<u>Committee Name</u>: Assembly Committee – Rural Affairs (AC-RA)

Appointments

97hr_AC-RA_Appt_pt00

Committee Hearings

97hr_AC-RA_CH_pt00

Committee Reports

97hr_AC-RA_CR_pt00

Clearinghouse Rules 97hr_AC-RA_CRule_97-153

Executive Sessions

97hr_AC-RA_ES_pt00

Hearing Records

97hr_ab0000

97hr_sb0000

Misc.

97hr_AC-RA__Misc__pt00

Record of Committee Proceedings

97hr_AC-RA_RCP_pt00

PMO



REPRESENTATIVE JOHN AINSWORTH

CHAIR: ASSEMBLY RURAL AFFAIRS COMMITTEE

MEMORANDUM

To:

Assembly Rural Affairs Committee Members

From:

State Representative John Ainsworth

Date:

February 10, 1998

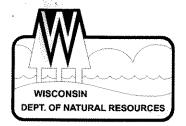
Re:

Clearinghouse Rule 97-153

On February 10, 1998, the following Clearinghouse Rule was referred to the Assembly Committee on Rural Affairs:

Clearinghouse Rule 97-153, AN ORDER to create subchapter IX of chapter NR 47, relating to the forest fire protection grant program.

The deadline for committee action on this rule is *March 10, 1998*. If you would like a copy of the rule, or are interested in requesting a hearing, please contact my office prior to that date.



State of Wisconsin \ DEPARTMENT OF NATURAL RESOURCES

Tommy G. Thompson, Governor George E. Meyer, Secretary

101 S. Webster St.
Box 7921
Madison, Wisconsin 53707-7921
Telephone 608-266-2621
FAX 608-267-3579
TDD 608-267-6897

February 25, 1998

Representative John Ainsworth, Chair Assembly Rural Affairs Committee Room 302 North State Capitol

Senator Alice Clausing, Chair Senate Agriculture and Environmental Resources Committee Room 308 100 North Hamilton

SUBJECT:

Clearinghouse Rule No. 97-153

Forest Fire Protection Grant Program

Dear Committee Chairs:

On January 28, 1998, the Natural Resources Board approved Clearinghouse Rule No. 97-153 and it was referred to your committees for review. The Department wishes to submit 2 germane modifications to the proposed rule that were adopted by the Natural Resources Board on February 25, 1998. A copy of the amended rule containing the modifications is attached.

The Department proposes to amend s. NR 47.905(1)(a) to read:

NR 47.905 ELIGIBILITY. (1) ELIGIBLE APLICANT. An eligible applicant is:

(a) A fire department that provides service to a municipality that has executed a forest fire suppression agreement to assist the department in initial attack suppression of forest fires.

This change is necessary because if the words "initial attack" are not deleted, it will have the unintended effect of making many fire department sin the southern portion of the state not eligible for grants under the program. A further reason for correcting this error is that this restriction is not authorized by the statutory language for grant eligibility.





The Department further proposes to amend s. NR 47.907(intro.) to read:

NR 47.907 GRANT SELECTION PROCESS. In selecting grant application projects, the department shall give priority to eligible applicants in the following order the following factors which are listed in no particular order:

The intent of the Department, based on the recommendation of the Fire Department Advisory Council, was to use the criteria as weighted factors in a composite ranking score, However, legal interpretation of the current rule language indicates that the ranking would be scored based upon the listed criteria and the order they are presented in the rule. Thus, all applications that met the first criteria would be funded before any applications that met the second or third criteria. The proposed modification would clarify and change the language to allow for the composite score process recommended by the Advisory Council.

Under s. 227.19(4)(b)3., Stats., the Department of Natural Resources submits this as a germane modification to Clearinghouse Rule No. 97-153. Your review period is extended 10 working days from the receipt of this letter.

Sincerely,

George E. Meyer

Secretary

cc: Charles Higgs - FR/4

Bob Egan - CF/8

PMC

OK

MEMORANDUM

To:

Assembly Rural Affairs Committee Members

From:

Representative John Ainsworth, Chairperson

Date:

March 4, 1998

Re:

Clearinghouse Rule 97-153

On February 10, 1998, Clearinghouse Rule 97-153, relating to the forest fire protection grant program, was referred to the Assembly Rural Affairs Committee for review. On February 25, 1998, I received notice from the Department of Natural Resources that they would like to attach two germane modifications to the proposed rule. A copy of this letter from Secretary George Meyer has been attached for your reference and use.

Please be advised that the deadline for committee action on this rule remains *March 10, 1998*. If you are in need of any additional information regarding these changes, or are interested in requesting a hearing, please contact my office prior to that date.

47.900 6 47.907(2) still contain the initial attack language. Is this intentional?



State Representative • 6th Assembly District

Chair: Assembly Committee on Rural Affairs

MEMORANDUM

To:

Assembly Rural Affairs Committee Members

From:

Representative John Ainsworth, Chairperson

Date:

March 5, 1998

Re:

Clearinghouse Rule 97-153

On February 10, 1998, Clearinghouse Rule 97-153, relating to the forest fire protection grant program, was referred to the Assembly Rural Affairs Committee for review. On February 25, 1998, I received notice from the Department of Natural Resources that they would like to attach two germane modifications to the proposed rule. A copy of this letter from Secretary George Meyer has been attached for your reference and use.

Please be advised that the deadline for committee action on this rule remains *March 10, 1998*. If you are in need of any additional information regarding these changes, or are interested in requesting a hearing, please contact my office prior to that date.

ORDER OF THE STATE OF WISCONSIN NATURAL RESOURCES BOARD CREATING RULES

The State of Wisconsin Natural Resources Board proposed an order to create ch. NR 47, subch. VIII relating to the forest fire protection grant program

FR-5-98

Analysis Prepared by Department of Natural Resources

Authorizing statutes: ss. 26.145, 23.11, 28.07 and 227.11(2)(a), Stats.

Statutes interpreted: s. 26.145, Stats.

1997 Wisconsin Act 27 created the Forest Fire Protection Grant Program. These rules amend this chapter to include rules pertaining to the administration of the forest fire protection grants.

SECTION 1. Chapter NR 47, subch. VIII is created to read:

SUBCHAPTER VIII

FOREST FIRE PROTECTION GRANT PROGRAM

NR 47.900 PURPOSE. The purpose of this subchapter is to implement and administer forest fire protection grants to municipal fire departments and other fire suppression organizations, as authorized under s. 26.145, Stats.. The purpose of the grant funding is to expand the use of local fire departments to augment and strengthen the department's overall initial attack fire suppression capabilities on forest fires.

NR 47.901 APPLICABILITY. The provisions of this subchapter are applicable to certain municipalities and not-for-profit organizations of the state who apply for forest fire protection grants under this subchapter.

NR 47.902 DEFINITIONS. In this subchapter:

- (1) "Applicant" means the Wisconsin municipality, fire department or fire suppression organization that submits an application for grants under this subchapter.
 - (2) "Fire department" has the meaning contained in s. 213.08, Stats.
- (3) "Fire suppression organization" means a not-for-profit organization whose primary purpose and activities support fire protection or suppression and that represents a majority of fire departments in a county or region that serve forest fire control areas established in ss. NR 30.01 and 30.02.
 - (4) "Grantee" means the recipient of a grant under this subchapter.
 - (5) "Municipality" means a Wisconsin city, village, town or county.
 - (6) "Project" means the practice or activity for which funds are applied under this subchapter.

NR 47.903 APPLICATION PROCEDURES. (1) Applicants shall submit applications on the prescribed department forms to the address shown on the application form. An applicant may not submit more than one application for grant funding in any single funding period as provided in subs. (2) and (3). The department shall send notice of the availability of application forms and instructions to all eligible fire departments in the state.

Note: Application forms are available from the Bureau of Forestry, 101 S. Webster St., P.O. Box 7921, Madison WI 53707.

- (2) Applicants for grant funding for the period which ends on June 30, 1998 shall submit their applications no later than April 15, 1998.
- (3) For funding available following July 1, 1998, applications shall be submitted by October 1 of each year.
- (4) No application from a fire suppression organization may be for more than \$25,000 or less than \$5,000 in grant funding.
- (5) No application from a fire department may be for more than \$10,000 or less than \$750 in grant funding.
- (6) Applicants who have been selected to receive grants shall be notified by the department and sent a grant agreement for signature and return. No project work may be done or cost incurred until the grant agreement has been signed by the department and the applicant.
- (7) The department may require a fire suppression organization to file with the department a charter, constitution, bylaws or similar documents which describe the organization's objectives and activities in forest fire protection.
- (8) Applications submitted after the deadline date or containing incorrect or inaccurate information will not be considered.
- NR 47.904 GRANT CALCULATION. (1) A grant under this subchapter shall be 50% of actual eligible cost. The estimated value of "in-kind" or donated labor, materials or equipment may not be considered actual eligible cost.
- (2) Grant applications will be funded in priority rank order. The last application for which funds are available may be offered less funding than the full amount requested. Copies of the standards are available for inspection at the offices of the revisor of statutes and the secretary of state. Individual copies may be obtained from the bureau of forestry, DNR, P.O. Box 7921, Madison WI 53707.

NR 47.905 ELIGIBILITY. (1) ELIGIBLE APPLICANT. An eligible applicant is:

- (a) A fire department that provides service to a municipality that has executed a forest fire suppression agreement to assist the department in initial attack suppression of forest fires.
- (b) A Wisconsin fire suppression organization that agrees to assist the department in the suppression of forest fires.
- (2) ELIGIBLE USES OF GRANT FUNDS. Requests for grant assistance are limited to materials, supplies and equipment which are primarily and directly associated with forest fire protection and suppression. Examples of eligible projects include:
 - (a) Forest fire protective clothing that meets NFPA Standard 1977.

- (b) Tools and small diameter hose used for forest fire suppression, foam and portable foam delivery equipment, dry hydrants, vehicle slip-on pumping units.
- (c) Communication equipment that is used for forest fire protection and suppression activities, such as radios, pagers, base station and repeater towers.
- (d) Rural fire mapping and numbering and materials, supplies and equipment and direction or location devices such as global positioning system devices.
- (e) Off-road vehicles such as all-wheel drive trucks of 1 to 5 ton capacity which are used primarily for forest fire suppression. Grant assistance for vehicles is limited to applications from individual fire departments.
- NR 47.906 ELIGIBLE AND INELIGIBLE COSTS. (1) ELIGIBLE COSTS. (a) Reasonable project costs which are necessary for and directly related to accomplishment of the approved project objectives and incurred during the project period are eligible for grant reimbursement.
- (b) Eligible costs are limited to actual costs incurred and paid by the grantee and do not include "in-kind" costs or the estimated value of donated labor, materials or equipment.
- (2) INELIGIBLE COSTS. (a) Costs not directly associated with and necessary for accomplishment of the approved project objectives are not eligible for grant reimbursement.
 - (b) Costs incurred before or after the project period are not reimbursable under the grant.
- (c) Costs for which payment has been or will be received under another federal or state financial assistance program are not reimbursable under the grant.
- (d) Costs incurred in a contract which creates a real or apparent conflict of interest. An apparent conflict of interest arises when an official or employee of a grantee participates in the selection, awarding or administration of a contract supported by this project and:
- 1. The official or employee, or her or his spouse or partner, has an ownership interest in the firm selected for the contract; or
- 2. An official or employee of a grantee receives a contract, gratuity or favor from the award of the contract.

NR 47.907 GRANT SELECTION PROCESS. In selecting grant application projects, the department shall give priority to eligible applicants in the following order the following factors which are listed in no particular order:

- (1) Eligible fire departments serving areas within organized forest fire control areas established under ss. NR 30.01 and 30.02.
- (2) Fire departments that provide initial attack response to wildfires within their jurisdictions at no cost to the department.
- (3) Fire departments with the majority of their members meeting NFPA 1051 standards for wildland fire fighter training.
 - (4) Other applications or projects.

NR 47.908 GRANT AWARDS; PAYMENT. (1) GRANT AWARDS. Grants shall be awarded subject to execution of the department's grant agreement by both the department and the grant applicant.

(2) PAYMENT. Final payment shall be made upon approval of the completed project by the department's regional fire management officer and approval of the completed claim for reimbursement from the grantee. Interim payment may be requested by the grantee and approved by the department where a financial hardship would be imposed by waiting until the project had been completed.

Note: It is expected that interim payments would more often be made to fire suppression organizations who have large grants and limited capacity to pay vendor bills before they receive reimbursement from the department.

(3) FINAL AUDIT. All payments are contingent upon final audit. Financial records including all documentation to support entries in the accounting records shall be kept for review by department auditors for a period of 3 years after final payment.

The foregoing rule was approved and adopted by the State of Wisconsin Natural Resources Board on January 28, 1998 and February 25, 1998.

The rule shall take effect on the first day of the month following publication in the Wisconsin administrative register as provided in s. 227.22(2)(intro.), Stats.

Dated at Madison, Wisconsin			- Andrews		
	STATE OF WISCONSIN DEPARTMENT OF NATURAL RESOURCES				
			1		
	Ву				
	Geo	rge E. Meyer, Secretary	r		

(SEAL)

WISCONSIN LEGISLATIVE COUNCIL STAFF



RULES CLEARINGHOUSE

Ronald Sklansky Director (608) 266-1946

Richard Sweet Assistant Director (608) 266–2982



David J. Stute, Director Legislative Council Staff (608) 266-1304

One E. Main St., Ste. 401 P.O. Box 2536 Madison, WI 53701-2536 FAX: (608) 266-3830

CLEARINGHOUSE REPORT TO AGENCY

[THIS REPORT HAS BEEN PREPARED PURSUANT TO S. 227.15, STATS. THIS IS A REPORT ON A RULE AS ORIGINALLY PROPOSED BY THE AGENCY; THE REPORT MAY NOT REFLECT THE FINAL CONTENT OF THE RULE IN FINAL DRAFT FORM AS IT WILL BE SUBMITTED TO THE LEGISLATURE. THIS REPORT CONSTITUTES A REVIEW OF, BUT NOT APPROVAL OR DISAPPROVAL OF, THE SUBSTANTIVE CONTENT AND TECHNICAL ACCURACY OF THE RULE.]

CLEARINGHOUSE RULE 97–153

AN ORDER to create subchapter IX of chapter NR 47, relating to the forest fire protection grant program.

Submitted by DEPARTMENT OF NATURAL RESOURCES

12--09--97

RECEIVED BY LEGISLATIVE COUNCIL.

01-09-98

REPORT SENT TO AGENCY.

RS:DLL:jt;kjf

LEGISLATIVE COUNCIL RULES CLEARINGHOUSE REPORT

This rule has been reviewed by the Rules Clearinghouse. Based on that review, comments are reported as noted below: 1. STATUTORY AUTHORITY [s. 227.15 (2) (a)] YES / NO Comment Attached 2. FORM, STYLE AND PLACEMENT IN ADMINISTRATIVE CODE [s. 227.15 (2) (c)] NO YES / Comment Attached CONFLICT WITH OR DUPLICATION OF EXISTING RULES [s. 227.15 (2) (d)] YES Comment Attached ADEQUACY OF REFERENCES TO RELATED STATUTES, RULES AND FORMS [s. 227.15 (2) (e)] NO M YES Comment Attached CLARITY, GRAMMAR, PUNCTUATION AND USE OF PLAIN LANGUAGE [s. 227.15 (2) (f)] YES / NO Comment Attached POTENTIAL CONFLICTS WITH, AND COMPARABILITY TO, RELATED FEDERAL REGULATIONS [s. 227.15 (2) (g)] Comment Attached YES 7. COMPLIANCE WITH PERMIT ACTION DEADLINE REQUIREMENTS [s. 227.15 (2) (h)] YES Comment Attached

WISCONSIN LEGISLATIVE COUNCIL STAFF

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CLEARINGHOUSE RULE 97–153

Comments

[NOTE: All citations to "Manual" in the comments below are to the Administrative Rules Procedures Manual, prepared by the Revisor of Statutes Bureau and the Legislative Council Staff, dated October 1994.]

1. Statutory Authority

- a. Section 26.145 (2) (b), Stats., as created by 1997 Wisconsin Act 27, provides that the department may not award a grant for fire suppression unless the grant recipient agrees in writing to assist the department in the suppression of forest fires at the department's request. Section NR 47.904 (1) (a) requires that a fire department enter into a forest fire suppression agreement acceptable to the department. Presumably, an "agreement acceptable to the department" will include a provision requiring the recipient to assist the department in the suppression of forest fires at the department's request. Section NR 47.905 (1) (b) simply describes an eligible applicant as a Wisconsin fire suppression organization, but does not similarly require that the organization execute an agreement acceptable to the department. Although s. NR 47.908 (1) requires the execution of a grant agreement by both the department and the grant applicant, the rule should be reviewed and clarified to expressly comply with the requirement of s. 26.145 (2) (b), Stats., that a recipient agree to assist in fire suppression efforts at the department's request.
- b. Section NR 47.905 (2) (intro.) states that forest fire protection grants may be used for **projects and activities** associated with forest fire protection and suppression. However, s. 26.145 (1), Stats., authorizes grants only for the acquisition of fire-resistant clothing and fire suppression supplies, equipment and vehicles. The eligible projects described in the rule exceed the authority granted in s. 26.145, Stats. [See, also, s. NR 47.905 (2) (f), relating to forest fire training as an eligible project.]

2. Form, Style and Placement in Administrative Code

- a. Chapter NR 47 currently has subchapters numbered I to VI and this rule creates subchapter IX in that chapter. Is there a reason that the new subchapter is not numbered VII, to continue the sequence in that chapter?
- b. In s. NR 47.902 (3), the definition of "fire suppression organization" is confusing, especially the words "region that serve." Also, it refers to "a fire department . . . that represents a majority of the fire departments" It appears that the definition is describing several things:
 - (1) A not-for-profit organization that represents a majority of fire departments in a county.
 - (2) A not-for-profit organization that serves a forest fire control area.
 - (3) A fire department that serves a forest fire control area.

It would be clearer to break the definition into the parts listed above.

- c. The cross-reference in s. NR 47.902 (3) should be replaced with more precise references to ss. NR 30.01 and 30.02.
- d. Rules should express mandatory provisions by the use of the word "shall" and permissive provisions with "may" and the word "will" should not be used. [s. 1.01 (2), Manual.] This usage should be corrected in ss. NR 47.903 (1) and (6) and 47.908 (2).
- e. Section NR 47.903 (4) and (5) are duplicated by s. NR 47.904 (2) and (3), although the substance of the two sets of provisions are not the same. The dollar limit on grants should be stated only once, either with or without a minimum amount. In addition, s. NR 47.906 (1) (b) duplicates the second sentence of s. NR 47.904 (1).
- f. Assuming that the grant program will be limited to the purchase of equipment, as provided in s. 26.145 (1), Stats., does the concept of in-kind matching apply? If not, the second sentence of s. NR 47.904 (1), and s. NR 47.906 (1) (b), should be omitted.
- g. Sections NR 47.905 (20) (a) and (f) and 47.907 (3) refer to NFPA standards. The department should ensure that the requirements of s. 227.21 (2), Stats., are met.

5. Clarity, Grammar, Punctuation and Use of Plain Language

a. In s. NR 47.903 (1), the phrase "single funding cycle" should be augmented by an internal cross-reference to subs. (2) and (3). Also, in sub. (3), the phrase "following July 1" should be replaced by the phrase "after June 30." In sub. (4), the word "that" should be replaced by the word "than." Finally, in sub. (7), the phrase "fire suppression organizations" should be replaced by the phrase "a fire suppression organization," in order to maintain consistency with the use of the singular form in the remainder of the subsection.

- b. Section NR 47.904 (4) should be rewritten to clarify whether funds will be prorated if they are insufficient to meet the requests of all applicants or whether the funds will be granted on a first-come, first-served basis.
- c. In s. NR 47.905 (2) (b), the last comma should be replaced by the word "and." In par. (c), the comma preceding the word "repeater" should be replaced by the word "and" and the notation ", etc." should be deleted. Finally, in par. (d), the acronym "GPS" should be spelled out.
- d. In s. NR 47.906 (2) (d), the first occurrence of the word "a" in the second sentence should be replaced by the word "an." Also, in par. (d) 2., the phrase "A person identified in par. (d) (intro.)" should be replaced by a reference to an official or employe of a grantee. Further, should this reference include the spouse or partner of the official or employe as provided in par. (d) 1.? Finally, in par. (d) 2., what constitutes a "favor"?
- e. In s. NR 47.907 (2), the word "jurisdiction" should be replaced by the word "jurisdictions."
- f. In s. NR 47.908 (2), the word "complete" should be replaced by the word "completed" and the phrase "by the grantee" should be inserted after the word "requested."

REPORT TO LEGISLATURE

NR 47, subch. VIII
Forest fire protection grant program

Board Order No. FR-5-98 Clearinghouse Rule No. 97-153

Statement of Need

The proposed rule implements the Forest Fire Protection Grant Program which was authorized by 1997 Wis. Act 27. The proposed rule provides the objectives and administrative mechanisms to establish and operate this new program, which is a cooperative effort with local fire departments to prevent and suppress forest fires in Wisconsin. Rural volunteer fire departments play a key role in assisting the Department in the control of forest fires. The effectiveness of most fire departments on these fires may be improved through better coordination, training and equipment. With a modest level of financial assistance, these departments can make major improvements in their capacity to effectively suppress forest fires. In 1993 the Department surveyed almost 850 rural fire departments for their training and equipment needs if they were requested to perform initial attack duties on forest fires. More than 60% of the department responded to the survey and indicated that there were substantial needs, particularly for all-wheel drive vehicles and training on forest fire suppression.

The rule describes and defines who is eligible for grant funding, the process for applying for a grant, the criteria used to rate and select applications to be funded and the process for payment and completion of each grant.

Modifications as a Result of Public Hearing

Section NR 47.904, as it was originally proposed, established a maximum grant of \$10,000 for an individual fire department and a maximum of \$50,000 for a fire suppression organization. The maximum for the fire suppression organization was reduced to \$25,000 to make the allocation of grant funding more equitable between the two types of organizations and allow for more funds to go to fire departments.

Section NR 47.907(2), which establishes the priority criteria to be used to select fire departments to receive grants, was modified to limit priority to those departments that do not charge the department for their "initial attack fire suppression" response. Increasing the "initial attack fire suppression" is the principal priority for this program and this objective is better reflected in the priority criteria.

Section NR 47.905, which pertains to eligible projects and costs, appeared to allow a fire suppression organization, which is an association of fire departments, to use grant funds to obtain fire fighting vehicles. As associations do not directly respond to forest fires, allowing fire fighting vehicles to be purchased by these grantees did not seem appropriate. Vehicles will be limited to fire departments who will use them to respond to forest fires.

Section NR 903 was modified to clarify that the maximum dollar amounts referred to grant funds only.

Appearances at the Public Hearing and Their Position

January 12, 1998 - Black River Falls

In support:

Jeff Amo, Chief, Black River Falls Fire Department, P.O. Box 435, Black River Falls, WI 54615

In opposition - none
As interest may appear - none

January 13, 1998 - Rhinelander - no appearances

Response to Legislative Council Rules Clearinghouse Report

The recommendations were accepted.

Final Regulatory Flexibility Analysis

The rule does not directly impact small business and there are no regulatory, compliance or reporting requirements for small businesses.

٠.					1997 Session
	FISCAL ESTIMATE	☐ ORIGINAL ☐ UPDATED ☐ CORRECTED ☐ SUPPLEMENTAL		NIT A I	LRB or Bill No./Adm. Rule No. NR 47
•	(C)A-2048 N(R10/94)		LJ SUPPLEME	NIAL	Amendment No. if Applicable
	Subject Forest Fire Protection Grant Program Rule				
	Fiscal Effect				
	State: No State Fiscal Effect				
	Check columns below only if bill makes or affects a sum sufficient appropriation	a direct appropriation n.		☐ Increase Co	sts - May be possible to Absorb
	☐ Increase Existing Appropriation ☐	Increase Existing Rev	/enues	, igui	loy a boddger LJ Yes LJ No
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10	SUMMARY OF BILL - This rule implements the Act 27, Stats., and recently signed into law by the extablish and operate this new program. Funder cooperative effort with local fire departments to	d at a level of \$505 000	sed rule provides	objectives and adm	under s. 917, 1997 Wisconsin inistrative mechanisms to
-	cooperative effort with local fire departments to	prevent and suppress for	est fires in Wiscon	ısin.	s, arose grants support a
	.nts are available to fire departments who enti- associations of fire departments who's primary p program expires at the end of the biennium.	er into a forest fire suppr urpose and activities sup	ession agreement port forest fire su	with the Departmer ppression. The gra	nt and to county or regional nt funding authorization for this
Ţ	SISCAL IMPACT - None. Funds provided under	er the budget bill - 1997	Wisconsin Act 27		
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Lo	ng-Range Fiscal Implications				
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