

2001 DRAFTING REQUEST

Bill

Received: **11/16/2000**

Received By: **traderc**

Wanted: **As time permits**

Identical to LRB:

For: **Marc Duff (608) 266-1190**

By/Representing: **Tim Kalies**

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

Drafter: **traderc**

May Contact:

Addl. Drafters:

Subject: **Environment - miscellaneous**

Extra Copies:

Submit via email: **NO**

Requester's email:

Pre Topic:

No specific pre topic given

Topic:

Environmental improvement program

Instructions:

1999 AB 356 as passed by Assembly

Drafting History:

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Typed</u>	<u>Proofed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
/?	traderc 12/11/2000	wjackson 12/14/2000		_____			S&L
/1			pgreensl 12/18/2000	_____	lrb_docadmin 12/18/2000	lrb_docadmin 04/20/2001	
				_____	lrb_docadmin 02/21/2001		

FE Sent For: 04/20/2001.

G (1/1")

<END>

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/1			pgreensl 12/18/2000		lrb_docadmin 12/18/2000		
					lrb_docadmin (wanted another copy) 02/21/2001 (w/ submittal form)		

Asm

Requested By Tim Kalies

<END>

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04-20-01 ("1")

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May Contact:

Alt. Drafters:

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Extra Copies: RPN

Pre Topic:

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1?	traderc	1 wlj 12/14	12/15 PS	12/18 pg/jk			

FE Sent For:

<END>

Tradewell, Becky

From: Kalies, Tim
Sent: Thursday, November 16, 2000 9:45 AM
To: Tradewell, Becky
Subject: Request for Redraft: 1999 AB 356

Hi Becky, Marc has asked me to request a redraft of 1999 AB 356 (environmental audit legislation). The redraft should reflect the version that passed the Assembly in March, which was s0456/1, and with Assembly Amendments 1-3 added to it.

Please call Rep. Duff or myself if you have any questions. Thank you very much.

TIMOTHY J. KALIES
Legislative Assistant
State Representative Marc Duff
Republican, 98th Assembly District
Phone (608) 266-1190 Fax (608) 282-3698
email: tim.kalies@legis.state.wi.us

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9/997
f80

11/16/2000

**ASSEMBLY AMENDMENT 3,
TO ASSEMBLY SUBSTITUTE AMENDMENT 1,
TO 1999 ASSEMBLY BILL 356**

March 23, 2000 - Offered by Representative BLACK.

1 At the locations indicated, amend the substitute amendment as follows:

2 ✓1. Page 9, line 12: delete "pars. (b) and" and substitute "par."

3 ✓2. Page 9, line 15: delete lines 15 to 18.

4 (END)

~~ASSEMBLY SUBSTITUTE AMENDMENT 1,~~
2001
* ~~TO 1999 ASSEMBLY BILL 356~~

~~March 21, 2000 - Offered by COMMITTEE ON ENVIRONMENT.~~

REGEN

1 AN ACT to create 299.85 of the statutes; relating to: an environmental
2 improvement program, environmental performance evaluations,
3 environmental management programs, providing immunity^{from civil penalties} for certain
4 violations of environmental requirements, access to certain information, and
5 providing a penalty.

analysis insert →

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

6 SECTION 1. 299.85[✓] of the statutes is created to read:

7 299.85 Environmental improvement program. (1) DEFINITIONS. In this
8 section:

9 (a) "Environmental management system" means an organized set of
10 procedures implemented by the owner or operator of a facility to evaluate the
11 environmental performance of the facility and to achieve measurable or noticeable

1 improvements in that environmental performance through planning and changes in
2 the facility's operations.

3 (am) "Environmental performance" means the effects of a facility on air, water,
4 land, natural resources, and human health.

5 (b) "Environmental performance evaluation" means a systematic, documented,
6 and objective review, conducted by or on behalf of the owner or operator of a facility,
7 of the environmental performance of the facility, including an evaluation of
8 compliance with one or more environmental requirements.

9 (c) "Environmental requirement" means a requirement in any of the following:

10 1. Chapters 160 or 280 to 299, a rule promulgated under one of those chapters,
11 or a permit, license, other approval or order issued by the department under one of
12 those chapters.

13 2. An ordinance or other legally binding requirement of a local governmental
14 unit enacted under authority granted by a state law relating to environmental
15 protection.

16 (d) "Facility" means all buildings, equipment, and structures located on a single
17 parcel or on adjacent parcels that are owned or operated by the same person.

18 (e) "Local governmental unit" means a city, village, town, county, town sanitary
19 district, or metropolitan sewerage district.

20 (f) "Regulated entity" means a public or private entity that is subject to
21 environmental requirements.

22 (2) REQUIREMENTS FOR PARTICIPATION. A regulated entity qualifies for
23 participation in the environmental improvement program with respect to a facility
24 owned or operated by the regulated entity if all of the following apply:

1 ^b (b) If the regulated entity conducts an environmental performance evaluation,
 2 the regulated entity notified the department in writing, no ^{fewer} less than 30 days before
 3 beginning an environmental performance evaluation, of the date on which the
 4 environmental performance evaluation would begin, the site or facility or the
 5 operations or practices at a site or facility to be reviewed, and the general scope of the
 6 environmental performance evaluation.

7 (d) At the time of submitting a report under sub. (3), ^{not, within 2 years,} more than 2 years have
 8 elapsed since the department of justice has ^{and} filed a suit to enforce an environmental
 9 requirement, ^{and} or the department or a local governmental unit has ^{not, within 2 years,} issued a citation
 10 to enforce an environmental requirement, because of a violation of an environmental
 11 requirement involving the facility.

12 ^a (a) ^{move} The regulated entity conducts an environmental performance evaluation of
 13 the facility or submits findings from the facility's environmental management
 14 system.

15 (e) The regulated entity submits a report as required under sub. (3).[✓]

16 ^c (c) If the regulated entity conducts an environmental performance evaluation,
 17 the environmental performance evaluation complies with sub. (4).[✓]

18 ^d (d) ^{move} If the regulated entity submits findings from the facility's environmental
 19 management system, the environmental management system complies with sub. (5).[✓]

20 (3) REPORT. ^{move} In order ^{to} participate in the environmental improvement program
 21 with respect to a facility, a regulated entity that owns or operates the facility shall
 22 submit a report to the department within 45 days after the date of the final written
 23 report of findings of an environmental performance evaluation of the facility or
 24 within 45 days after the date of findings from the facility's environmental

1 management system if the findings identify a violation of an environmental
2 requirement. The report shall include all of the following:

3 (a) 1. If the regulated entity conducted an environmental performance
4 evaluation, a description of the environmental performance evaluation, including
5 who conducted the environmental performance evaluation, when it was completed,
6 what activities and operations were examined, and what was revealed by the
7 environmental performance evaluation.

8 2. If the regulated entity submits findings from an environmental management
9 system, a description of the environmental management system, of the activities and
10 operations covered by the environmental management system, and of who made the
11 findings and when the findings were made.

12 (b) A description of all violations of environmental requirements revealed by
13 the environmental performance evaluation or the environmental management
14 system and of the length of time that the violations may have continued.

15 (c) A description of actions taken or proposed to be taken to correct the
16 violations of environmental requirements.

17 (d) A commitment to correct the violations of environmental requirements
18 within 90 days of submitting the report or ^{according to} within a compliance schedule approved
19 by the department.

20 (e) If the regulated entity proposes to take more than 90 days to correct the
21 violations of environmental requirements, a proposed compliance schedule that
22 contains the shortest reasonable periods for correcting the violations of
23 environmental requirements, a statement that justifies the proposed compliance
24 schedule, and a description of measures that the regulated entity will take to

1 minimize the effects of the violations of environmental requirements during the
2 period of the compliance schedule.

3 (em) If the regulated entity proposes to take more than 90 days to correct the
4 violations of environmental requirements, ^{the} proposed stipulated penalties to be
5 imposed if the regulated entity violates the compliance schedule under par. (e).[✓]

6 (f) A description of the measures that the regulated entity has taken or will take
7 to prevent future violations of environmental requirements and a timetable for
8 taking the measures that it has not yet taken.

*insert
a1997* ✓
9 (4) ENVIRONMENTAL PERFORMANCE EVALUATION. If a regulated entity conducts an
10 environmental performance evaluation under sub. (2) (a), ^{a✓} the regulated entity does
11 not qualify for participation in the environmental improvement program unless the
12 final written report of findings of the environmental performance evaluation is
13 labeled "environmental performance evaluation report" ^g is dated ^g and, if the
14 environmental performance evaluation identifies violations of environmental
15 requirements, includes a plan for corrective action. A regulated entity may use a
16 form developed by the regulated entity, by a consultant, ^g or by the department for the
17 final written report of findings of the environmental performance evaluation.

18 (5) ENVIRONMENTAL MANAGEMENT SYSTEM. If a regulated entity submits findings
19 from the facility's environmental management system under sub. (2) (a), ^{a✓} the
20 regulated entity does not qualify for participation in the environmental
21 improvement program unless the regulated entity's efforts to prevent, detect, ^g and
22 correct violations of environmental requirements are appropriate to the size of the
23 regulated entity and to the nature of its business and are consistent with any criteria
24 used by the federal environmental protection agency to define due diligence in
25 federal audit policies or regulations.

1 (6) COMPLIANCE SCHEDULES. (a) If the department receives a report under sub.
2 (3) that contains a proposed compliance schedule under sub. (3) (e), the department
3 shall review the proposed compliance schedule. The department may approve the
4 compliance schedule as submitted or propose a different compliance schedule. If the
5 regulated entity does not agree to implement a compliance schedule proposed by the
6 department, the department shall schedule a meeting with the regulated entity to
7 attempt to reach an agreement on a compliance schedule. If the department and the
8 regulated entity do not reach an agreement on a compliance schedule, the
9 department may issue a compliance schedule. A compliance schedule under this
10 subsection is subject to review under ch. 227. ✓

11 (b) The department may not approve or issue a compliance schedule that
12 extends longer than 12 months beyond the date of approval of the compliance
13 schedule. The department shall consider the following factors in determining
14 whether to approve a compliance schedule:

- 15 1. The environmental and public health consequences of the violations.
- 16 2. The time needed to implement a change in raw materials or method of
17 production if that change is an available alternative to other methods of correcting
18 the violations.
- 19 3. The time needed to purchase any equipment or supplies that are needed to
20 correct the violations.

21 (6m) STIPULATED PENALTIES. (a) If the department receives proposed stipulated
22 penalties under sub. (3) (em), the department shall review the proposed stipulated
23 penalties. The department may approve the stipulated penalties as submitted or
24 propose different stipulated penalties. If the regulated entity does not agree to
25 stipulated penalties proposed by the department, the department shall schedule a

meeting with the regulated entity to attempt to reach an agreement on stipulated penalties. If no agreement is reached, there are no stipulated penalties for violations of the compliance schedule.

Insert
1989-2

(7) DEFERRED CIVIL ENFORCEMENT. (a) 1. This state may not ^{begin} commence a civil action to collect forfeitures for violations of environmental requirements ^{at a facility} that are disclosed ^{in the report} by a regulated entity that qualifies under sub. (2) for participation in the environmental improvement program ~~in a report that meets the requirements~~ of sub. (3) for at least 90 days after the department receives ^a ~~the~~ report ^{that meets the requirements in sub. (3)}.

2. If the regulated entity corrects violations that are disclosed by a regulated entity that qualifies under sub. (2) for participation in the environmental improvement program in a report that meets the requirements of sub. (3) within 90 days after the department receives a report that meets the requirements of sub. (3), this state may not ^{bring} commence a civil action to collect forfeitures for the violations.

3. This state may not ^{begin} commence a civil action to collect forfeitures for violations covered by a compliance schedule that is approved under sub. (6) during the period of the compliance schedule if the regulated entity is not violating the compliance schedule. If the regulated entity violates the compliance schedule, the department may collect ^{any} the stipulated penalties ^{insert 1989-3} ~~from~~ there are no stipulated penalties, this state may ^{begin a} commence civil action to collect forfeitures for the violations.

4. If the department approves a compliance schedule under sub. (6) and the regulated entity corrects the violations according to the compliance schedule, this state may not ^{bring} commence a civil action to collect forfeitures for the violations.

(b) Notwithstanding par. (a), this state may at any time ^{begin} commence a civil action to collect forfeitures for violations of environmental requirements if any of the following apply:

1 1. The violations present an imminent threat to public health or the
2 environment or may cause serious harm to public health or the environment.

3 2. The department discovers the violations before submission of a report under
4 sub. (3).[✓]

5 3. The violations resulted in a substantial economic benefit that gives the
6 regulated entity a clear advantage over its business competitors.

7 4. The violations are identified through monitoring or sampling required by
8 permit, statute, rule, regulation, judicial or administrative order,[✓] or consent
9 agreement.

10 (8) CONSIDERATION OF ACTIONS BY REGULATED ENTITY. If the department receives
11 a report that complies with sub. (3)[✓] from a regulated entity that qualifies under sub.
12 (2)[✓] for participation in the environmental improvement program,[✓] and the report
13 discloses a potential criminal violation of an environmental requirement, the
14 department and the department of justice shall take into account the diligent actions
15 ^{and reasonable care taken by,} of the regulated entity to comply with environmental requirements in deciding
16 whether to pursue a criminal enforcement action and what penalty should be sought.
17 In determining whether a regulated entity acted with due diligence and reasonable
18 care, the department and the department of justice shall consider whether the
19 regulated entity has demonstrated any of the following:

20 (a) ~~by~~ That the regulated entity took corrective action that was timely when the
21 violation was discovered.

22 (b) ~~by~~ That the regulated entity exercised reasonable care in attempting to prevent
23 the violation and to ensure compliance with environmental requirements.

24 (c) ~~by~~ That the regulated entity had a documented history of good faith efforts to
25 comply with environmental requirements before implementing its environmental

1 management system or before beginning to conduct environmental performance
2 evaluations.

3 (d) ~~is~~ That the regulated entity has promptly made appropriate efforts to achieve
4 compliance with environmental requirements since implementing its
5 environmental management system or since beginning to conduct environmental
6 performance evaluations and that action was taken with due diligence.

7 (e) ~~is~~ That the regulated entity exercised reasonable care in identifying violations
8 in a timely manner.

9 (f) ~~is~~ That the regulated entity willingly cooperated in any investigation that was
10 conducted by this state or a local governmental unit to determine the extent and
11 cause of the violation.

12 (9) ACCESS TO RECORDS. (a) Except as provided in part ~~of sub. (2)~~ (c),[✓]
13 department shall make any record, report^s or other information obtained in the
14 administration of this section available to the public.

15 ~~(b) The department may not reveal to any person that the department has
16 received a notice under sub. (2) (a) or the contents of a notice received under sub. (2)
17 (a), except that the department may provide reports about notices received under
18 sub. (2) (a) as long as regulated entities providing the notices cannot be identified.~~

19 (c) The department shall keep confidential any part of a record, report^s or other
20 information obtained in the administration of this section, other than emission data
21 or discharge data, upon a showing satisfactory to the department by any person that
22 the part of a record, report^s or other information would, if made public, divulge a
23 method or process that is entitled to protection as a trade secret, as defined in s.
24 134.90 (1) (c),[✓] of that person.

1 (d) If the department refuses to release information on the grounds that it is
2 confidential under par. (c) and a person challenges that refusal, the department shall
3 inform the ~~applicant or participant~~^{affected regulated entity} of that challenge. Unless the ~~applicant or~~
4 ~~participant~~^{regulated entity} authorizes the department to release the information, the ~~applicant or~~
5 ~~participant~~^{regulated entity} shall pay the reasonable costs incurred by this state to defend the refusal
6 to release the information.

7 (e) Paragraph (c) does not prevent the disclosure of any information to a
8 representative of the department for the purpose of administering this section or to
9 an officer, employ~~e~~^s or authorized representative of the federal government for the
10 purpose of administering federal law. When the department provides information
11 that is confidential under par. (c) to the federal government, the department shall
12 also provide a copy of the application for confidential status.

13 (10) PENALTY. (a) Any person who knowingly makes a false statement in a
14 report submitted under sub. (3) shall be fined not less than \$10 nor more than
15 \$10,000 or imprisoned for not more than 6 months or both.

16 (b) For purposes of this subsection, an act is committed knowingly if it is done
17 voluntarily and is not the result of negligence, mistake, accident~~y~~ or circumstances
18 that are beyond the control of the person.

19 (END)

**ASSEMBLY AMENDMENT 2,
TO ASSEMBLY SUBSTITUTE AMENDMENT 1,
TO 1999 ASSEMBLY BILL 356**

Insert a1997

March 23, 2000 - Offered by Representative DUFF.

1 At the locations indicated, amend the substitute amendment as follows:

2 1. Page 5, line 8: after that line insert:

3 ~~“(3m)~~ PUBLIC NOTICE; COMMENT PERIOD. (a) The department shall provide at
4 least 30 days for public comment on a compliance schedule and stipulated penalties
5 proposed in a report under sub. (3).[✓] The department may not approve or issue a
6 compliance schedule under sub. (6)[✓] or approve stipulated penalties under sub. (6m)[✓]
7 until after the end of the comment period.

8 (b) Before the start of the public comment period under par. (a),[✓] the department
9 shall provide public notice[✓] of the proposed compliance schedule and stipulated
10 penalties that does[✓] all of the following:

11 1. Identifies the regulated entity that submitted the report under sub. (3),[✓] the
12 facility at which the violation occurred[✓] and the nature of the violation.

↓

1 2. Describes the proposed compliance schedule and the proposed stipulated
2 penalties.

3 3. Identifies an employe^e_λ of the department and an employe^e_λ of the regulated
4 entity who may be contacted for additional information about the proposed
5 compliance schedule and the proposed stipulated penalties.

6 4. States that comments concerning the proposed compliance schedule and the
7 proposed stipulated penalties may be submitted to the department during the
8 comment period and states the last date of the comment period. ~~///~~

9

(END) of insert a/997

**ASSEMBLY AMENDMENT 1,
TO ASSEMBLY SUBSTITUTE AMENDMENT 1,
TO 1999 ASSEMBLY BILL 356**

March 23, 2000 - Offered by Representative DUFF.

1 At the locations indicated, amend the substitute amendment as follows:

2 [✓]1. Page 6, line 21: before "If" insert "(a)".

3 2. Page 7, line 3: after that line insert:

4 "(b) Stipulated penalties approved under par. (a)[✓] shall specify a period, not
5 longer than 6 months beyond the end of the compliance schedule, during which the
6 stipulated penalties will apply."

7 3. Page 7, line 18: delete "or, if" and substitute "during the period in which the
8 stipulated penalties apply. This state may ^{begin} ~~commence~~ civil action to collect forfeitures
9 for violations of environmental requirements that are not corrected by the end of the
10 period in which the stipulated penalties apply. If the regulated entity violates the
11 compliance schedule and".

12

(END)

*Insert
a1989-2*

*Insert
a1989-3*

No If

2001-2002 DRAFTING INSERT
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-1045/lins
RCT:.....

Analysis insert

anal: line →

This bill creates the environmental improvement program, administered by the department of natural resources (DNR), under which a participant may be able to avoid forfeitures (civil monetary penalties) for an environmental violation that the participant reports to DNR.

A public or private entity that is subject to environmental laws (regulated entity) may participate in the environmental improvement program if the regulated entity satisfies several requirements. To participate, a regulated entity must conduct an environmental performance evaluation that satisfies requirements specified in the bill or have an environmental management system that satisfies requirements specified in the bill. An environmental performance evaluation is a systematic and objective review of the effects of a facility on the environment, including an evaluation of compliance with one or more environmental laws. An environmental management system is a set of procedures designed to evaluate the effects of a facility on the environment and to achieve improvements in those effects.

To participate in the program, the regulated entity must submit a report to DNR describing the results of the environmental performance evaluation or describing findings from the environmental management system. At the time of submitting the report, more than two years must have elapsed since the regulated entity was prosecuted or issued a citation for violating an environmental law. The report must describe all violations of environmental laws revealed by the environmental performance evaluation or environmental management system and the actions taken or proposed to be taken to correct the violations. If the regulated entity proposes to take more than 90 days to correct the violations, the regulated entity must submit a proposed compliance schedule and proposed penalties that the regulated entity would agree to accept (stipulated penalties) if it violates the compliance schedule.

The bill requires DNR to provide public notice and a period for public comment on any compliance schedule and stipulated penalties proposed by a regulated entity. After that period, DNR may approve the compliance schedule as submitted or propose a different compliance schedule. If the parties cannot agree on a compliance schedule, DNR may impose a compliance schedule, which may be appealed by the regulated entity. DNR also reviews proposed stipulated penalties. If the parties cannot agree on stipulated penalties, there are no stipulated penalties.

The bill generally prohibits this state from beginning an action to collect a forfeiture for a violation of an environmental law that is disclosed by a regulated entity that satisfies the requirements for participation in the environmental improvement program for at least 90 days after DNR receives the report of the violation. Similarly, the bill generally prohibits the state from beginning an action to collect a forfeiture while a regulated entity is complying with a compliance schedule. If the regulated entity corrects the violation within the 90-day period or within the time provided in the compliance schedule, the bill generally prohibits the state from bringing an action to collect forfeitures for the violation. If a regulated entity violates a compliance schedule and there are stipulated penalties, the

regulated entity must pay the stipulated penalties. The bill authorizes this state to begin an action to collect forfeitures from a regulated entity that satisfies the requirements for participation in the environmental improvement program at any time under several circumstances, including cases in which a violation presents an imminent threat, or may cause serious harm, to public health or the environment or in which DNR discovers the violation before the regulated entity reports the violation.

The bill does not prevent the state from prosecuting a criminal violation by a regulated entity that qualifies for participation in the environmental improvement program, but the bill requires DNR and the department of justice to take into account the efforts of the regulated entity to comply with environmental laws in deciding whether to begin a criminal enforcement action and what penalty should be sought.

For further information see the *state and local* fiscal estimate, which will be printed as an appendix to this bill.

anal:line →

Memo

To: Rep. Duff

(The Bill's Requestor)

Attached is a fiscal estimate prepared for your 2001 draft that has not yet been introduced.

LRB Number: LRB - 1045

Version: "/ 1 "

Entered In Computer And Copy Sent To Requestor Via E-Mail: 05 / 16 / 2001

Fiscal Estimate Prepared By: (agency abbr.) DNR

If you have questions about the attached fiscal estimate, you may contact the agency/ individual who prepared the fiscal estimate. If you disagree with the enclosed fiscal estimate, please contact the LRB drafter of your proposal to discuss your options under the fiscal estimate procedure.

* * * * *

To: LRB – Legal Section PA's

Subject: Fiscal Estimate Received For A Un-Introduced Draft

- If this is **re-drafted** to a new version please attach this early fiscal estimate to the back of the draft's file between the old version and the new version.
- If this draft gets **introduced** ... and the version of the attached fiscal estimate is correct ... please write the drafts intro. number below and give this fiscal estimate to Mike (or Lynn) to process.

THIS DRAFT WAS INTRODUCED AS: 2001 _____

- If this draft gets **introduced** ... and the version of the attached fiscal estimate is for a previous version ... please attach this early fiscal estimate to the back of the draft's file between the old version and the new version. Have Mike (or Lynn) get the ball rolling on getting a fiscal estimate prepared for the introduced version.

Barman, Mike

From: Barman, Mike
Sent: Wednesday, May 16, 2001 10:04 AM
To: Rep.Duff
Subject: LRB-1045/1 (FE by DNR - Attached - For Your Review)



FE-Duff.pdf

FE-Duff

Memo

To: Rep. Duff

(The Bill's Requestor)

Attached is a fiscal estimate prepared for your 2001 draft that has not yet been introduced.

LRB Number: LRB - 1045

Version: " / 1 "

Entered In Computer And Copy Sent To Requestor Via E-Mail: 07 / 03 / 2001

Fiscal Estimate Prepared By: (agency abbr.) DOJ

If you have questions about the attached fiscal estimate, you may contact the agency/individual who prepared the fiscal estimate. If you disagree with the enclosed fiscal estimate, please contact the LRB drafter of your proposal to discuss your options under the fiscal estimate procedure.

* * * * *

To: LRB – Legal Section PA's

Subject: Fiscal Estimate Received For A Un-Introduced Draft

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Barman, Mike

From: Barman, Mike
Sent: Tuesday, July 03, 2001 8:50 AM
To: Rep.Duff
Subject: LRB-1045/1 (FE by DOJ ... attached for your review)



FE_Duff.pdf

FE_Duff