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Joint Committee on Finance

Paper #141

Nonpoint Source Program Grants and Contracts (DNR -- Environmental Quality)

[LFB 2015-17 Budget Summary: Page 322, #4]

CURRENT LAW

The Department of Natural Resources (DNR) administers several grant programs to prevent or reduce nonpoint source water pollution. The targeted runoff management (TRM) program provides financial assistance to projects addressing water quality concerns or impairments, primarily in rural or agricultural settings. TRM projects are funded mostly through general obligation bonding revenues (BR) by the nonpoint account of the segregated (SEG) environmental fund. Additional program funds also come from federal funds (FED) under the Clean Water Act and state general purpose revenues (GPR). These fund sources also support grants under a companion program to TRM, which makes grants to animal feeding operations that have received a notice of discharge (NOD) or a notice of intent (NOI) to issue a notice of discharge for animal waste runoff that has entered state waters.

The urban nonpoint source and storm water management (UNPS) grant program provides financial assistance for planning or practices undertaken by urban municipalities, including those responsible for managing storm water discharges to waters of the state. The program is funded by a combination of nonpoint SEG-supported general obligation bonding and nonpoint SEG appropriations, which have annual base funding of \$1,313,200.

Also, DNR is appropriated funds for contracts with entities providing research, education and outreach related to nonpoint source water pollution abatement programs. DNR is appropriated \$997,600 each year for these purposes. The statutes require at least \$500,000 be allocated each year to programs of the University of Wisconsin-Extension related to nonpoint source water pollution.

GOVERNOR

Delete \$3,566,400 over the biennium for nonpoint source grant programs, as shown in Table 1:

TABLE 1

DNR Nonpoint Program Funding Changes -- AB 21 / SB 21

<u>Appropriation</u>	<u>Fund Source</u>	<u>Base (Annual)</u>	<u>Bill (Annual)</u>	<u>Annual Change</u>
Targeted runoff management grants	GPR	\$200,000	\$0	- \$200,000
Nonpoint source contracts	SEG	997,600	227,600	- 770,000
Urban nonpoint source grants	SEG	<u>1,313,200</u>	<u>500,000</u>	<u>- 813,200</u>
	Total	\$2,510,800	\$727,600	- \$1,783,200

DISCUSSION POINTS

1. The bill contains several recommendations by the Governor to align the expenditures of the nonpoint account with anticipated ongoing revenues. Several of these provisions are addressed in other Legislative Fiscal Bureau budget papers. The following sections discuss the Governor's recommendations for nonpoint-related expenditure reductions budgeted under DNR. Alternatives for each program or appropriation are included in each section.

A. Targeted Runoff Management Grants

2. The GPR appropriation for nonpoint programs, which is primarily allocated to the targeted runoff management, or TRM program, has been subject to both reductions in base funding and transfers to the general fund in the last several biennia. Table 2 shows the GPR appropriated biennially for nonpoint programs since 2009-11, including expenditure reductions made under past requirements to lapse amounts to the general fund. Although past lapses have reduced or eliminated GPR funding for individual years, the bill would eliminate future GPR base funding for DNR TRM grants.

TABLE 2

TRM Program GPR Appropriations

	<u>2009-11</u>	<u>2011-13</u>	<u>2013-15</u>	<u>2015-17 (Bill)</u>
Appropriated	\$1,625,800	\$1,418,200	\$400,000	\$0
Agency Reductions/ Transfers	- <u>1,420,400</u>	- <u>1,217,100</u>	<u>0</u>	<u>0</u>
Total Available	\$205,400	\$201,100	\$400,000	\$0

3. The GPR TRM grant appropriation primarily supports certain costs under the TRM program, but also under the NOD/NOI grant programs. TRM grants currently are awarded in one of four project areas. Projects are classified either as large-scale or small-scale, and are also classified as addressing TMDL (total maximum daily load) plans or being non-TMDL related. (The federal Clean Water Act generally requires waters that states have identified as impaired to undergo TMDL planning. A TMDL plan specifies maximum amounts of pollutants that can be introduced to the water, accounting for all point and nonpoint sources.) Large-scale TRM projects are to address agricultural nonpoint sources, and may be eligible for funding up to \$1,000,000 over three years. Small-scale projects focus on agricultural or certain urban sources, and may be eligible for up to \$150,000 in funding over two years. In addition to funding maximums, projects are subject to other provisions limiting the state's portion of cost-sharing grants. The typical state share for conservation practices funded by TRM grants is 70%, which requires at least a 30% recipient match of eligible project costs. TRM project activities, as well as those for NOD/NOI grants, may include both: (a) structural improvements to improve water quality, such as stream bank stabilization or manure storage structures; or (b) nonstructural practices such as changes in cropping techniques or nutrient management planning for optimizing applications of fertilizer, manure or other nutrients to agricultural lands. Large-scale TRM projects also may include local planning, education and outreach in a project area; state funds for these activities are termed local assistance grants.

4. Most funding for TRM grants is from nonpoint SEG-supported general obligation bonding revenues, and each of the last four biennial budgets authorized an additional \$7 million BR for TRM grants. Approximately \$1.6 million to \$2 million of this biennial authority has been reserved for NOD/NOI grants in each of the last two biennia. The bill would provide an additional \$7 million BR for TRM and NOD/NOI grants in 2015-17.

5. In addition to bond proceeds, DNR allocates federal funding awarded to the state to TRM and NOD/NOI grants. This funding, known as Section 319 funding for the part of the Clean Water Act authorizing it, provides funding for state programs addressing nonpoint source water pollution. DNR budgeted \$800,000 FED and \$1,000,000 FED, respectively, for TRM grant awards made for the 2014 and 2015 calendar years, which were the calendar years in which state funding available in the 2013-15 biennium generally would have been awarded.

6. The uses of bond proceeds for water pollution-abatement programs are restricted by provisions of the Wisconsin Constitution; such funds are largely restricted to use on structural improvements that would benefit state waters. Therefore, Section 319 FED or GPR are often needed to support TRM or NOD/NOI projects that include local assistance activities or nonstructural practices, as bond proceeds cannot fund these activities.

7. Nationally, annual appropriations of Section 319 funds have decreased by about 20% since the 2010 federal fiscal year, according to the U.S. Environmental Protection Agency (EPA). DNR also reports Section 319 awards to Wisconsin are not expected to significantly change in the next biennium. However, regardless of Section 319 funding levels, Section 319 funds can only be awarded to TRM or NOD/NOI projects to the extent the project would occur in an area that has in place a watershed plan that meets EPA guidelines for containing certain comprehensive watershed planning elements. DNR maps and data indicate most of the state is not under a qualifying plan as

of February, 2015, although recent changes to local conservation planning requirements by the Department of Agriculture, Trade and Consumer Protection (DATCP) are intended to align future local plans with federal guidelines. For areas that do not yet have in place such watershed-based plans, GPR would be a possible fund source for TRM or NOD/NOI projects with nonstructural or other planning components.

8. Similar DATCP nonpoint SEG appropriations also would be a possible source of funding for nonstructural practices or for limited staffing costs for projects that may otherwise seek TRM funding. DATCP funding for cost-sharing for nonstructural practices would continue at \$2,500,000 SEG annually under the bill. However, the bill also would require \$250,000 of this amount to be allocated to grants to producer-led groups conducting nonpoint source pollution abatement in watersheds throughout the state. This provision could reduce funding otherwise generally available for nonstructural practices. Further, DATCP reports it generally distributes its funding for voluntary changes landowners undertake for their operations. DNR funds, particularly for NOD/NOI grants, are more similar to regulatory actions for more apparent discharges or significant violations of performance standards. Such differences in agency funding suggest funds available outside DNR may not function as substitutes for DNR funding in all instances. Also, the bill would reduce base funding for county conservation staffing grants by the \$815,900 nonpoint SEG each year provided on a one-time basis in 2013-15.

9. It could be argued the general fund is an appropriate source to continue providing for nonpoint source pollution abatement activities, as the diffuse nature of nonpoint source water pollution suggests the possibility of many not easily defined sources. Entities that are considered point sources discharges, such as industrial activities, wastewater treatment plants, municipal storm water sewer systems or concentrated animal feeding operations, generally must fund their own pollution abatement systems and practices. Conversely, GPR support of nonpoint programs generally reflects the diverse nature of activities that contribute to nonpoint source water pollution, as well as the general benefits to water quality that accrue from pollution prevention or abatement practices. Under current law and the bill, GPR funding for nonpoint programs includes: (a) a transfer of \$11,143,600 from the general fund to the nonpoint account, which is one of the nonpoint account's primary annual revenue sources, behind state solid waste "tipping fees"; and (b) \$3,027,200 GPR annually for DATCP grants to counties for support of land and water conservation staff. DNR Water Division staff assigned to nonpoint program areas also are funded in part by GPR. DNR also reports it has budgeted approximately \$842,700 GPR with 8.0 positions for administration of nonpoint-related activities in 2014-15.

10. The \$400,000 GPR biennial reduction for DNR nonpoint programs represents approximately 5% or less of the total bonding, FED and GPR amounts customarily available biennially to DNR for TRM and NOD/NOI grants. (These amounts totaled approximately \$9.2 million for grants in the 2013-15 biennium.) Further, other funding, such as from DATCP nonpoint SEG appropriations, would remain available under the bill for support of nonstructural practices to prevent or limit agricultural-based nonpoint source water pollution. The Committee could therefore give consideration to adopting the Governor's recommendation [Alternative A1].

11. Conversely, because GPR can support certain practices that bond proceeds cannot, and

because GPR has fewer restrictions than certain federal funds available for similar purposes, it could be argued the GPR reduction may impede the awarding of TRM grants in certain geographic areas to otherwise worthwhile projects. Some may also argue that the GPR and other nonpoint-related reductions under the bill would reduce funding for nonpoint source water pollution abatement at times when nonpoint source pollution-related occurrences, including nutrient-driven algal blooms and hypoxic zones in Wisconsin and U.S. water bodies, have generated attention and, at times, presented public health concerns. The Committee could give consideration to deleting the Governor's recommendation [Alternative A4].

12. The Committee could also give consideration to restoring a portion of funding for DNR nonpoint programs. The affected appropriation is a biennial appropriation, meaning DNR can expend all monies appropriated for the biennium at any point in the biennium, including transferring funding between fiscal years. For instance, the Committee could restore \$400,000 in 2015-16 only [Alternative A2a]. Such an alternative would maintain current funding for 2015-17, but no funding would be provided as base funding in compiling the 2017-19 budget. Further GPR funding, if any, could be considered at that time. The Committee could also consider providing \$200,000 in 2015-16 [Alternative A2b], providing \$200,000 in 2016-17 to restore base-level funding for the 2017-19 biennium [Alternative A2c], or providing \$100,000 annually [Alternative A2d], which would provide base funding for 2017-19 but in a lower amount than currently.

13. If the Committee wished to restore funding for TRM and NOD/NOI grants under Alternative A2, the Committee could specify whether to retain funding as GPR [Alternative A3a] or transfer the funding source to nonpoint SEG [Alternative A3b]. Although the nonpoint account has a structural imbalance under current law, the structural condition is expected to improve under the bill. The account also would have sufficient balances and income in 2015-17 to support the options under Alternative A2. However, if the funding were transferred to nonpoint SEG, it also could be argued that funding additional appropriations with nonpoint SEG would further stress the ability of the account to support future grants.

B. Urban Nonpoint Source and Municipal Flood Control Grants

14. The UNPS program provides financial assistance for municipalities implementing practices in urban areas to achieve water quality standards, protect groundwater, and meet storm water permit conditions of NR 216. (Municipal discharges from storm sewers are regulated as point source discharges under provisions of the federal Clean Water Act.) UNPS grants may be construction grants or planning grants. Construction grants may fund such projects as (a) stream bank stabilization; (b) structural practices for abating runoff from government, transportation, commercial, recreational or certain industrial facilities, including costs of land acquisition, storm sewer rerouting, and structure removal; and (c) other activities, such as improved street sweeping, identified by DNR rule. Planning grants, on the other hand, involve nonstructural activities such as engineering designs not specific to a project, feasibility studies, public information initiatives, ordinance drafting, and ordinance enforcement. Construction grants may be eligible for 50% state funding up to \$150,000, while planning grants may be eligible for 70% state funding up to \$85,000. Property acquisition may receive 50% funding, up to \$50,000.

15. The DNR municipal flood control and riparian restoration (MFC) program provides

municipalities with local assistance grants to conduct planning for flood control or mitigation projects, or grants to support acquisition and development activities. Acquisition and development activities may include: (a) property acquisition and removal; (b) floodproofing of structures; and (c) construction of facilities to collect, store, retain or convey water for flood control purposes. MFC acquisition and development grants and local assistance grants may be eligible for 70% state cost-sharing. In any fiscal year, the Department may not award more than 20% of the program's available funding to any one applicant.

16. UNPS and MFC grants may be funded by nonpoint SEG-supported general obligation bonding revenue, or by nonpoint SEG biennial appropriations. The programs' bonding authority was authorized \$5 million BR in new authority under 2013 Act 20; the bill would provide an additional \$5 million BR in 2015-17. The nonpoint SEG appropriation has base funding of \$1,313,200 each year. It may be used to fund either UNPS or MFC grants, although in the last five full fiscal years, \$2.0 million (71%) of the \$2.8 million in total expenditures from the appropriation were for UNPS planning grants.

17. The bill would reduce nonpoint SEG for the UNPS and MFC programs from \$1,313,200 each year to \$500,000 each year. Although the bill would continue additional UNPS/MFC bonding authority, funding limitations on UNPS planning grants and MFC local assistance grants are similar to those for local assistance or other nonstructural practices grants under the TRM program. As UNPS/MFC planning or local assistance grants do not implement structural practices, they cannot use bonding authority and are therefore dependent on nonpoint SEG funding.

18. Under current law, the nonpoint account is projected to have a structural imbalance. Expenditure reductions under the bill would be estimated to improve, and perhaps eliminate, the structural imbalance of the account. However, restoring all or a portion of base funding would likely increase the account's structural imbalance. Because of concerns about the nonpoint account condition, and because the bill would continue to provide bonding authority and some level of nonpoint SEG for UNPS and MFC nonstructural grants, the Committee could consider adopting the Governor's recommendation [Alternative B1].

19. UNPS construction grants generally cannot fund practice installation in conjunction with new construction, or with areas that have undergone significant land-use changes such that runoff is no longer controlled. UNPS planning grants, however, are designed to support organization and preparation activities for municipalities that are becoming more urbanized and that are considering infrastructure needs or development patterns. These areas may be more likely to be experiencing new growth that is not eligible for UNPS construction grants, and reducing nonpoint SEG funding may tend to affect such municipalities more so than others. It is likely reduced funding for municipal planning, both in the UNPS and MFC programs, could require such activities to compete for funding with other expenditures in the general budgets of municipalities or storm water utilities. Further, recent demand for UNPS planning grants has typically exceeded the \$500,000 that would be available under the bill. The Committee could give consideration to restoring funding of: (a) \$200,000 each year [Alternative B2a]; (b) \$400,000 each year [Alternative B2b]; or (c) \$813,200 each year, which would maintain current law [Alternative B2c].

20. The Committee also could consider modifying the state match for UNPS planning grants, which is currently set by statute at 70% state funding, or equal to a recipient matching share of at least 30% of eligible project costs. Reducing the state portion of funding may allow funds to be distributed to more recipients than would be possible under a higher state share at the recommended funding level. A maximum state match of 50% could be considered [Alternative B3a], which would require recipients to match state funding at least dollar-for-dollar. A 50% state share would be consistent with the 50% recipient match required for UNPS construction grants. If the Committee wished to reduce the maximum state share for UNPS grants to 50%, it also could consider reducing the state portion for MFC grants to 50% [Alternative B3b]. This would make UNPS and MFC grants, both of which are made primarily to urban areas, and which share the same nonpoint SEG and BR funding sources, consistent in their maximum state cost-share rates. The Committee also could retain the current UNPS planning grant and MFC grant recipient match of 30% [Alternative B3c].

C. Nonpoint Source Contracts

21. DNR is currently appropriated \$997,600 nonpoint SEG annually for contracts to any person providing services to administer or implement nonpoint source pollution abatement programs, including information, education or training services. Further, the statute providing for DNR contracts requires the Department to allocate \$500,000 in each fiscal year to the UW-Extension. At least a portion of UW-Extension funding has customarily gone to the Natural Resources Education (NRE) program, which was previously known as the basin education program. For each year in the previous two biennia, allocations to the NRE program have been approximately \$350,000.

22. Base funding for nonpoint source contracts has been \$997,600 since 2003-04. However, appropriated amounts have occasionally been transferred to the general fund; for instance, no contracts were awarded in 2009-10 or 2010-11. The bill would reduce funding for nonpoint source contracts by \$770,000 each year, to a level of \$227,600.

23. The bill would not change the requirement for a \$500,000 annual allocation to UW-Extension. However, the administration has submitted an erratum stating the bill should be amended to repeal the \$500,000 annual allocation to UW-Extension.

24. Most nonpoint contracts historically have funded projects of UW-Extension or other UW System institutions. In recent years, research funds directed to the UW System have funded studies on various aspects of nutrient management and fertilizer or manure application. Other entities receiving funds in recent years have included the U.S. Geological Survey and the Wisconsin Land and Water Conservation Association, a group of county land and water conservation staff and county land conservation committees.

25. DNR has indicated two statewide efforts that have customarily received contract funding would be strongly considered for continued funding under the bill. These include: (a) development and maintenance of online software for assisting farmers with nutrient management planning; and (b) nonpoint source education and outreach through the NRE program. In addition, a farmer-led watershed initiative in the area of the St. Croix and Red Cedar Rivers has received

funding in recent years, and DNR reports it would be considered for future allocations.

26. Given the structural condition of the nonpoint account, it could be argued a reduction in nonpoint source contract funding is appropriate to better align account expenditures and revenues, particularly as some amount of funding would continue. DATCP also has customarily awarded a portion of its nonpoint SEG appropriations for soil and water resource management to the UW-Extension for various statewide initiatives related to nonpoint source pollution abatement. This practice would be expected to continue under the bill. The Committee could consider adopting the Governor's recommendation [Alternative C1].

27. However, it also could be argued the nonpoint source contracts are appropriate to fund at levels closer to current law. Increased funding would allow DNR to pursue additional research and outreach with statewide benefits for soil conservation, nutrient management and water quality. Also, other bill provisions that may reduce UW System appropriations could decrease the UW System's ability to fund nonpoint-related research using its own funds. The Committee could consider restoring one of the following portions of the funding: (a) \$200,000 each year [Alternative C2a]; (b) \$385,000 each year, or half of the recommended reduction [Alternative C2b]; or (c) \$770,000 each year, which would maintain current law [Alternative C2c].

28. Consideration also could be given to the Governor's recommendation to repeal the minimum \$500,000 allocation per fiscal year to UW-Extension. If the Committee adopted the Governor's recommendation, or retained a level of funding not exceeding \$500,000, it could repeal the minimum \$500,000 annual allocation to UW-Extension [Alternative C3]. If the Committee wished to restore funding to a level more than \$500,000, it could consider taking no action.

ALTERNATIVES

A. Targeted Runoff Management Funding

1. Adopt the Governor's recommendation to delete \$200,000 GPR annually for nonpoint source TRM grants.
2. Restore one of the following amounts:
 - a. \$400,000 in 2015-16 only;
 - b. \$200,000 in 2015-16 only;
 - c. \$200,000 beginning in 2016-17; or
 - d. \$100,000 each year.
3. In addition to Alternative A2, specify one of the following funding sources:
 - a. GPR; or
 - b. the nonpoint account of the environmental fund.

4. Delete the Governor's recommendation. (\$200,000 GPR would be restored each year.)

ALT A4	Change to Bill
GPR	\$400,000

B. Urban Nonpoint Source and Storm Water Management Grants

1. Adopt the Governor's recommendation to delete \$813,200 nonpoint SEG each year for the urban nonpoint source and storm water management program and municipal flood control and riparian restoration program.

2. Restore one of the following amounts for urban nonpoint source/municipal flood control grants:

- a. \$200,000 nonpoint SEG each year;

ALT B2a	Change to Bill
SEG	\$400,000

- b. \$400,000 nonpoint SEG each year; or

ALT B2b	Change to Bill
SEG	\$800,000

- c. \$813,200 nonpoint SEG each year. (Delete the Governor's recommendation.)

ALT B2c	Change to Bill
SEG	\$1,626,400

3. In addition to Alternative B1 or B2, specify one or more of the following maximum state funding levels:

a. Up to 50% of eligible project costs for urban nonpoint source (UNPS) planning grants (at least a dollar-for-dollar recipient match on state funds);

b. Up to 50% of eligible project costs for all grants under the municipal flood control and riparian restoration program (requiring at least a dollar-for-dollar recipient match on state funds); or

c. Take no action (maintain the current 70% state maximum for UNPS planning grants and MFC grants).

C. Nonpoint Source Contracts

1. Adopt the Governor's recommendation to delete \$770,000 nonpoint SEG annually for nonpoint source contracts.

2. Restore one of the following amounts:

a. \$200,000 each year;

ALT C2a Change to Bill	
SEG	\$400,000

b. \$385,000 each year; or

ALT C2b Change to Bill	
SEG	\$770,000

c. \$770,000 each year. (Delete the Governor's recommendation.)

ALT C2c Change to Bill	
SEG	\$1,540,000

3. Delete the requirement that DNR allocate \$500,000 in each fiscal year for contracts with the University of Wisconsin-Extension.

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