2009 DRAFTING REQUEST

Assembly Amendment (AA-AB75)

Received: **04/29/2009**

Received By: **btradewe**

Wanted: **Soon**

Identical to LRB:

For: **Legislative Fiscal Bureau**

By/Representing: **Bonderud**

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

Drafter: **btradewe**

May Contact:

Addl. Drafters:

Subject: **Environment - env. cleanup**

Extra Copies:

Submit via email: **YES**

Requester's email:

Carbon copy (CC:) to:

Pre Topic:

LFB:.....Bonderud -

Topic:

Abandoned petroleum tank removal changes

Instructions:

See attached

Drafting History:

Vers.	Drafted	Reviewed	Typed	Proofed	Submitted	Jacketed	Required
/?							
/1	btradewe 04/30/2009	jdyer 04/30/2009	mduchek 04/30/2009	_____ _____	lparisi 04/30/2009		

FE Sent For:

<END>

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FE Sent For:

<END>

Tradewell, Becky

From: Bonderud, Kendra
Sent: Wednesday, April 29, 2009 4:44 PM
To: Tradewell, Becky
Subject: drafting request for JFC

Follow Up Flag: Follow up
Flag Status: Red

Becky,

Would you draft an amendment for the JFC budget amendment that would include Budget Paper #262, Alternative 3b and 3c? JFC also adopted Alternative 2, but that doesn't need a draft, just my chapter 20 change.

Thank you.

Kendra Bonderud
Fiscal Analyst
Wisconsin Legislative Fiscal Bureau
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Kendra.Bonderud@legis.wisconsin.gov

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April 29, 2009 | Joint Committee on Finance | Paper #262

Payments to Remove Abandoned Underground Petroleum Storage Tanks (Commerce – Housing, Buildings, and Environmental Regulation)

[LFB 2009-11 Budget Summary: Page 197, #4]

CURRENT LAW

Commerce administrative rules require that when underground petroleum storage tanks are no longer used, the tanks must be properly closed and removed. The petroleum environmental cleanup fund award (PECFA) program reimburses owners or operators for a portion of the cleanup costs of discharges from petroleum product storage tank systems and home heating oil tank systems. The costs of removing the tank are not eligible for reimbursement under the PECFA program.

GOVERNOR

Provide $247,500 annually from the segregated petroleum inspection fund in a new appropriation for the removal of abandoned underground petroleum storage tanks. Authorize Commerce to make payments from the appropriation to contract with a person registered or certified under Department rules to remove abandoned tanks if the Department determines both of the following: (a) the tank is abandoned; and (b) the owner of the tank is unable to pay the costs. Authorize Commerce to pay for the following costs: (a) empty, clean, remove, and dispose of an underground petroleum product storage tank system; (b) assess the tank site (the assessment would determine whether there is petroleum contamination at the site); and (c) backfill the excavation. Specify that Commerce would use the same process to determine if an owner of the tank is unable to pay as currently used to determine whether the PECFA deductible (owner's share) may be waived because of the owner's inability to pay the deductible.

If Commerce pays for the removal of an abandoned tank, the Department would be required to record a lien on the property with the register of deeds, equal to the costs incurred by Commerce for the tank removal. The property would remain subject to the lien until the amount

is repaid in full. Any payments received by Commerce from persons who make repayments to remove the lien would be deposited into the petroleum inspection fund.

DISCUSSION POINTS

1. Commerce administrative rules define an abandoned tank as a tank (with or without petroleum product inside) that is not in active use, temporarily-out-of-service, or closed in accordance with Commerce rules. Administrative rules specify procedures for properly closing and removing a tank.

2. There are approximately 6,800 abandoned underground petroleum tanks on the Department's database. Commerce does not know how many of these tanks might qualify for removal under the bill. However, in the spring of 2007, when a similar provision was included in the Governor's budget recommendations, but not in the final budget act, Commerce estimated that fewer than 10% of abandoned tanks might qualify for removal.

3. Commerce officials estimate tank removal costs would average $3,000 per site where site conditions would make it easy to remove the tank. They also estimate that tank removal costs might double if they include activities such as replacement of landscaping, asphalt, sod, lawn, sidewalk or fence. Finally, they estimate that 90% of tank removals would cost less than $25,000. The $247,500 provided annually could pay for removal of perhaps 40 to 80 tanks per year.

4. When Commerce finds tanks that have not been closed, or not closed properly in compliance with Commerce rules, the Department issues orders to shut down the tank and to properly close and remove it. Department officials indicate they do not have specific information about how many orders they have issued in the last few years. In 2007, Commerce indicated it had issued over 1,000 orders per year in the previous three years. Commerce has found that if a tank is abandoned, issuing an order typically does not result in proper closure if the owner is unknown, unable, or unwilling to complete the required work. Department officials hope that the proposal would remove the financial obstacles to obtaining proper closure and removal of tanks.

5. Commerce anticipates that if the Governor's recommendation is approved, the Department and DOA procurement officials would develop a list of the amounts the state would pay for specified customary costs and a list of eligible contractors within various regions of the state who would agree to perform tank removal within the customary cost limits. Commerce would directly pay the contractors for the tank removal costs. The Department is also developing a document under which the property owner would agree to allow the contractor access to the property to remove the tank, and to allow a lien for the state's costs to be placed on the property.

6. It is likely that when some tanks are removed under the bill, PECFA-eligible contamination will be discovered. Commerce officials indicate they do not have enough information about potential tanks that might be removed under the provision to estimate the number of PECFA-eligible sites that might be discovered during the removal process. However, it can be anticipated that removal of tanks under the provision could result in at least a modest increase in the number of sites that need to be cleaned up under the PECFA program.

7. When contamination is discovered, the owner or operator is responsible for cleaning it up and submitting PECFA claims for reimbursement. It is likely that if an owner is not financially able to remove an abandoned tank, the owner would not be financially able to clean up contamination found during the removal of the tank. It is uncertain what Commerce and DNR would do to make sure that an owner with insufficient funds to remove a tank would clean up contamination discovered during the removal of an abandoned tank.

8. The proposal to require recording a lien on the property for the costs of tank removal is the same as the current law provision for waiver of the deductible (the portion of eligible costs the owner must pay) under the PECFA program. Commerce indicates they would use the same procedures they currently use to determine if a PECFA claimant has financial hardship, whereby a known owner would have to provide information about income, tax records, assets, and liabilities to demonstrate an inability to pay for the tank removal. Commerce has waived the deductible on approximately 59 PECFA sites under the financial hardship provision, for a total of $251,700 in waived deductible amount. The lien has been satisfied after sale of the property for 21 of the sites, and $85,300 has been repaid to the petroleum inspection fund.

9. Under the bill, Commerce would also record a lien on the property for the tank closure and removal costs by using the same procedures as used for the waiver of the PECFA deductible. Recording a lien on the property would ensure that the state could eventually be reimbursed for the costs it incurs to remove the tank, typically at the time of sale of the property.

10. Commerce could use the proposed appropriation for the following costs: (a) empty, clean, remove, and dispose of an underground petroleum product storage tank system; (b) assess the tank site; and (c) backfill the excavation. Commerce officials indicate that tank closure contractors have identified additional activities that might be advisable at some sites, but were not considered by the Department in previous cost estimates. These would include costs for activities such as replacement of landscaping, asphalt, sod, lawn, sidewalk, or fence.

11. These landscape and property restoration activities are not specifically included in, or excluded from, the cost components authorized for payment under the bill. The Department would have some discretion in determining what costs it includes under "backfill the excavation." The Committee could choose to specifically include (Alternative 3a) or exclude (Alternative 3b) such costs as eligible costs under the program.

12. The bill does not specify what appropriation would fund administration of the program. While Commerce would not be prohibited from using the new appropriation for administration of the program, all of the funding is included for tank removal costs, and no staff are provided. The program would be created in Chapter 101 of the statutes. The only existing administrative appropriations authorized for the general purposes of Chapter 101 are the Safety and Buildings Division program revenue operations appropriation (funded from several building and construction-related permits) and a federal appropriation. The federal appropriation receives funding from the U.S. Environmental Protection Agency leaking underground storage tank program, but it is unknown whether EPA would allow the federal funding to be used for administration of the tank removal program.

13. Commerce and administration officials would like to administer the tank removal program with staff funded from the SEG petroleum inspection fund appropriations for the petroleum tank inspection program and the PECFA program. The Committee could consider amending the bill to authorize use of the two SEG appropriations for administration of the tank removal program (Alternative 3c).

14. Commerce officials indicate that they are aware of perhaps eight sites that might currently fit the criteria under the bill and could be removed during the 2009 construction season. Additional eligible sites would likely be identified by municipalities, the Department, or others if the Governor's recommendation is adopted.

15. It is uncertain how long it would take to finish setting up the program and how many eligible sites would be identified during the 2009-11 biennium. The Committee could consider reducing the funding under the bill. For example, $100,000 annually would pay for tank removals at roughly 15 to 30 sites per year (Alternative 2). This would allow Commerce to begin implementation of the program, and the funding level could be reevaluated during 2011-13 budget deliberations.

ALTERNATIVES

1. Approve the Governor's recommendation to: (a) provide $247,500 petroleum inspection fund SEG annually in a new appropriation for the removal of abandoned underground petroleum storage tanks; (b) authorize Commerce to contract with a person certified by the Department for removal of abandoned tanks where the owner is unable to pay; (c) authorize Commerce to pay to (1) empty, clean, remove, and dispose of an underground petroleum product storage tank system; (2) assess the tank site; and (3) backfill the excavation; (d) direct Commerce to use the same process to determine if an own is unable to pay for the tank removal as is currently used to determine whether the PECFA deductible may be waived; and (e) specify that if Commerce pays for the removal of a tank under the provision, the Department would record a lien on the property for the Department's costs, and any payments made to remove the lien would be deposited in the petroleum inspection fund.

2. Modify the Governor's recommendation to approve $100,000 annually for the program (delete $147,500 annually from the amount provided in the bill).

ALT 2	Change to Bill Funding
SEG	- $295,000

3. Approve Alternative 1 or 2 and, in addition, approve one or more of the following:

a. Authorize Commerce to use the appropriation for necessary replacement of landscaping, asphalt, sod, lawn, sidewalk or fence associated with a tank removal performed under the program.

b. Specify that backfilling the excavation would not include such costs as replacement of landscaping, asphalt, sod, lawn, sidewalk or fence associated with a tank removal performed under the program.

c. Authorize Commerce to use the existing SEG petroleum inspection program and PECFA program administrative appropriations for administration of the abandoned tank removal program.

4. Delete provision.

20.143 (3)(r)
(3)(w)

ALT 4	Change to Bill Funding
SEG	- $495,000

Prepared by: Kendra Bonderud

State of Wisconsin
2009 - 2010 LEGISLATURE

SOONGn 4/30

LRBb0232/1
RCT:.....

LFB:.....Bonderud – Abandoned petroleum tank removal changes

FOR 2009-11 BUDGET -- NOT READY FOR INTRODUCTION

ASSEMBLY AMENDMENT ,

TO 2009 ASSEMBLY BILL 75

At the locations indicated, amend the bill as follows:

1. Page 345, line 14: after that line insert:

"**SECTION 216s.** 20.143 (3) (r) of the statutes is amended to read:

20.143 **(3)** (r) *Safety and building operations; petroleum inspection fund.* From the petroleum inspection fund, the amounts in the schedule for the purposes of ch. 168 and ss. 101.09 ~~and~~, 101.142, and 101.1435.".

History: 1979 c. 361; 1981 c. 20, 21, 349; 1983 a. 27, 83, 192, 381; 1985 a. 29 ss. 169 to 204, 3202 (14); 1985 a. 120, 332, 334; 1987 a. 27, 109, 317, 318, 399, 403; 1989 a. 31, 185, 237, 317, 325, 335, 336, 342, 359; 1991 a. 39, 259, 261, 269, 315; 1993 a. 5, 16, 75, 110, 232, 437; 1995 a. 27 ss. 483, 505 to 517, 608s, 609g, 609j, 964, 965, 977, 987, 988, 990 to 993, 1080b, 1085b, 1086b, 9116 (5); 1995 a. 116, 119, 216, 227; 1997 a. 9, 27, 35, 215, 237, 252, 310; 1999 a. 9, 84, 106, 185, 186; 2001 a. 16, 109; 2003 a. 33 ss. 292c to 297m, 593 to 600, 602 to 604; 2003 a. 255, 256; 2005 a. 25 ss. 150m to 156t, 331; 2005 a. 45, 358; 2007 a. 20, 125, 225; 2009 a. 2; s. 13.92 (2) (i).

2. Page 345, line 20: after that line insert:

"**SECTION 219e.** 20.143 (3) (w) of the statutes is amended to read:

1 20.143 **(3)** (w) *Petroleum storage environmental remedial action;*
2 *administration.* From the petroleum inspection fund, the amounts in the schedule
3 for the administration of ss. 101.143, 101.1435, and 101.144.".

History: 1979 c. 361; 1981 c. 20, 21, 349; 1983 a. 27, 83, 192, 381; 1985 a. 29 ss. 169 to 204, 3202 (14); 1985 a. 120, 332, 334; 1987 a. 27, 109, 317, 318, 399, 403; 1989 a. 31, 185, 237, 317, 325, 335, 336, 342, 359; 1991 a. 39, 259, 261, 269, 315; 1993 a. 5, 16, 75, 110, 232, 437; 1995 a. 27 ss. 483, 505 to 517, 608s, 609g, 609j, 964, 965, 977, 987, 988, 990 to 993, 1080b, 1085b, 1086b, 9116 (5); 1995 a. 116, 119, 216, 227; 1997 a. 9, 27, 35, 215, 237, 252, 310; 1999 a. 9, 84, 106, 185, 186; 2001 a. 16, 109; 2003 a. 33 ss. 292c to 297m, 593 to 600, 602 to 604; 2003 a. 255, 256; 2005 a. 25 ss. 150m to 156t, 331; 2005 a. 45, 358; 2007 a. 20, 125, 225; 2009 a. 2; s. 13.92 (2) (i).

4 **3.** Page 1189, line 5: delete that line and substitute "**tanks. (1)** In this section:
5 (a) "Backfill" does not include landscaping or replacing sidewalk, asphalt,
6 fence, or sod or other vegetation.
7 (b) "Underground petroleum product storage tank system" has the meaning given in s. 101.143 (1)(i).
8 **(END)**

#. Page 1189, line 6: delete that line and substitute:

State of Wisconsin
2009 - 2010 LEGISLATURE

LRBb0232/1
RCT:jld:md

LFB:.....Bonderud – Abandoned petroleum tank removal changes

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5 fence, or sod or other vegetation.

6 (b) "Underground petroleum product storage tank system" has the meaning
7 given in s. 101.143 (1) (i).".

8 **(END)**