



## Legislative Fiscal Bureau

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Joint Committee on Finance

Paper #528

### **Multi-Discharger Variance Implementation (Natural Resources -- Environmental Quality)**

[LFB 2019-21 Budget Summary: Page 303, #4]

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#### **CURRENT LAW**

In 2010, the Department of Natural Resources (DNR) promulgated standards for maximum allowable phosphorus concentration in Wisconsin's waters. As a result, it began incorporating these standards into Wisconsin pollutant discharge elimination system (WPDES) permits for point sources of water pollution, primarily municipal and industrial wastewater treatment facilities. Alongside these standards, it established more stringent agricultural performance standards related to nonpoint source phosphorus runoff.

Phosphorus limits imposed under WPDES permit conditions may be established under total maximum daily load (TMDL) plans. Under Section 303(d) of the Clean Water Act, DNR is required by the Environmental Protection Agency (EPA) to report biennially on all waters it has identified as impaired, meaning they do not meet water quality standards. DNR is then required to develop a TMDL plan for these impaired waters and submit it to EPA for approval. TMDLs study pollution in a water body and set goals to limit total point source and nonpoint source pollution to a level that will allow the water body to meet water quality standards. Approved TMDLs in Wisconsin include the Lower Fox River, Milwaukee River, Rock River, St. Croix River, and Wisconsin River watersheds. Other TMDLs currently in development include the St. Louis River, Upper Fox and Wolf Rivers, and northeastern lakeshore of Lake Michigan from Ozaukee County to Door County.

#### **GOVERNOR**

Provide \$4,000,000 in general obligation bonding for water pollution control infrastructure grants. Specify that bonding revenues (BR) would support grants to municipalities and counties

for infrastructure projects that control water pollution in watersheds with a federally approved TMDL. Additionally, provide 1.0 position with \$76,600 annually in a segregated (SEG) conservation fund (split-funded) operations appropriation to administer these grants. Require DNR to promulgate rules for the administration of these grants. Further, create an appropriation within the water resources account of the conservation fund to support principal and interest payments on these bonds. Budget debt service at \$41,600 SEG in 2020-21.

## **DISCUSSION POINTS**

### **A. Total Maximum Daily Load Implementation Grant Program**

1. DNR reports that under the new phosphorus standards, almost 80% of facilities must meet standards more stringent than those previously in effect. In 2015, the Department of Administration estimated that expenditures of at least \$3.45 billion are required by Wisconsin businesses and municipalities to comply with the new phosphorus rule. Federal law provides regulatory flexibility to states for implementing water quality standards in the form of variances. A variance is a short-term deviation from pollution abatement standards that allows incremental step-ups over a period of time to enable a more feasible and cost-effective implementation of pollution abatement technology. Typically, variances are provided on an individual basis, with each application requiring DNR and Environmental Protection Agency (EPA) approval. However, in February, 2017, DNR received approval from EPA for a statewide multi-discharger variance (MDV) for phosphorus, which allows eligible municipal and industrial wastewater treatment plants to participate without the need for an individualized permit.

2. The MDV allows qualifying municipal and industrial wastewater treatment facilities to incrementally reduce their phosphorus discharges over a period of 20 years, while also undertaking one of three options to reduce other sources of discharges within their watershed. One option is for the permit holder to make payments to counties in support of county nonpoint source pollution abatement activities. The other two options consist of either a permit holder or a third-party contractor implementing adaptive management (AM) practices. AM is the implementation of both urban and agricultural best management practices (BMPs) to reduce total discharges of a pollutant into a watershed. By targeting nonpoint sources of phosphorus into a watershed, it is expected that a point source would be able to more cost-effectively reduce total pollutant discharges in a watershed as compared to facility improvements. Under the MDV, the amount of phosphorus reduction is required to be at least as much as the difference between the point source's actual phosphorus contributions and the level it would be expected to reach to meet effluent limits.

3. The proposed funding would support BMPs related to preventing and reducing both urban and agricultural nonpoint source water pollution under AM programs. Under current law, DNR and the Department of Agriculture, Trade and Consumer Protection administer a number of programs that provide cost-share grants and technical assistance to landowners and municipalities to limit nonpoint pollution. While many of these programs seek to implement the same BMPs, current law excludes WPDES-permitted facilities from most such funding. The administration indicates that the proposed program would provide financial assistance to point sources to support AM activities under a WPDES permit, which are the same activities that other landowners, as well as municipalities in

general, implement with cost-share funding. Further, while municipal point sources are eligible for clean water fund financial assistance programs related to implementing facilities upgrades to reduce effluent in their point source discharge, limited programs are available for municipal sewage treatment facilities or industrial dischargers to reduce phosphorus through nonpoint abatement activities.

4. DNR estimates approximately 400 municipal wastewater treatment facilities and other industrial dischargers face phosphorus limits. While some facilities are still in planning stages related to their permits, DNR reports 20 have already selected AM, and estimates approximately 25 more will in the next five years. Of the 20 facilities that have already selected AM, DNR reports 15 have approved plans and would be ready to use funding under this proposal. Considering that half of facilities expected to participate in AM activities in the next five years are not currently ready to receive funding, the Committee could consider providing \$2 million in bonding authority, and consider further allocations under subsequent budget legislation (Alternative A2).

5. Currently, while WPDES-permitted dischargers conduct AM activities in a watershed, they do so alongside other non-permitted landowners and municipalities that receive cost-share assistance for the same types of practices that have the same intended effect. For agricultural BMPs, cost-sharing is generally offered at a 70% state match, while urban BMPs are generally offered a 50% state match. Under the bill, no grantee match is required, and DNR could provide grants that fully fund the cost of AM by WPDES-permitted dischargers. Given that current law requires point source dischargers to implement conservation activities without cost-share assistance while other nonpoint participants that implement the same conservation practices for the same purposes receive cost-sharing, it could be considered appropriate to specify the same cost-share rates for municipal point sources as well. To provide uniformity in state funding for nonpoint abatement activities across programs, the Committee could consider specifying the proposed program require a 30% non-state match from grantees for funding that supports agricultural BMPs, and 50% match from grantees for funding that supports urban BMPs, consistent with other state nonpoint grant programs (Alternative A4). Conversely, subsequent rulemaking by DNR as required under the bill could establish cost-share rates for the proposed grants.

6. Under the bill, counties and municipalities would be eligible to receive funding for projects that improve water quality in watersheds with a federally approved TMDL. As noted previously, the administration intends for funding to be directed toward municipal wastewater treatment facilities that are seeking to implement AM practices as part of their WPDES permit. Under the bill, these facilities would be eligible to receive funding. However, as the bill provides that funding may be directed toward municipalities and counties in general, it is possible that DNR could allocate funding to projects not related to AM activities under WPDES permits. Given that municipalities and counties are currently eligible for financial assistance related to implementation of nonpoint pollution abatement through other DNR and DATCP programs, the Committee could consider specifying that only WPDES-permitted entities would be eligible for funding under this provision (Alternative A5).

7. The debt service on bonds issued under this provision would be supported by the water resources account of the conservation fund (Alternative A3a). On June 30, 2018, the account had an available balance of approximately \$1.3 million. Under the bill, revenues to the water resources account would increase beginning in 2020-21 due to increases in the motor fuel tax. Further, the bill

proposes increases of approximately \$1.5 million each year to lake and river protection grants, as discussed in a separate issue paper entitled "Lake and River Protection Grants." If current law revenues were maintained, with no increases to the motor fuel tax, and lake and river protection grants were not increased, the water resources account would be expected to have a balance of approximately \$29,700 at the end of 2020-21. Considering the available balance of the water resources account, the Committee could consider specifying a different funding source to support debt service.

8. The administration reports it chose to support bonding with water resources account SEG because TMDLs are impacted by both point and nonpoint source pollution. However, nonpoint source pollution abatement programs historically have been supported by general purpose revenues (GPR) and SEG revenue from the nonpoint account of the environmental fund. Given that funding would support nonpoint conservation practices, the Committee could consider specifying that bonding would be supported by the nonpoint account (Alternative A3b). However, under the Governor's proposal it is expected the nonpoint account would have an estimated closing cash balance of -\$5.3 million and an available balance of -\$10.8 million on June 30, 2021. The Committee could also consider supporting bonding with GPR (Alternative A3c).

9. The proposed program would effectively provide financial assistance to such facilities as municipal sewerage works who otherwise would use rates for service to cover the cost of required plant upgrades and AM activities under the new phosphorus standards. While point source dischargers face financial constraints to meeting statewide phosphorus standards, it could be considered appropriate that costs are borne by dischargers. By imposing pollution abatement requirements on dischargers of phosphorus, DNR is able to capture the cost to the environment of phosphorus pollution. Thus, when customers of point source dischargers pay fees associated with the discharger's service, they are covering the actual cost of such pollution, rather than passing part of that cost on to others in the watershed who would experience negative effects associated with excess phosphorus. If the Committee took no action (Alternative A6), it is expected the cost of implementing phosphorus pollution controls would continue to be passed on to customers or ratepayers creating the costs associated with that pollution.

## **B. Grants Administration Position**

10. The administration indicates the proposed position would assist in implementation of the TMDL implementation grant program as well as address increased workload associated with proposed increases to the lake and river protection grants, as discussed in a separate paper. Activities would include program management of the TMDL implementation grant program, policy development, and management of other grant administration staff. Information from DNR and the administration suggests perhaps 75% of the position activities would be associated with TMDL implementation and 25% with lake and river protection grants. Considering the increased workload associated with creating a new grant program and administering funding for additional lake and river protection grants, the Committee could consider approving the position (Alternative B1), or providing 0.75 position to reflect work associated with the TMDL implementation grant program (Alternative B2). The Committee could also take no action (Alternative B3).

## ALTERNATIVES

(Funding of alternatives below related to nonpoint SEG are dependent upon Committee action under paper #525 entitled "Environmental Fund Overview." The paper provides a number of alternatives related to revenue that would address the condition of the nonpoint account.)

### A. Total Maximum Daily Load Implementation Grant Program

1. Adopt the Governor's proposal to provide \$4,000,000 in general obligation bonding for water pollution control infrastructure grants. Specify that bonding revenues (BR) would support grants to municipalities and counties for infrastructure projects that control water pollution in watersheds with a federally approved TMDL. Require DNR to promulgate rules for the administration of these grants.

ALT A1	Change to	
	Base	Bill
BR	\$4,000,000	\$0

2. Modify the Governor's proposal by providing \$2,000,000 in general obligation bonding for water pollution control infrastructure grants.

ALT A2	Change to	
	Base	Bill
BR	\$2,000,000	- \$2,000,000

3. In addition to Alternative 1 or 2 above, create an appropriation for debt service payments and specify that bonding be supported by:

a. The water resources account of the conservation fund (SEG-CON).

ALT A3a	Change to	
	Base	Bill
SEG-CON	\$41,600	\$0

b. The nonpoint account of the environmental fund (SEG-ENV).

ALT A3b	Change to	
	Base	Bill
SEG-ENV	\$41,600	\$41,600
SEG-CON	<u>0</u>	<u>- 41,600</u>
Total	\$41,600	\$0

c. GPR.

ALT A3c	Change to	
	Base	Bill
GPR	\$41,600	\$41,600
SEG-CON	<u>0</u>	<u>- 41,600</u>
Total	\$41,600	\$0

4. Specify that TMDL implementation grants require the grantee provide a non-state match of 30% for state funding that supports agricultural best management practices, and 50% for state funding that supports urban best management practices. (This alternative could be moved in addition to any of the other alternatives.)

5. Specify that recipients of TMDL implementation grants must be WPDES permitted wastewater treatment facilities. (This alternative could be moved in addition to any of the other alternatives.)

6. Take no action.

ALT A6	Change to	
	Base	Bill
BR	\$0	\$4,000,000
SEG-CON	\$0	- \$41,600

**B. Grant Administration Position**

1. Adopt the Governor's proposal to provide 1.0 position with \$76,600 annually in a conservation fund (split-funded) operations appropriation for implementation and grant management activities associated with the TMDL implementation grant program, and the lake and river protection grant programs.

ALT B1	Change to Base		Change to Bill	
	Funding	Positions	Funding	Positions
SEG	\$153,200	1.00	\$0	0.00

2. Provide 0.75 position with \$57,500 in a conservation fund (split-funded) operations appropriation for implementation and grant management activities associated with the TMDL implementation grant program.

ALT B2	Change to Base		Change to Bill	
	Funding	Positions	Funding	Positions
SEG	\$115,000	0.75	- \$38,200	- 0.25

3. Take no action.

ALT B3	Change to Base		Change to Bill	
	Funding	Positions	Funding	Positions
SEG	\$0	0.00	-\$153,200	- 1.00

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