVICES -- CHILDREN AND FAMILIES

Foster Care Rate Increase

Motion:

Move to provide \$527,300 (\$334,800 GPR and \$192,500 FED) in 2001-02 and \$786,400 (\$484,900 GPR and \$301,500 FED) in 2002-03 and increase the uniform foster care rate as identified in the following table.

Monthly Uniform Foster Care Rate

| Child's Age  | Current Rate | Beginning<br>January, 2002 | Beginning<br>January, 2003 |
|--------------|--------------|----------------------------|----------------------------|
| 0-4 yrs      | \$302        | \$305                      | \$308                      |
| 5-11 yrs     | 329          | 332                        | 336                        |
| 12-14 yrs    | 375          | 379                        | 383                        |
| 15 and older | 391          | 395                        | 399                        |

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Note:

This motion would provide a 1% increase in the uniform foster care rates, effective January 2002, and an additional 1% increase, effective January, 2003. Funding would be provided to fund DHFS and county costs resulting from the increase.

[Change to Bill: \$819,700 GPR and \$494,000 FED]

MO#

|           |   |   |   |
|-----------|---|---|---|
| BURKE     | Y | N | A |
| DECKER    | Y | N | A |
| MOORE     | Y | N | A |
| SHIBILSKI | Y | N | A |
| PLACHE    | Y | N | A |
| WIRCH     | Y | N | A |
| DARLING   | Y | N | A |
| WELCH     | Y | N | A |
|           |   |   |   |
| GARD      | Y | N | A |
| KAUFERT   | Y | N | A |
| ALBERS    | Y | N | A |
| DUFF      | Y | N | A |
| WARD      | Y | N | A |
| HUEBSCH   | Y | N | A |
| HUBER     | Y | N | A |
| COGGS     | Y | N | A |

AYE 8 NO 8 ABS \_\_\_\_\_

HEALTH AND FAMILY SERVICES -- CHILDREN AND FAMILIES

The Emergency Food Assistance Program

Motion:

Move to provide \$82,000 GPR in 2001-02 and \$160,000 GPR in 2002-03 to increase state funding for storage and transportation costs for food provided under the federal TEFAP program. Create an annual GPR appropriation in DHFS for this purpose and transfer \$150,000 GPR annually from the general program operations appropriation for the Division of Children and Family Services to the new appropriation. Require DHFS to expend all federal funds before using GPR funds for this purpose. Require DHFS to solicit private funds to support these costs.

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Note:

This motion would provide \$82,000 GPR in 2001-02 and \$160,000 GPR in 2002-03 to transport and store food available under the emergency food assistance program (TEFAP). TEFAP is a federal program administered by the U.S. Department of Agriculture (USDA) that makes food available to states to help supplement the diets of low-income individuals. The USDA buys the food, processes and packages it and ships it to the states. In Wisconsin, DHFS oversees program administration, including food transportation, storage and allocation.

Currently, \$150,000 GPR annually is budgeted in the Division of Children and Family Services general program operations appropriation to support these costs. This motion would: (a) create a new GPR appropriation to fund these support costs; (b) transfer \$150,000 GPR annually that is currently budgeted in DHFS' general program operations to this new appropriation; (c) provide an additional \$160,000 GPR annually to store and transport the TEFAP bonus food that is provided to Wisconsin; (d) require DHFS to solicit donations to support the costs of the transporting and storing TEFAP bonus food; and (e) require DHFS to expend all federal funds before using GPR funds for this purpose.

[Change to Bill: \$242,000 GPR]

MO# \_\_\_\_\_

|           |   |   |   |
|-----------|---|---|---|
| BURKE     | Y | N | A |
| DECKER    | Y | N | A |
| MOORE     | Y | N | A |
| SHIBILSKI | Y | N | A |
| PLACHE    | Y | N | A |
| WIRCH     | Y | N | A |
| DARLING   | Y | N | A |
| WELCH     | Y | N | A |
|           |   |   |   |
| GARD      | Y | N | A |
| KAUFERT   | Y | N | A |
| ALBERS    | Y | N | A |
| DUFF      | Y | N | A |
| WARD      | Y | N | A |
| HUEBSCH   | Y | N | A |
| HUBER     | Y | N | A |
| COGGS     | Y | N | A |

AYE 8 NO 8 ABS \_\_\_\_\_

# HEALTH AND FAMILY SERVICES

## Children and Families

### *Bill Agency*

#### **LFB Summary Items for Which No Issue Paper Has Been Prepared**

| <u>Item #</u> | <u>Title</u>                       |
|---------------|------------------------------------|
| 4             | Milwaukee Child Welfare Contracts  |
| 6             | Special Needs Adoption Partnership |
| 19            | Foster Parent Insurance Deductible |
| 21            | Repeal Appropriations              |

#### **LFB Summary Items Addressed at a Previous Committee Executive Session**

| <u>Item #</u> | <u>Title</u>                                   |
|---------------|--|
| 7             | Kinship Care -- Funding (Paper #1050)          |
| 8             | Kinship Care -- Review of Denial of Benefits   |
| 9             | Transfer Youth Programs to DWD (Paper #1025)   |
| 11            | Child Care licensing Funding (Paper #1048)     |
| 13            | Brighter Futures and Tribal Adolescent Funding |

#### **LFB Summary Items for Introduction as Separate Legislation**

| <u>Item #</u> | <u>Title</u>  |
|---------------|---|
| 14            | Guardianship  |
| 15            | Petitions for the Transfer of Custody and Guardianship        |
| 16            | Permanency Plans for Court-Ordered Placements With a Relative |
| 17            | Court-Ordered Placements -- Agency Recommendations            |
| 20            | Searches for Birth Parents                                    |



# Agriculture, Trade and Consumer Protection

## Trade and Consumer Protection

### *Base Agency*

(LFB Budget Summary Document: Page 99)

### LFB Summary Items for Which Issue Papers Have Been Prepared

| <u>Item #</u> | <u>Title</u>  |
|---------------|---|
| 1             | Transfer Consumer Protection Functions (Paper #215) |
| 3             | Ethanol Producer Grant Program (Paper #216)         |
| 5             | Federal Agricultural Policy Reform (Paper #217)     |
| 6             | Weights and Measures Funding (Paper #218)           |
| 8             | Johne's Program Position (Paper #219)               |

**AGENCY:** DOJ

*Card - 1*

**Paper #:** 215

**ISSUE:** Transfer of Consumer Protection Functions from DOJ to DATCP

**ALTERNATIVE:** 2 (maintain current law)

**SUMMARY:** Burke Motion to transfer Consumer Protection back to DOJ.

**Prepared by:** Tanya



## Legislative Fiscal Bureau

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May 31, 2001

Joint Committee on Finance

Paper #215

### **Transfer Consumer Protection Functions (Agriculture, Trade and Consumer Protection and Justice)**

[LFB 2001-03 Budget Summary: Page 99, #1 and page 433, #3]

#### **CURRENT LAW**

The Department of Justice (DOJ) has concurrent authority with the Department of Agriculture, Trade and Consumer Protection (DATCP) to determine violations of, and initiate prosecutorial proceedings to: (a) restrain by temporary or permanent injunction any fraudulent representation; (b) restrain by temporary or permanent injunction any violation of telecommunication trade practices and enforce forfeitures; and (c) recover a civil forfeiture for violation of a fraudulent representation, fraudulent drug advertising, unfair methods of competition or unfair trade practices injunction. However, DOJ can only commence these proceedings and enforce the above forfeitures in circuit court after consulting with DATCP.

Under current law, DOJ must furnish all legal services required by DATCP relating to the enforcement of the above consumer protection statutory provisions, as well as other consumer protection statutory provisions and chapters, together with any other services necessarily connected to those legal services.

For allegations of unfair methods of competition in business or unfair trade practices in business, DOJ may: (a) initiate administrative proceedings in regards to such allegations with DATCP; (b) appear before DATCP in regards to such proceedings; and (c) appeal DATCP decisions and orders to a court of law. Under current law, DOJ may: (a) accept a written assurance of discontinuance of any act or practice alleged to be a violation of the fraudulent representation laws; (b) bring an action enjoining any corporation, or limited liability company, foreign or domestic, which violates any order regarding unfair methods of competition or unfair trade practices from doing business in this state and revoking or canceling its certificate of authority, incorporation or organization; and (c) join the Federal Communications Commission

and the Federal Trade Commission in bringing actions in federal court under the federal telecommunications act and federal marketing laws. Finally, under current law: (a) forfeitures under the self-service storage facilities law are enforced by DOJ or by the district attorney of the county where the violation occurred; and (b) a representative from DOJ must be a member of the advisory group that DATCP must form before preparing any proposed rule on telecommunication services.

DATCP's consumer protection staff review and respond to consumer inquiries and complaints received through the DATCP toll-free hotline, telephone calls to regional offices, written complaints or referrals from other state agencies. Further, DATCP is authorized significant investigative authority under general agency powers provided by Chapter 93 of the statutes, in addition to specific authority in unfair trade practices and deceptive advertising laws. These include the authority to subpoena documents and testimony, conduct investigative hearings, collect and analyze samples, and inspect and copy business records.

In 2000-01, DATCP's Bureau of Consumer Protection is provided \$4,384,300 in funding and 72.55 staff (\$2,839,100 GPR and 50.6 GPR positions, \$1,178,200 PR and 17.95 PR positions, and \$367,000 SEG and 4.0 SEG positions) for these purposes. The Bureau consists of a director and central administrative staff that includes a consumer information center made up of the consumer hotline and consumer information staff. The Bureau also operates regional offices in Eau Claire, Green Bay, Madison and Wauwatosa.

Under current law, DOJ is provided \$808,700 GPR and 9.3 GPR positions annually for consumer protection functions. These staff include 4.8 attorneys, 2.0 consumer protection investigators, 1.0 legal secretary, 1.0 paralegal and 0.5 legal assistant.

## **GOVERNOR**

Transfer \$808,700 GPR and 9.3 GPR consumer protection positions annually (4.8 attorneys, 2.0 consumer protection investigators, 1.0 legal secretary, 1.0 paralegal and 0.5 legal assistant) from DOJ's Division of Legal Services to DATCP.

Make the following statutory changes concerning consumer protection legal services: (a) eliminate DOJ's concurrent authority to determine violations, initiate prosecutorial proceedings and accept, in lieu of prosecuting, written assurance of discontinuance of alleged violations concerning cases relating to fraudulent representations; (b) eliminate DOJ's concurrent authority to determine violations, initiate prosecutorial proceedings and enforce forfeitures concerning cases relating to telecommunications trade practices; (c) delete the requirement that a representative from DOJ be a member of the advisory group that DATCP must form before preparing any proposed rule on telecommunication services; (d) authorize a district attorney instead of DOJ to file complaints and prosecute actions before DATCP concerning unfair methods of competition in business or unfair trade practices; (e) provide that DATCP would replace DOJ as the state agency that would bring an action in the name of the state to enjoin any

corporation, or limited liability company from doing business in this state and canceling or revoking its certificate of authority, incorporation, or organization for violating any unfair method of competition or unfair trade practices order; (f) eliminate DOJ's concurrent authority to commence actions to recover civil forfeitures on behalf of the state for violations of injunctions involving fraudulent representations, fraudulent drug advertising, unfair methods of competition or unfair trade practices; (g) provide that DATCP would replace DOJ as the state agency, in addition to district attorneys, empowered to enforce forfeitures for violations of the self-service storage facilities laws; (h) remove DOJ as an agency to which a court could award reasonable and necessary expenses of prosecution, including attorney fees, under the Marketing, Trade Practices chapter of the statutes (Chapter 100) and provide that 10% of money awarded under the Chapter for the costs of investigation and the expenses of prosecution, including attorney fees, would no longer be credited to DOJ's investigation and prosecution appropriation; and (i) no longer require DOJ to furnish all legal services to DATCP relating to the enforcement of various consumer protection statutes; instead, authorize DOJ to furnish these legal services upon the request of DATCP.

Provide that: (a) on the effective date of the bill, the assets and liabilities of DOJ primarily related to the provision of consumer protection legal services, as determined by the DOA Secretary, would become assets and liabilities of DATCP; (b) the incumbent employees holding the transferred positions be transferred to DATCP and maintain their employment rights and status; (c) tangible personal property, pending matters, contracts and contract responsibilities relating to the provision of consumer protection legal services be transferred to DATCP; and (d) rules and orders relating to the provision of consumer protection legal services under DOJ would remain in effect until their specified expiration date or until modified or rescinded by DATCP.

## DISCUSSION POINTS

### 1995 Act 27

1. Under 1995 Act 27 (the 1995-97 budget act), \$1,411,900 GPR and 26.6 GPR positions were deleted and transferred from DOJ in 1996-97 to reflect the move of most consumer protection functions from DOJ to DATCP on July 1, 1996. Under the act, 12.8 DOJ positions were eliminated and the remaining 13.8 positions, and the incumbents, were transferred from DOJ to DATCP. After the change, DOJ retained 9.3 legal services staff for consumer protection functions.

2. Under Act 27, the following DOJ responsibilities were transferred to DATCP:

- Fraudulent representations;
- Fraudulent drug advertising;
- Penalties for violations of DATCP rules relating to methods of competition and trade practices;
- Motor vehicle rust proofing warranties;
- Substantiation of energy savings and safety claims;

- Penalties: marketing and trade practices;
- Sale of cleaning agents and water conditioners containing phosphorus;
- Products containing or made with ozone-depleting substances;
- Ticket refunds;
- Cable television subscriber rights;
- Dating service contracts;
- Fitness center and weight reduction contracts;
- Pawnbrokers and secondhand article and jewelry dealers;
- Prize notices;
- Mail-order sales regulated;
- Motor fuel dealerships;
- Future service plans;
- Vehicles-financial responsibility: damage waivers and penalties;
- Self-service storage facilities;
- Time share ownership deposits, escrow requirements remedies and penalties; and
- Prepaid maintenance liens.

3. Act 27 required that DOJ consult with DATCP prior to commencing an action: (a) for violations of the state's fraudulent advertising laws; (b) for violations of telecommunications trade practices; and (c) to recover civil forfeitures for violations of an injunction issued under the state's fraudulent advertising statutes, drug pricing statutes and unfair trade practices.

### **Consumer Protection in DOJ**

4. DOJ retains concurrent authority to determine violations of, and initiate prosecutorial proceedings on, cases relating to fraudulent representation, fraudulent drug advertising, unfair methods of competition, unfair trade practices and telecommunications trade practices. However, DOJ can only commence an action in circuit court after consulting with DATCP. Under current practice, DOJ informs DATCP prior to filing these types of cases, and DATCP has never objected to a DOJ-initiated action. Under current law, DATCP is not given statutory authority to prevent DOJ from initiating these types of actions; after consultation DOJ is permitted to exercise its independent discretion.

5. In addition to its authority to independently bring cases relating to fraudulent representation, fraudulent drug advertising, unfair methods of competition, unfair trade practices and telecommunications trade practices (after consulting with DATCP), DOJ can also represent the state in court on other types of consumer protection cases referred for adjudication by DATCP or other state agencies. DATCP indicates that it generally refers its consumer protection cases to district attorneys or DOJ for court enforcement, not because it lacks court enforcement authority under the consumer protection laws it administers, but rather because it lacks the necessary legal staff to prosecute those cases itself. District attorneys generally prosecute criminal cases at the trial level (rather than DATCP and DOJ). DATCP indicates that the type of case it generally refers to DOJ involves a civil action with multi-county implications.

6. Of the 53 consumer protection cases concluded by DOJ in 1998-99 and 1999-00, DOJ estimates that approximately 23 of these cases were DATCP referrals. (According to DOJ, approximately five of these cases were referred after DOJ had already initiated an enforcement action.) The remaining cases were primarily multi-state actions with other Attorneys General, with a few referrals from sources other than DATCP.

7. Under the federal telecommunications act and the federal marketing laws, the "state officer responsible for enforcement" has authority to bring actions under those acts. DOJ has traditionally exercised this authority without the requirement of consultation with DATCP. DOJ indicates, however, that as a practical matter there are situations under these acts where consultation occurs both formally and informally between DOJ and DATCP. In addition, under current law, only DOJ may initiate administrative proceedings before DATCP in regards to allegations of unfair methods of competition in business or unfair trade practices in business.

8. DOJ indicates that its consumer protection attorneys (assistant attorneys general) spend almost all of their time on consumer protection cases. DOJ assistant attorneys general (AAG) with other areas of expertise, however, are sometimes called in to assist in a consumer protection case if their area of specialization is involved. According to DOJ, an AAG experienced in telecommunications regulation has been used on occasion when a consumer protection case involving telecommunication matters has arisen, and the consumer protection unit has also employed the specialized help out bankruptcy AAGs when a suspected consumer protection violator has filed for bankruptcy protection.

9. DOJ indicates that while attorneys in the legal services division work in designated units that are organized around particular types of practice areas, at any given time attorneys in one unit may be asked to assist another unit due to workload constraints, special case needs or other factors. DOJ indicates that for some large consumer protection cases, other legal services units in DOJ may be asked to contribute attorneys and legal staff to meet the demands of the case. Similarly, consumer protection attorneys may assist attorneys in other units.

10. DOJ attorneys make use of both DOJ investigators and DATCP investigators in consumer protection enforcement actions. In addition, DOJ investigators work with investigators from other attorney general offices in organizing and cataloging evidence that will be used in upcoming multi-state litigation. DOJ works with DATCP investigators from time to time on cases referred by DATCP to DOJ. Whether DOJ or DATCP investigators are employed in a given situation is often a product of availability and judgments about the complexity of work or specialized expertise of a given investigator.

11. While DATCP has independent enforcement authority, DOJ indicates that it has always viewed the relationship it has with DATCP as most similar to the relationship that exists between law enforcement agencies and district attorney offices. Law enforcement officers, like DATCP, are responsible for complaint intake, review, investigation and recommendation for enforcement action. District attorneys, like DOJ, are ultimately responsible for reviewing the investigatory work product, exercising prosecutorial discretion and ultimately enforcing and/or

settling cases. However, DOJ has also exercised its authority to review and investigate consumer protection cases which the agency may also prosecute.

12. In 1998-99 and 1999-00, DOJ's consumer protection unit completed 53 cases. These included 19 telemarketing/telecommunications cases, eight cases involving deceptive credit practices, 10 involving misleading health care claims and 11 deceptive travel promotions. Over the two-year period, the 53 cases resulted in a total recovery, including forfeitures and costs, refunds and restitution and multi-state settlements, of \$8,948,400, including \$3,142,300 in forfeitures and costs, \$1,107,000 in refunds and restitution, and \$4,699,100 in multi-state settlements (the restitution amount does not include restitution and refunds made directly to consumers by the defendant companies). Over this two-year period DOJ received 48 referrals from DATCP.

### **Governor's Recommendation to Transfer DOJ's Remaining Consumer Protection Responsibilities and Positions to DATCP**

13. DATCP's Consumer Protection Bureau relies significantly on its administrative rules. The administrative rules provide detailed, industry-wide standards of conduct related to specific consumer protection issues. In addition, DATCP practices progressive enforcement of the state's consumer protection laws through the use of warning letters, assurances of compliance, special orders and formal prosecutions, when necessary.

14. DATCP uses a program of prevention, education, mediation and enforcement to maintain compliance with DATCP rules. In addition, administrative rules are intended to reduce the possibility of arbitrary or inconsistent state regulation of businesses. Generally, rules have been adopted for those consumer issues for which unfair business activities had, at one time, become common. DATCP adopts new rules and modifies current rules in response to new practices.

15. Under the Governor's recommendation, the remaining DOJ consumer protection responsibilities, independent authority and positions would be transferred to DATCP. DOJ would also no longer be required to furnish all legal services required by DATCP relating to the enforcement of various consumer protection statutes, but DOJ would still be authorized to furnish these legal services upon the request of DATCP. Under the bill, district attorneys, instead of DOJ, would be authorized to file complaints and prosecute actions before DATCP concerning unfair methods of competition in business or unfair trade practices.

16. DOA indicates that the provision to transfer the remaining consumer protection responsibilities and positions from DOJ to DATCP was included in the bill so as to: (a) complete the process that was begun under 1995 Act 27 to shift consumer protection responsibilities from DOJ to DATCP; (b) take advantage of any additional efficiencies that might arise from a further consolidation of consumer protection functions; and (c) place consumer protection in an agency where the focus is on prevention and voluntary compliance. While DOA indicates efficiency would be one reason to consolidate functions, no cost savings would be realized under the bill.

17. In his March 19, 2001, comments before the Joint Committee on Finance, the



Attorney General indicated that, "if you eliminate the role of the Attorney General completely from the enforcement of consumer protection in this state, you will lose one of the most effective and powerful tools we have to enforce our consumer protection laws-the role of the Attorneys General in multi-state litigation." DOJ has significant experience working with other states' Attorneys General in multi-state litigation on behalf of consumers. In 1998-99 and 1999-00 the Attorney General participated in the following multi-state settlements: (a) a settlement with Sears Roebuck and Company over violations of federal bankruptcy law in which Wisconsin received more than \$2 million; (b) a settlement with Knoll Pharmaceutical Company and BASF Corporation over its marketing practices involving the sale of a synthetic thyroid hormone in which Wisconsin received \$1,031,900; (c) a settlement with Walgreens for dispensing partial or short prescriptions in which Wisconsin received \$491,200; (d) a settlement with Nestle USA for failing to comply with state and federal food laws by advertising and selling unsafe candy/toy products; and (e) a settlement with the United States Sales Corporation involving sweepstakes, which provided a fund of \$30.4 million for restitution to consumers nationwide.

18. DATCP has also been responsible for prosecuting consumer protection efforts. All consumer protection-related prosecutions initiated by DATCP resulted in judgments of approximately \$9.4 million in 1999 and 2000. This includes approximately \$4 million in 1999 and \$5.4 million in 2000, through civil forfeitures and penalties. An additional \$4.0 million was returned to Wisconsin consumers in 2000 through court order (\$2.1 million) and DATCP mediation (\$1.9 million).

19. The Bureau of Consumer Protection within DATCP (Bureau) belongs to the National Association of Consumer Agency Administrators. Through this organization and other cooperative arrangements with federal agencies such as the Consumer Product Safety Commission, the Federal Trade Commission and the Federal Communications Commission, the Bureau participates in multi-state investigations.

20. The Bureau states that they also are conducting investigations with consumer protection agencies and Attorneys General in other states. The Bureau is currently working with the Washington and Oregon Attorneys General on a major defective household siding investigation. The three states jointly are conducting discovery, developing research plans and meeting with the siding manufacturer's representatives to discuss a settlement. Further, they jointly have proposed settlement documents and submitted pleadings to the siding manufacturer. Therefore, the Bureau maintains that they have multi-state investigation and litigation experience as well.

21. Consumer protection cases sometimes require legal expertise outside of consumer protection law, such as when a violator of consumer protection laws files for bankruptcy protection. Some might argue that leaving consumer protection litigation functions in DOJ would leave consumer protection in an agency where it could draw on other fields of legal expertise when necessary. Others would counter that the bill would still permit DATCP to draw upon DOJ's other areas of legal expertise if it were needed in a particular case, even if the consumer protection litigation functions were transferred to DATCP. Under the Governor's recommendation, DOJ would still be authorized to furnish legal services upon the request of DATCP. However, DOJ would have

no specific staff or funding to provide such services.

22. It has been the experience of DOJ that it needs the flexibility on occasion of being able to shift attorneys and support staff from one unit to another to help with a major case. Some might argue that taking consumer protection litigation functions out of DOJ would hamper the state's ability to prosecute major consumer protection actions. On the other hand, DATCP could manage such situations by retaining outside counsel as DOJ did with the tobacco litigation, or by making use of the authorization DOJ would still have under the bill to furnish legal services upon the request of DATCP. Further, it could be argued that consolidating all consumer protection staff and resources in one agency could maximize state resources available to undertake a major investigation and prosecution of consumer protection violations. Consolidation could be viewed as reducing the likelihood of two agencies duplicating investigations and ensuring that an agency's investigative priorities also received prosecutorial priority.

23. In his March 19, 2001, comments before the Joint Committee on Finance, the Attorney General indicated that the proposed transfer of consumer protection operations from DOJ to DATCP was unconstitutional. Article VI, Section 3, of the Constitution provides that, "the powers, duties and compensation of the treasurer and attorney general shall be prescribed by law." DOJ maintains, however, that Article VI, Section 3, of the Constitution does not give the Legislature unlimited power to eliminate or transfer the Attorney General's core constitutional powers and duties. DOJ points to the first law prescribing the duties of the Attorney General as indicative of the Constitutional framers' intent as to the powers of the Attorney General. That law provided that, "the attorney general shall appear for the state, and prosecute and defend all suits and proceedings civil or criminal, in the Supreme Court, in which the state shall be interested or a party; and shall also when requested by the Governor or either branch of the legislature, appear for the people of this state, and prosecute or defend in any other court, or before any officer, in any cause or matter, civil or criminal, in which the people of this state may be a party or interested." DOJ maintains that the Legislature's power to prescribe the statutory duties of the office of the Attorney General is constrained by the fact that the state constitution vests in the Attorney General the role of chief legal officer for the state. DOJ officials have indicated that moving the enforcement of consumer protection laws in the courts (the prosecutorial function) from the Attorney General to DATCP could merit litigation.

24. Staff of the Legislative Council was asked to address the Attorney General's comments. The Legislative Council staff indicated that the Wisconsin Supreme Court has consistently interpreted Article VI, Section 3, of the Constitution to mean that the scope of the Attorney General's authority is prescribed in the statutes and is not to be found in other sources such as the common law or any notion of inherent authority. According to the Legislative Council staff, as recently as State v. City of Oak Creek, a legal decision from last year, the Supreme Court held that, "the attorney general's constitutional powers are equivalent to his statutory powers--they are one and the same", that is, the Attorney General's constitutional powers are what the Legislature prescribes by statute.

25. Under the bill, district attorneys (DAs), instead of DOJ, would be authorized to file

complaints and prosecute actions before DATCP concerning unfair methods of competition in business or unfair trade practices in business. DOJ indicates that these types of cases vary from cases having a strictly local impact, to cases with statewide importance.

26. One might expect that when DAs have to weigh where to use prosecutorial resources, they might tend to favor more serious criminal cases and cases of local importance, to cases with a greater statewide impact but less significance for the DA's county. As a result, one might expect statewide cases of unfair methods of competition in business and unfair trade practices in business to receive less attention if the Governor's recommendation was adopted. On the other hand, some might argue that the state would now have the resources of 71 DA offices statewide to apply and give greater attention to such statewide cases.

### **ALTERNATIVES TO BASE**

1. Approve the Governor's recommendation to transfer \$808,700 GPR and 9.3 GPR consumer protection positions annually (4.8 attorneys, 2.0 consumer protection investigators, 1.0 legal secretary, 1.0 paralegal and 0.5 legal assistant) from DOJ's Division of Legal Services to DATCP. In addition, approve the Governor's recommendations for statutory changes concerning consumer protection legal services and the transfer of consumer protection assets, liabilities, incumbent employees, tangible personal property, pending matters, contracts, contract responsibilities and rule making authority from DOJ to DATCP.

2. Maintain current law.

Prepared by: Paul Onsager and David Schug



DATCP -- TRADE AND CONSUMER PROTECTION

Transfer Consumer Protection Legal Functions from DATCP to DOJ

[In Lieu of Paper #215]

Motion:

Move to delete \$1,589,500 GPR and 28.25 GPR consumer protection positions from DATCP in each fiscal year (0.45 division administrator, 0.30 budget policy supervisor, 0.50 communications specialist, 0.75 bureau director, 9.65 consumer protection investigators, 3.0 investigator supervisors, 5.65 consumer specialists, 0.5 legal secretary, 0.8 program and policy analyst and 6.65 program assistants).

In addition, transfer \$1,057,500 GPR and 15.5 GPR consumer protection positions from DATCP to the Department of Justice (DOJ) in each fiscal year (2.0 attorneys, 1.0 consumer complaint supervisor, 4.0 consumer protection investigators, 1.0 investigator supervisor, 5.5 consumer specialists and 2.0 program assistants).

Further, provide DOJ \$221,200 GPR and 10.50 GPR consumer protection positions in 2001-02 and \$442,400 GPR in 2002-03. (8.5 consumer specialists and 2.0 paralegals).

Transfer all of DATCP's authority and related administrative rules of the following statutory sections to DOJ:

- 100.15 Regulation of trading stamps
- 100.16 Selling with pretense of prize; in-pack chance promotion exception
- 100.17 Guessing contests
- 100.171 Prize notices
- 100.173 Ticket refunds
- 100.174 Mail-order sales regulated
- 100.175 Dating service contracts
- 100.177 Fitness center and weight reduction center contracts
- 100.178 Fitness center staff requirements
- 100.18 Fraudulent representations
- 100.182 Fraudulent drug advertising
- 100.20 Methods of competition and trade practices
- 100.205 Motor vehicle rustproofing warranties

- 100.207 Telecommunications services
- 100.209 Cable television subscriber rights
- 100.2095 Labeling of bedding
- 100.28 Sale of cleaning agents and water conditioners containing phosphorus
- 100.31 Unfair discrimination in drug pricing
- 100.37 Hazardous substances act
- 100.38 Antifreeze
- 100.41 Flammable fabrics
- 100.42 Product safety
- 100.43 Packaging standards; poison prevention
- 100.44 Identification and notice of replacement part manufacturer
- 100.46 Energy consuming products
- 100.50 Products containing or made with ozone-depleting substances
- Chap 136 Future Service Plans
- Chap 344 Vehicle Financial Responsibility
- Chap 704 Landlord and Tenant
- Chap 707 Timeshares
- Chap 779 Liens

In addition, transfer DATCP's current authority to file court actions in all other Chapter 100 (Marketing; Trade Practices) sections to DOJ, for example in 100.201 (Unfair Trade Practices in the Dairy Industry), 100.22 (Discrimination in the Purchase of Milk) and 100.235 (Procurement of Vegetable Crops).

Further, require that DOJ, instead of DATCP, be awarded consumer protection assessments on all fines and forfeitures for violations under consumer protection sections or corresponding rules proposed to be transferred to DOJ and that any revenue received from these assessments that exceeds \$85,000 in any fiscal year be deposited to the state's general fund. In addition to other allowable penalties, allow the court to award DOJ the reasonable and necessary costs of investigation and an amount reasonably necessary to remedy the harmful effects of the violation from any person who violates the above consumer protection sections. Require DOJ to deposit in the state treasury for deposit in the general fund all of these monies that the court awards and require 10% of the money deposited in the general fund for the costs of investigation and the expenses of prosecution, including attorney fees, to be credited to a current DOJ investigation and prosecution appropriation.

Transfer the 15.5 staff, assets, liabilities and obligations primarily associated with the transferred consumer protection functions from DATCP to DOJ on the effective date of the bill. Provide that if the agencies were unable to agree on an equitable division, the Joint Committee on Finance would settle the dispute at a meeting of the Committee under s. 13.10. Provide that the incumbent DATCP employees who would be transferred to DOJ would maintain all their civil service and other employee rights held prior to transfer. Further, transfer all tangible personal property, pending matters, contracts and contract responsibilities relating to transferred consumer protection provisions and specify that all rules and orders relating to the transferred consumer protection provisions remain in effect until their specified expiration date or until modified or

rescinded by DOJ.

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Note: \_\_\_\_\_

The DATCP Consumer Protection Bureau consists of a director and central administrative staff that includes a consumer information center made up of consumer hotline and consumer information staff. The Bureau also operates regional offices in Eau Claire, Green Bay, Madison and Wauwatosa. Staff from DATCP's four regional offices respond to consumer complaints and conduct investigations or other inspection-related work within their geographic areas that may have been received through local consumer complaints or referred from the Department's centrally located toll-free hotline. In addition, regional staff are assigned to certain statewide and national complaint areas. Investigations of complaints that may require further action are initiated by regional staff and then referred to central office staff for formal action. In 2001, the four regional offices have 27.15 staff working on consumer protection issues (62% of DATCP's consumer protection staff).

Under the proposal, DOJ would house 35.3 positions related to consumer protection, as shown in the following table.

| Position Titles                             | Current DATCP | Eliminated DATCP | Transferred to DOJ | Current DOJ | New DOJ      | Proposed DOJ |
|---|---------------|------------------|--------------------|-------------|--------------|--------------|
| Administrator                               | 0.45          | 0.45             |                    |             |              |              |
| Attorney                                    | 2.00          |                  | 2.00               | 4.80        |              | 6.80         |
| Budget Policy Supervisor                    | 0.30          | 0.30             |                    |             |              |              |
| Communications Specialist                   | 0.50          | 0.50             |                    |             |              |              |
| Consumer Complaint Supervisor               | 1.00          |                  | 1.00               |             |              | 1.00         |
| Consumer Protection Bureau Director         | 0.75          | 0.75             |                    |             |              |              |
| Consumer Protection Investigator            | 13.65         | 9.65             | 4.00               | 2.00        |              | 6.00         |
| Consumer Protection Investigator Supervisor | 4.00          | 3.00             | 1.00               |             |              | 1.00         |
| Consumer Specialist                         | 11.15         | 5.65             | 5.50               |             | 8.50         | 14.00        |
| Legal Assistant                             |               |                  |                    | 0.50        |              | 0.50         |
| Legal Secretary                             | 0.50          | 0.50             |                    | 1.00        |              | 1.00         |
| Paralegal                                   |               |                  |                    | 1.00        | 2.00         | 3.00         |
| Program & Planning Analyst                  | 0.80          | 0.80             |                    |             |              |              |
| Program Assistant                           | 8.65          | 6.65             | 2.00               |             |              | 2.00         |
| <b>Total Consumer Protection Positions</b>  | <b>43.75</b>  | <b>28.25</b>     | <b>15.50</b>       | <b>9.30</b> | <b>10.50</b> | <b>35.30</b> |

According to DOJ, many of the position reductions would be based on eliminating DATCP's regionalized consumer protection structure. Under the current structure, 27.15 DATCP consumer protection positions (including 7.15 in Madison) are located in regional offices. However, DOJ states they would maintain one investigator each in offices in Eau Claire, Appleton and Milwaukee

to conduct regional investigations.

Under the proposal, all DATCP consumer protection positions would be transferred to DOJ or eliminated. DATCP generally would retain authority and positions related to weights and measures, trade practices (including the minimum mark-up law) and agricultural-related trade provisions. However, the motion also would transfer to DOJ all authority under s. 100.20 of the statutes, which requires business methods of competition and trade practices to be "fair." Under s. 100.20, DATCP currently is provided broad authority to define fair methods and practices, including the authority to: (1) specify, by administrative rule, unfair business methods and practices; and (2) issue special orders enjoining unfair business practices. Under the unfair trade statute, DATCP also regulates many forms of advertising and sales claims. This law is often termed the "Little FTC Act," in reference to its similarity to the Federal Trade Commission Act, on which it was based.

[Change to Base: -\$2,515,400 GPR and -17.75 GPR positions]

[Change to Bill: -\$2,515,400 GPR and -17.75 GPR positions]

MO# \_\_\_\_\_

|           |   |   |   |
|-----------|---|---|---|
| BURKE     | Y | N | A |
| DECKER    | Y | N | A |
| MOORE     | Y | N | A |
| SHIBILSKI | Y | N | A |
| PLACHE    | Y | N | A |
| WIRCH     | Y | N | A |
| DARLING   | Y | N | A |
| WELCH     | Y | N | A |
|           |   |   |   |
| GARD      | Y | N | A |
| KAUFERT   | Y | N | A |
| ALBERS    | Y | N | A |
| DUFF      | Y | N | A |
| WARD      | Y | N | A |
| HUEBSCH   | Y | N | A |
| HUBER     | Y | N | A |
| COGGS     | Y | N | A |

AYE \_\_\_\_\_ NO \_\_\_\_\_ ABS \_\_\_\_\_



AGENCY: DATCP - Trade & Consumer Protection

PAPER: #216

ISSUE: Ethanol Producer Grant Program

RECOMMENDATION: Alternative 2(c) <sup>1</sup> 1(b)

SUMMARY: If we are going to spend the \$3 million GPR this budget, we might as well make it sum sufficient. Good for Brian's relationship with farmers and the FB. Also, I think the \$3 million budgeting estimate could be reduced to half or zero, because I don't think it's likely that one of these plants will really get up and running in the next 2 years.

BY: Barry

*No consensus*



## Legislative Fiscal Bureau

One East Main, Suite 301 • Madison, WI 53703 • (608) 266-3847 • Fax: (608) 267-6873

May 31, 2001

Joint Committee on Finance

Paper #216

### Ethanol Producer Grant Program (DATCP -- Trade and Consumer Protection)

[LFB 2001-03 Budget Summary: Page 100, #3]

#### **CURRENT LAW**

1999 Act 55 created an ethanol producer grant program for annual payments of 20¢ per gallon to qualifying producers for up to 15 million gallons (\$3 million per producer maximum) of ethanol produced in a 12-month period in Wisconsin. The program is scheduled to sunset on June 30, 2006. No funding was provided under Act 55. If appropriated funds are insufficient to pay all ethanol producer claims, payments are prorated.

#### **GOVERNOR**

Provide \$3 million GPR in 2002-03 for grants to ethanol producers. Further, transfer the program from the Department's marketing division to its trade and consumer protection division.

#### **DISCUSSION POINTS**

##### **Background**

1. Although ethanol can be produced from various starch sources, over 90% of U.S. ethanol is made from corn. It is estimated that in 2000, 1.6 billion gallons of ethanol were produced using 600 million bushels of corn. Wisconsin ranks seventh among states in the production of corn for grain, harvesting 408 million bushels in 1999. Approximately 5.8 million bushels of corn are used to produce 15 million gallons of ethanol (one bushel of corn is equivalent to approximately 2.6 gallons of ethanol).

2. Some have estimated the price of corn increases by 10¢ to 30¢ per bushel for growers near ethanol plants. The Congressional Research Service indicates that when corn supplies are plentiful, the use of every 100 million bushels of corn for ethanol raises the national price of corn by 4¢ per bushel. When corn supplies are limited, the price impact is higher. In addition to its impact on prices, an ethanol plant also may give local farmers a more stable market for their grain.

3. While no ethanol production facility in Wisconsin currently produces enough ethanol to qualify for an ethanol producer grant, the state used approximately 93.8 million gallons of ethanol in 2000 (up from 75.4 million gallons in 1999). State law requires state employees to use gasohol (an ethanol mix of up to 10%) or alternative fuel for the operation of all state-owned or state-leased motor vehicles whenever feasible. In addition, the federal Clean Air Act requires the use of reformulated gasoline or oxygenated fuels in Kenosha, Milwaukee, Ozaukee, Racine, Washington and Waukesha Counties due to significant ozone levels in Southeastern Wisconsin. Most of the federal requirement is met through the use of reformulated gasoline, which is mixed with up to 10% ethanol.

4. The Department of Administration (DOA) estimates that in 1999, 67.4 million gallons of ethanol were used in reformulated gasoline and eight million gallons of ethanol were blended for sale in the state as gasohol. In 2000, it is estimated that 70.7 million gallons were used in reformulated gasoline and 23.1 million gallons were blended for gasohol. Industry officials suggest the increase in gasohol consumption reflects the higher gasoline prices in 2000. As gasoline prices rose, ethanol blends became more competitively priced, particularly when used to make higher octane fuels.

#### **Other Ethanol Production Incentives**

5. A federal tax reduction of 5.3¢, which gradually will be reduced to 5.1¢, per gallon of gasoline mixed with up to 10% ethanol is in place through 2007. This incentive translates to a federal subsidy of approximately 53¢ per gallon of ethanol produced. Some states provide additional ethanol production incentives. Minnesota provides up to \$37 million annually for a producer incentive of 20¢ per gallon for the first ten years of ethanol production for up to \$3 million annually per plant. In addition, in the mid-1990's, Minnesota provided blenders a 5¢ tax credit per gallon of ethanol mixed with gasoline. Further, an ethanol production facility loan program provides low interest loans of up to \$500,000 for plant construction. Minnesota currently has the capacity to produce 290 million gallons of ethanol at 14 ethanol plants and actually produced 190 million gallons of ethanol in 1999. State law also requires that all gasoline sold or offered for sale in Minnesota contain at least 2.7% oxygen by weight, which generally is met by adding ethanol. As a result, it is estimated that 200 million gallons of ethanol are used annually in Minnesota.

6. A few other states also offer ethanol production incentives, including North Dakota for up to 12 years at 40¢ per gallon, Nebraska for up to five years at 20¢ per gallon (this expired on December 31, 2000 and was replaced by an incentive of 7.5¢ per gallon for up to three years for new production), Missouri for up to five years at 20¢ per gallon for the first 12.5 million gallons and 5¢ per gallon for the next 12.5 million gallons and South Dakota at 20¢ per gallon with a limit of \$1

million per facility per year and no more than \$10 million total to any one producer. In addition, South Dakota provides blenders a 2¢ tax credit per gallon of ethanol blends (Missouri offered the same credit until July 1, 1996). Iowa offers a subsidized loan program specifically for building ethanol production facilities and provides blenders a 1¢ tax credit per gallon of ethanol blends, but provides no producer payment. Nor do Illinois or Indiana offer producer subsidies, but each of these states has large ethanol production facilities. In fact, despite not offering producer payments, Illinois and Iowa are the leading producers of ethanol in the nation. Table 1 portrays ethanol production capacity and consumption in area states (while the table shows national capacity of 1.9 billion gallons, actual production was estimated at 1.6 billion gallons). Wisconsin consumption numbers are from the Wisconsin Department of Revenue and DOA's Division of Energy and consumption numbers for other states are from federal highway administration estimates derived from gasohol tax collections.

**TABLE 1**

**Area Ethanol Production and Consumption  
(In Gallons)**

|                | 2000<br>Production<br>Capacity | 1999<br>Consumed<br>in Gasohol |
|----------------|--------------------------------|--------------------------------|
| Illinois       | 457,800,000                    | 215,565,000                    |
| Iowa           | 394,300,000                    | 70,900,000                     |
| Minnesota      | 289,600,000                    | 206,542,000                    |
| Nebraska       | 287,333,333                    | 22,127,000                     |
| North Dakota   | 169,900,000                    | 4,630,000                      |
| Indiana        | 85,000,000                     | 95,281,000                     |
| Kansas         | 73,433,333                     | 5,252,000                      |
| Missouri       | 30,000,000                     | 15,257,000                     |
| South Dakota   | 29,000,000                     | 19,124,000                     |
| Wisconsin      | 4,000,000                      | 75,400,000                     |
| Ohio           | 0                              | 207,956,000                    |
| Michigan       | 0                              | 35,898,000                     |
| Area Total     | 1,820,366,666                  | 973,932,000                    |
| National Total | 1,945,900,000                  | 1,339,239,000                  |

7. Ethanol plants may be eligible to participate in Wisconsin economic development programs through the Department of Commerce. The Wisconsin Development Fund offers grants and loans to businesses for items such as technology development and major economic development. Further, Commerce provides grants and loans through a Rural Economic Development Program, which includes funding for business startups in rural areas. It could be

argued that the state is already providing incentives for businesses to locate in the state. Further, if the ethanol industry is offered additional incentives, other industries may seek production subsidies for their products.

### Wisconsin Ethanol Grant Program

8. The Department would like to move the ethanol producer grant program from its marketing to its trade and consumer protection division, due to the fuel-related expertise of staff in that division. Staff in the trade and consumer protection division already collect data on fuel use and deal with fuel issues relating to the weights and measure program and minimum mark-up provisions. Further, the division currently has auditors that could be utilized for the ethanol producer grant program.

9. To date, six plants that would qualify for state production subsidies have expressed interest in locating in the state. Table 2 lists locations and projected production of currently proposed ethanol facilities. It is estimated to generally take at least two years to build an ethanol plant, including finding a site, permitting, design, financing and construction. Further, the actual construction time is at least 14 months, and often a plant does not reach full production until several months after a facility is complete. Under DATCP's final draft rule on the ethanol grant program, producers would need to have at least 10 million gallons of ethanol produced by March 1, 2003, in order to be eligible for a grant, so that payments may be made before the close of the fiscal year. Thus, even if each of the six currently interested ethanol facilities did construct plants in Wisconsin, it is unlikely that more than one would have 10 million gallons of ethanol produced by March 1, 2003.

**TABLE 2**

#### Interested Ethanol Producers

| <u>County</u> | <u>Municipality</u> | <u>Planning Stage</u>         | <u>Proposed Capacity (in gallons)</u> |
|---------------|---------------------|-------------------------------|---------------------------------------|
| Green         | Monroe              | Financing                     | 40 million                            |
| La Crosse     | La Crosse           | Financing                     | 30 million                            |
| Dodge         | Elba                | Designing and Permitting      | 40 million                            |
| Barron        | Stanley             | Finding a Site and Permitting | 18 million                            |
| Winnebago     | Oshkosh             | Finding a Site and Designing  | 20 million                            |
| Dunn          | Menomonie           | Finding a Site and Designing  | 20 million                            |

10. Nonetheless, some maintain that a \$3 million subsidy is inadequate. With current prorating provisions and the \$3 million GPR proposed by the Governor, it may be difficult for these ethanol plants to receive financing, as actual payments would be less than 20¢ per gallon if multiple facilities meet the minimum production of 10 million gallons of ethanol to qualify for grants. In

some cases, it is reported that due to the prorating provision of the statutes, lending institutions are not including state payments as projected plant revenue for financing plans.

11. Current law sunsets the program on June 30, 2006, and allows the Wisconsin Department of Transportation (DOT) to end the program earlier if federal transportation funding has decreased due to increased ethanol sales in the state. While these provisions minimize the state's potential future liability from providing an ethanol subsidy, they may also decrease the investment confidence of ethanol producers and their lenders.

12. It has been suggested that the annual producer grant appropriation be replaced by a GPR sum sufficient appropriation in order to make more funding available to potential producers. While this option would guarantee that monies were available to provide all producers with a full 20¢ per gallon subsidy, it also would increase the state cost of the program by unforeseen amounts in future biennia. In order to better budget the state commitment in a sum sufficient appropriation, the Committee could choose to convert the program's annual appropriation to a sum sufficient appropriation capped at an amount deemed acceptable.

13. Further, in order to ensure financing for a specific number of plants (or level of production) the prorating provision could be replaced. If DATCP awarded grants based on when a producer first met the 10 million gallon production threshold, it would give the first plants to meet the production threshold more security as they would know how much of a payment to expect from the state. It could also hasten the construction of plants in the state.

14. Others would point out that since six groups are pursuing plant options before any available subsidy amount has been set by the Legislature, the prorating provision under current law might not be a significant impediment to potential producers. Still, as none of the proposed plants have been given financing approval or actually begun construction, it may be too early to determine the impact of current prorating provisions on attracting ethanol plants to the state.

15. If a proposed producer does receive funding, it could be argued that a producer subsidy is not needed since the lending institution believes the facility would be profitable without any subsidy. However, a production subsidy does encourage initial capital investment in a facility that might not otherwise be profitable. A \$3 million annual production subsidy could recoup a \$10 million investment in ethanol equipment purchases after less than four years of producing ethanol. Such a return on a capital investment creates a more favorable status for a potential producer applying for funding from a lender and minimizes the risk to begin construction.

16. According to a study funded by the Wisconsin Corn Growers/Corn Promotion Board, the cost to production of constructing the six ethanol plants proposed ranges from \$20 to \$55 million each. Further, once each plant is operating at capacity, the study estimates combined corporate and individual income tax revenues, including multiplier effects, from each plant to range from \$2 million to \$5.5 million, depending on the plant's capacity. While these factors could be seen as benefits offsetting subsidy costs, some could argue that other industries may provide the same or greater benefits to the state without receiving substantial state subsidies. Further, with our current

relatively low unemployment rate, the affect of new ethanol plants on state income tax revenues is unclear, as people may still be employed elsewhere.

17. Due to recent groundwater contamination concerns relating to the use of methyl tertiary butyl ether (MTBE), a petroleum-based product, as an oxygenate in gasoline, the national market for ethanol could rapidly expand. Ethanol can be used as a substitute for MTBE, and federal Clean Air Act regulations require the use of oxygenated fuels in certain areas (including southeast Wisconsin). However, it is also possible that federal vehicular emission standards could be relaxed, which could reduce the demand for ethanol. Further, the profitability of ethanol production facilities would be adversely affected if federal subsidies were not reauthorized in 2007.

**ALTERNATIVES TO BASE**

- 1. Approve the Governor's recommendation to:
  - a. Provide \$3 million GPR in 2002-03 for grants to ethanol producers.

| <u>Alternative 1a</u>                                | <u>GPR</u>          |
|--|---------------------|
| 2001-03 FUNDING (Change to Base)<br>[Change to Bill] | \$3,000,000<br>\$0] |

- b. Transfer the program from the Department's marketing division to its trade and consumer protection division.

2. Convert the GPR appropriation for payments to ethanol producers from an annual to a sum sufficient appropriation and cap annual expenditure authority at one of the following amounts: (It is not anticipated that more than one facility would qualify for payments in the 2001-03 biennium.)

- a. \$6,000,000
- b. \$9,000,000
- c. \$12,000,000
- d. \$15,000,000

| <u>Alternative 2</u>                                 | <u>GPR</u>          |
|--|---------------------|
| 2001-03 FUNDING (Change to Base)<br>[Change to Bill] | \$3,000,000<br>\$0] |

- 3. Specify that DATCP grant eligibility be on a first-come, first-served basis based on

reaching the 10 million gallon production threshold (rather than prorating payments to all producers under current law).

4. Maintain current law.

| <u>Alternative 3</u>             | <u>GPR</u>     |
|----------------------------------|----------------|
| 2001-03 FUNDING (Change to Base) | \$0            |
| [Change to Bill]                 | - \$3,000,000] |

Prepared by: David Schug

| <u>MO#</u> |   |   |   |
|------------|---|---|---|
| BURKE      | Y | N | A |
| DECKER     | Y | N | A |
| MOORE      | Y | N | A |
| SHIBILSKI  | Y | N | A |
| PLACHE     | Y | N | A |
| WIRCH      | Y | N | A |
| DARLING    | Y | N | A |
| WELCH      | Y | N | A |
|            |   |   |   |
| GARD       | Y | N | A |
| KAUFERT    | Y | N | A |
| ALBERS     | Y | N | A |
| DUFF       | Y | N | A |
| WARD       | Y | N | A |
| HUEBSCH    | Y | N | A |
| HUBER      | Y | N | A |
| COGGS      | Y | N | A |

AYE \_\_\_\_\_ NO \_\_\_\_\_ ABS \_\_\_\_\_



AGENCY: DATCP - Trade & Consumer Protection

PAPER: #217

ISSUE: Federal Agricultural Policy Reform

RECOMMENDATION: Alternative 2(b) *or alt 1*

SUMMARY: Do not support alt 2(a). Otherwise, anything is fine.

BY: Barry

*Gard - 1*

*BB - 3*



## Legislative Fiscal Bureau

One East Main, Suite 301 • Madison, WI 53703 • (608) 266-3847 • Fax: (608) 267-6873

May 31, 2001 Joint Committee on Finance Paper #217

### Federal Agricultural Policy Reform (DATCP -- Trade and Consumer Protection)

[LFB 2001-03 Budget Summary: Page 101, #5]

#### CURRENT LAW

Funding of \$50,000 each year of the biennium was authorized on a one-time basis in both the 1997-99 and 1999-01 budgets for federal dairy policy reform.

#### GOVERNOR

Provide \$50,000 GPR each year in a biennial appropriation to provide assistance to organizations to seek federal agricultural policy reform. Prohibit funds from being encumbered after June 30, 2005.

#### DISCUSSION POINTS

1. For the past four years, DATCP has been appropriated \$50,000 GPR annually for federal dairy policy reform activities. The Department claims that because funding was limited to federal dairy reform policy, it was unable to spend the full amount of the appropriation in 1999-01. Therefore, the Department is planning to use \$46,500 from the appropriation to meet 2000-01 agency lapse requirements. Under the bill, funds could be used for federal agricultural policy reform, rather than solely for federal dairy policy reform as was authorized in the past.

2. DATCP plans to use funding for travel for meetings and committee testimony to represent Wisconsin agricultural interests in pending federal legislation, such as the 2002 farm bill, and other agricultural issues. Other subjects the Department anticipates could be discussed include federal dairy pricing changes, nonpoint pollution, genetically modified organisms, world trade

issues, foot and mouth disease strategies, animal tagging and whether meat inspections at the state level are sufficient for interstate trade purposes. In addition, the Department plans to use \$12,000 annually to support the Upper Midwest Dairy Coalition.

3. In 1999-00, DATCP used \$34,600 of the allotted \$50,000 for federal dairy pricing reform as follows: (a) \$20,000 to support a Minnesota dairy producers' lawsuit against the USDA (the lawsuit was unsuccessful and the deadline for an appeal has passed); (b) \$12,000 for the Upper Midwest Dairy Coalition; (c) \$2,400 for DATCP officials travel to Coalition and other meetings; and (d) \$200 for an informational letter mailed to Wisconsin dairy producers on federal dairy policy reform issues.

4. As of April 1, 2001, DATCP has spent \$12,000 to support the Upper Midwest Dairy Coalition, \$800 for meetings travel and \$100 for a computer soundcard for an analyst to listen to federal hearings on dairy pricing. In addition, DATCP has chosen to use \$46,500 from the appropriation to meet agency lapse requirements.

5. The Upper Midwest Dairy Coalition was established in 1995 and has members that include dairy cooperatives, farm organizations, trade associations and state agencies. The Coalition estimates that 88% of its revenues come from the dairy industry. A Coalition official indicates that the state funding would be used to assist with the cost of economic and legal analyses, which could be used to educate federal officials about the inequities in the federal milk pricing system. The University of Wisconsin is currently conducting economic analyses for the Coalition.

6. The Upper Midwest Dairy Coalition generally consists of Wisconsin, Iowa, and Minnesota. DATCP and the Minnesota Department of Agriculture have provided the Coalition with funding in the past. However, according to DATCP, Wisconsin is the only state currently contributing funding to the Coalition. A Coalition official indicates that other states do not financially contribute beyond providing in-kind work such as absorbing attorney fees and contributing time because the dairy industry is not as prevalent in those states and thus, the overall economic impact of the federal pricing system is less.

7. If funding is provided for federal agricultural policy reform, other Wisconsin industries involved in interstate commerce could also argue to use state tax dollars to advance their interests in Washington. On the other hand, due to the significance of the agricultural industry in the state, the potential for improving the Wisconsin agricultural industry's competitive position does exist.

8. The state currently maintains an office in Washington, D.C. to promote federal legislation favorable to Wisconsin. Five positions are authorized for the office, including two GPR positions from the Department of Administration (a gubernatorial appointee and a federal state relations staff assistant) whose charge is to represent the state in federal legislation. While the Committee deleted salary and fringe benefits funding for three of the positions, the associated position authority was not deleted. It could be argued that the state is already promoting agricultural policy reform through the State of Wisconsin office in Washington. Further, Wisconsin's elected

Senators and Representatives in Washington perform similar functions.

9. However, DATCP officials contend that while the state-federal office has assisted the Department in its past efforts, the state-federal staff lack agricultural-specific knowledge. Providing funding for agricultural policy reform would provide the benefit of obtaining more specialized services.

10. In 1995-96, DATCP provided \$10,000 from its marketing general operations appropriation for the Upper Midwest Dairy Coalition's efforts. Arguably, since DATCP used marketing funds in the past, DATCP could give federal agricultural policy reform priority use of these funds and financially contribute to the Coalition from existing marketing funding.

11. Further, DATCP administers an agricultural development and diversification (ADD) grant program that provides grants to fund demonstration projects, feasibility analyses, and applied research toward new or alternative technologies and practices to stimulate agricultural development and economic activity. The program currently is provided \$400,000 GPR annually for grants, and the Governor recommends in the budget providing an additional \$810,000 PR from tribal gaming revenues over the biennium.

12. DATCP's rule related to the ADD program (ATCP 161) states that DATCP can award ADD grants for the purpose of improving the competitive position of the state's agriculture industry. The state's contribution to the Coalition would be an allowable purpose in that the Coalition's goal is to remove the inequities of the current federal dairy pricing system, which would improve the industry's competitive position. Further, it could be argued that the efforts put forth in shaping a federal farm bill may also improve the agricultural industry's competitive position. Therefore, DATCP could provide the \$50,000 for federal agricultural policy reform activities in each year of the biennium either from the ADD program, the marketing appropriation or a combination of the two. Further, if the Committee chose to prioritize funding for federal agricultural policy reform over general marketing promotion or ADD grant funding, it could require DATCP to allocate at least \$50,000 annually for federal agricultural policy through 2005. The Department chose not to provide funding for federal agricultural reform from either of these sources in the 1999-01 biennium.

## ALTERNATIVES TO BASE

1. Approve the Governor's recommendation to provide \$50,000 GPR each year in a biennial appropriation to provide assistance to organizations to seek federal agricultural policy reform and prohibit funds from being encumbered after June 30, 2005.

| <u>Alternative 1</u>             | <u>GPR</u> |
|----------------------------------|------------|
| 2001-03 FUNDING (Change to Base) | \$100,000  |
| [Change to Bill]                 | \$0]       |

2. Modify the Governor's recommendation to require DATCP to provide at least \$50,000 each year from one of the following existing sources to seek federal agricultural policy reform and sunset the requirement on June 30, 2005 (no additional funding would be provided):

- a. The DATCP agricultural development and diversification GPR appropriation.
- b. The DATCP marketing program general operations GPR appropriation.

| <b>Alternative 2</b>                    | <b>GPR</b>          |
|---|---------------------|
| <b>2001-03 FUNDING (Change to Base)</b> | <b>\$0</b>          |
| <i>[Change to Bill</i>                  | <i>- \$100,000]</i> |

3. Maintain current law. (DATCP could choose to allocate resources for this purpose from existing funds.)

| <b>Alternative 3</b>                    | <b>GPR</b>          |
|---|---------------------|
| <b>2001-03 FUNDING (Change to Base)</b> | <b>\$0</b>          |
| <i>[Change to Bill</i>                  | <i>- \$100,000]</i> |

Prepared by: David Schug

AGENCY: DATCP - Trade & Consumer Protection

PAPER: #218

ISSUE: Weights & Measures Funding

RECOMMENDATION: (anything is fine)

SUMMARY: No strong opinion here. Whatever Decker wants.

BY: Barry

Gard - 1  
BB - 2



## Legislative Fiscal Bureau

One East Main, Suite 301 • Madison, WI 53703 • (608) 266-3847 • Fax: (608) 267-6873

May 31, 2001

Joint Committee on Finance

Paper #218

### **Weights and Measures Funding (DATCP -- Trade and Consumer Protection)**

[LFB 1999-01 Budget Summary: Page 101, #6]

#### **CURRENT LAW**

DATCP's Bureau of Consumer Protection administers a weights and measures program that enforces state laws designed to ensure the accuracy of measuring devices and quantity declarations used in commercial transactions. The program protects consumers and businesses from misrepresentations and fraudulent practices through regular inspections of metering devices and measured commodities. As part of this general authority, the Department periodically inspects the accuracy of items such as retail gas pumps, grocery scales, vehicle scales and liquid petroleum gas meters. Municipalities (not including towns) with populations over 5,000, according to the most recent estimates made by the Department of Administration, are required to enforce weights and measures provisions, unless they contract with DATCP for weights and measures enforcement, at the Department's discretion. DATCP may charge municipalities a fee to recover inspection costs if DATCP provides the weights and measures enforcement.

#### **GOVERNOR**

Transfer 3.0 weights and measures inspector positions and \$190,900 annually from PR to petroleum inspection fund SEG.

#### **DISCUSSION POINTS**

1. In 1999-00, weights and measures program expenditures were \$1,231,400. Funding was received from fees paid by users (50%), the petroleum inspection fund (32%) and GPR (18%). The Department has 20.25 staff dedicated to this program including 13 regional weights and measures inspectors. In addition, the Consumer Protection Bureau has a weights and measures supervisor and 6.25 staff in its regulation and safety section who assist weights and measures inspectors in carrying out the Department's responsibilities under Chapter 98 of the statutes. These

staff are primarily responsible for rulemaking, educational, training and technical support to the Department's weights and measures staff as well as to municipalities and other governmental agencies and private sector service organizations conducting weights and measures regulatory work. In addition, the unit is responsible for maintaining and staffing the state's metrology lab (a lab that deals with the calibration of scales and other measuring devices).

2. Fees collected for weights and measures activities totaled \$720,700 in 1999-00, of which the Department spent \$618,300. Approximately 43% of weights and measures program revenues collected are paid by municipalities under contract with DATCP to provide services. Fees paid by municipalities are based on the types of businesses in the municipality, historical inspection times and the number of meters located in the municipality. Municipalities that contract with DATCP pay for some of the service and generally receive annual inspections through the Department. Municipalities with populations under 5,000 are not required to pay for Department weights and measures services or to test their own meters. DATCP estimates that it tests meters in nonmunicipal locations once every three to five years. Thus, as the number of municipalities with populations over 5,000 rises, the Department workload is likely to increase as meters in newly contracted municipalities are inspected more frequently.

3. Other major fees are paid by vehicle scale operators (16.4%), grocery stores (12.2%), those using the state measurement center laboratory (8.2%), feed dealers (7.8%) and weights and measures servicing companies (4.8%). Under the bill, the weights and measures inspection appropriation account would have an estimated balance of \$509,000 PR as of June 30, 2003, based on expenditure authority under the bill, and revenues would be \$62,400 higher than expenditure authority on an annual basis. If funding of \$190,900 PR each year were not transferred to the petroleum inspection fund, the account would have an estimated \$127,200 balance at the end of the biennium. However, annual expenditures would exceed annual revenues. Table 1 outlines the fund condition of the weights and measures PR account under the bill and current law.

**TABLE 1**

**Estimated Weights and Measures PR Account Balance**

|                 | Bill           |                | Current Law    |                |
|-----------------|----------------|----------------|----------------|----------------|
|                 | <u>2001-02</u> | <u>2002-03</u> | <u>2001-02</u> | <u>2002-03</u> |
| Opening Balance | \$384,200      | \$446,600      | \$384,200      | \$255,700      |
| Revenue         | 701,400        | 701,400        | 701,400        | 701,400        |
| Expenditures    | 639,000        | 639,000        | 829,900        | 829,900        |
| Closing Balance | 446,600        | 509,000        | 255,700        | 127,200        |

**Petroleum Inspection Fund**

4. The weights and measures program estimates spending 42% of its inspection time



on petroleum-related inspections in 1999-00. These include inspections of gas pumps, liquid petroleum gas meters, meters at petroleum loading sites and tanker truck meters. DATCP inspected 29,183 gas pumps in 1999-00. The bill would provide 37.5% of all revenue (\$573,600 annually) from the petroleum inspection fund.

5. The petroleum inspection fund receives revenues from a 3¢ per gallon fee on all petroleum products entering the state. The weights and measures program receives base funding of \$385,100 and four positions annually from the petroleum inspection fund. Of the total appropriations from the fund, approximately 95% is used for petroleum inspections, awards and administration of the petroleum environmental cleanup fund award (PECFA) program, which reimburses owners for a portion of the costs of cleaning up discharges of petroleum products from petroleum storage tank systems. As of April 1, 2001, the Department of Commerce had PECFA award applications totaling \$24.1 million that had not been paid. Further, Commerce has also issued \$250 million of \$270 million in revenue obligations authorized in 1999 Act 9 for payment of PECFA claims and is paying debt service on those amounts. It will issue the remaining \$20 million in bonds this summer, and the bill would provide \$100 million in additional bonding authority. Some may argue that petroleum inspection fund revenues should be used for PECFA or PECFA bond debt service instead of non-PECFA appropriations.

6. It could be argued that since municipalities are already assessed fees based on the number of meters in the municipality (including gas pumps and other petroleum-related meters), providing additional revenues from the petroleum inspection fund for all petroleum-related inspections would be overcharging for those devices located in contracting municipalities. The Department estimates half of field staff time is spent on contract areas. However, contract areas only pay about half of the total cost of all inspections, since those municipalities are not assessed full amounts for travel, paperwork, vacation, meeting and similar administrative costs. Although DATCP only charges municipalities about half the cost of inspections, the Department is authorized to set fees to cover actual costs incurred.

7. If contract areas are assessed for approximately one-half the total cost of petroleum-related inspections, then the Department could recover the other half of petroleum-related inspection costs from the petroleum inspection fund without charging twice for the inspection. Funding all petroleum inspections in non-contract areas and one-half of the inspections in contract areas would require \$481,600 annually from the petroleum inspection fund. To accomplish this, the Committee could transfer 2.0 positions and \$98,900 annually from PR to petroleum inspection fund SEG rather than the 3.0 positions and \$190,900 under the bill. This alternative would be fully supported by available program revenues in 2001-03 and the weights and measures inspection account would have an estimated balance of \$320,000 as of June 30, 2003. However, revenues to the account would be \$30,000 lower than expenditure authority on an annual basis.

8. Further, since some would argue that contract areas should pay the full cost of DATCP inspections, rather than half the costs, the Committee could choose to provide funding from the petroleum inspection fund to cover only the cost of petroleum inspections in non-contract areas. This would require \$321,100 annually from the petroleum inspection fund, while adjusted base

funding is \$382,700 SEG annually. Choosing this alternative would transfer 1.0 position and \$61,600 annually from petroleum inspection fund SEG to PR (rather than transferring three positions from PR to SEG under the bill). While this alternative would be fully supported by available program revenues in 2001-03 (due to an opening balance of \$384,000), expenditures would significantly exceed revenues on an ongoing basis. Therefore DATCP would have to raise fees charged to municipalities in 2003-05 to reflect the actual costs of the program. Table 2 outlines the account condition of the weights and measures PR account under each of these alternatives.

**TABLE 2**  
**Estimated Weights and Measures PR Account Balance**

|                 | Alternative #2                |                | Alternative #3               |                |
|-----------------|-------------------------------|----------------|------------------------------|----------------|
|                 | <u>1/2 Contracts from SEG</u> |                | <u>No Contracts from SEG</u> |                |
|                 | <u>2001-02</u>                | <u>2002-03</u> | <u>2001-02</u>               | <u>2002-03</u> |
| Opening balance | \$384,200                     | \$354,600      | \$384,200                    | \$194,100      |
| Revenue         | 701,400                       | 701,400        | 701,400                      | 701,400        |
| Expenditure     | 731,000                       | 731,000        | 891,500                      | 891,500        |
| Closing Balance | 354,600                       | 325,000        | 194,100                      | 4,000          |

**ALTERNATIVES TO BASE**

1. Approve the Governor's recommendation to transfer 3.0 weights and measures inspector positions and \$190,900 annually from PR to petroleum inspection fund SEG.

| <u>Alternative 1</u>                      | <u>PR</u>   | <u>SEG</u>  | <u>TOTAL</u> |
|---|-------------|-------------|--------------|
| <b>1999-01 FUNDING</b> (Change to Base)   | -\$381,800  | \$381,800   | \$0          |
| <i>(Change to Bill)</i>                   | <i>\$0</i>  | <i>\$0</i>  | <i>\$0</i>   |
| <b>2000-01 POSITIONS</b> (Change to Base) | - 3.00      | 3.00        | 0.00         |
| <i>(Change to Bill)</i>                   | <i>0.00</i> | <i>0.00</i> | <i>0.00</i>  |

2. Transfer 2.0 positions and \$98,900 annually from PR to petroleum inspection fund SEG (to fund all non-contract and half of municipal contract inspection costs related to petroleum from SEG).

| <u>Alternative 2</u>                      | <u>PR</u>        | <u>SEG</u>        | <u>TOTAL</u> |
|---|------------------|-------------------|--------------|
| <b>1999-01 FUNDING</b> (Change to Base)   | -\$197,800       | \$197,800         | \$0          |
| <i>(Change to Bill)</i>                   | <i>\$184,000</i> | <i>-\$184,000</i> | <i>\$0</i>   |
| <b>2000-01 POSITIONS</b> (Change to Base) | - 2.00           | 2.00              | 0.00         |
| <i>(Change to Bill)</i>                   | <i>1.00</i>      | <i>- 1.00</i>     | <i>0.00</i>  |

3. Transfer 1.0 position and \$61,600 annually from petroleum inspection fund SEG to PR (to fund all non-contract, but no municipal contract inspection costs related to petroleum from SEG).

| <u>Alternative 3</u>               | <u>PR</u>        | <u>SEG</u>         | <u>TOTAL</u> |
|------------------------------------|------------------|--------------------|--------------|
| 1999-01 FUNDING (Change to Base)   | \$123,200        | - \$123,200        | \$0          |
| <i>[Change to Bill]</i>            | <i>\$505,000</i> | <i>- \$505,000</i> | <i>\$0</i>   |
| 2000-01 POSITIONS (Change to Base) | 1.00             | - 1.00             | 0.00         |
| <i>[Change to Bill]</i>            | <i>4.00</i>      | <i>- 4.00</i>      | <i>0.00</i>  |

4. Maintain current law.

| <u>Alternative 4</u>               | <u>PR</u>        | <u>SEG</u>         | <u>TOTAL</u> |
|------------------------------------|------------------|--------------------|--------------|
| 1999-01 FUNDING (Change to Base)   | \$0              | \$0                | \$0          |
| <i>[Change to Bill]</i>            | <i>\$381,800</i> | <i>- \$381,800</i> | <i>\$0</i>   |
| 2000-01 POSITIONS (Change to Base) | 0.00             | 0.00               | 0.00         |
| <i>[Change to Bill]</i>            | <i>3.00</i>      | <i>- 3.00</i>      | <i>0.00</i>  |

Prepared by: David Schug