



Legislative Fiscal Bureau

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TO: Senator Brian Burke
Room LL1, 119 Martin Luther King Blvd.

FROM: Bob Lang, Director

SUBJECT: Senate Substitute Amendment 1 to Senate Bill 57: Hazardous Materials
Transportation Registration Fees

Senate Bill 57 was introduced on February 5, 1997, and referred to the Senate Committee on Labor, Transportation and Financial Institutions. On February 25, 1997, that Committee recommended passage of Senate Substitute Amendment 1 on a vote of 6-1.

BACKGROUND

Under current law, any person who is required to file hazardous materials transportation registration statements with the U.S. Department of Transportation and who transports, or offers for transportation, hazardous material in Wisconsin, is required to register with the state Department of Transportation (DOT) and pay a registration fee. Wisconsin 1995 Act 113 required that the fees be based upon an administrative rule, promulgated by the Emergency Response Board (ERB), that was in effect on June 30, 1995. The registration fees under this rule are \$400 for each of five specifically defined activity categories that a person engages in, regardless of the number of times that activity was performed during the prior 12-month period of July 1 to June 30. The maximum fee is \$2,000.

In October, 1996, the Fourth District Court of Appeals, in reversing a Dane County Circuit Court decision, ruled that this flat fee structure violated the commerce clause of the United States Constitution. The court found that a flat fee imposes an unfair burden on the interstate transport of hazardous materials because, under such a system, it is the act of crossing state lines, and not the actual distance traveled, which largely determines the fees paid. The Appeals Court remanded the case back to Circuit Court for a determination of what the state must pay to hazardous materials transporters. DOT anticipates that the state will be required to pay back \$2.973 million, which is the full amount paid by registrants under the flat fee.

The registration fees were originally created as user charges that directly funded costs related to hazardous materials emergency response teams. However, subsequent legislation removed this direct linkage and instead specified that the fees were to be deposited in the transportation fund. The appropriations to the Department of Military Affairs (DMA) that were previously funded from the fees were converted to appropriations from the transportation fund (DOT's appropriation for administering the collection of the fees was not modified, but instead remained funded from existing balances). Under this arrangement, the DMA appropriations for the hazardous materials response teams are fully funded, regardless of the level of fees deposited in the transportation fund. Appropriations from the transportation fund for this purpose have been considerably higher than the amount collected in fees.

The DMA appropriations fund two types of emergency response teams. The majority of the costs are related to contracts with the regional emergency response ("level A") teams, which respond to the most serious hazardous materials incidents. There are currently eight "A" teams in the state. The second type of teams are county emergency response ("level B") teams, which respond to less serious incidents. The "B" teams receive state grants to pay a portion of their costs for computers and equipment. In addition, there are transportation fund appropriations for DMA's administration of this program and for emergency response training.

The 1997-99 biennial budget would provide a total of \$2,275,100 annually to DMA for this program (\$1,400,000 for "A" teams, \$720,000 for "B" teams and \$147,500 for DMA administration and training). In addition, the budget would request that the Legislative Audit Bureau perform a program audit of the "A" teams to determine whether this money is being spent in a cost-effective manner.

SUMMARY OF SUBSTITUTE AMENDMENT

Senate Substitute Amendment 1 would eliminate the requirement that the registration fees be based upon the expired ERB rules. The bill would direct DOT to promulgate rules to establish fees that would be consistent with the procedures, limitations and recommendations put forth last year by a working group composed of state and local government officials and coordinated by the U.S. Secretary of Transportation. A pilot registration program developed by the working group, which uses a base state registration plan similar to the International Registration Plan currently used for motor carriers, is now being used by Minnesota, Nevada, Ohio and West Virginia. Pending the regulatory review process, the federal government may require all states that collect hazardous materials registration fees to use a version of this base state plan. The bill would allow, but not require, DOT to promulgate rules that would include Wisconsin in a base state registration system.

In addition, the bill would require that the fees collected provide revenue that reasonably approximates the amounts appropriated from the transportation fund for hazardous materials programs and for collecting and administering the fees.

The bill would also change DOT's authority to determine who must be registered. Current law requires the Department to register persons who are required to file hazardous materials transportation statements with the federal Department of Transportation. The bill would change this to require registration of persons who may be required to file such statements.

Finally, the bill would convert DOT's PR appropriation for the administration and collection of the fees to a SEG appropriation. Accordingly, the 2.0 PR positions related to administration and collection would be converted to SEG positions. The unencumbered balance for administration (currently estimated at \$337,000) would be transferred to the new SEG appropriation for administration on the effective date of the bill.

FISCAL EFFECT

The bill would require that the fee structure implemented by DOT must raise revenues that approximate the transportation fund appropriations to support the operations of emergency response teams and related administrative functions. In 1996-97, the appropriations to the Department of Military Affairs from the transportation fund plus the amount budgeted for administration totalled \$2,380,900. DOT estimates that the fee structure that was ruled unconstitutional raised \$700,000 in revenue annually. Consequently, a new fee structure would be required to raise approximately \$1.7 million more than the previous fee structure, which is a 240% increase.

Since DOT believes that a base state registration system would improve compliance, the fees may not need to be raised by that amount to generate the required level of revenue. Furthermore, federal regulations on base state registration, which are still pending, may allow or require registration of transporters who are not currently required to register. If these carriers are included as well, the required fee increase would not need to be as great. DOT indicates, however, that even with improved compliance and a possibly expanded registration base, most of the increased revenue would need to come from fee increases.

DOT could begin promulgating rules establishing a registration fee system upon passage of the bill. However, fee collections could not begin for several months. DOT indicates that it would likely take more than six months to complete the rule-making process, followed by a few more months to develop a billing process and the necessary registration databases, work out enforcement issues and notify carriers of the new requirements.

BL/JWD/sas

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MO# 1 Overall
Passage
w/ emerg. clause

2 BURKE	(Y)	N	A
DECKER	(Y)	N	A
GEORGE	(Y)	N	A
JAUCH	(Y)	N	A
WINEKE	(Y)	N	A
SHIBILSKI	(Y)	N	A
COWLES	(Y)	N	A
PANZER	(Y)	N	A
1 JENSEN	(Y)	N	A
OURADA	(Y)	N	A
HARSDORF	(Y)	N	A
ALBERS	(Y)	N	A
PORTER	(Y)	N	A
KAUFERT	(Y)	N	A
LINTON	(Y)	N	A
COGGS	(Y)	N	A

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