

2003 DRAFTING REQUEST

Senate Amendment (SA-SB252)

Received: 09/30/2003

Received By: rnelson2

Wanted: Soon

Identical to LRB:

For: Legislative Fiscal Bureau

By/Representing: Rebecca H

This file may be shown to any legislator: NO

Drafter: rnelson2

May Contact:

Addl. Drafters:

Subject: Nat. Res. - LWSR stewardship

Extra Copies:

Submit via email: NO

Pre Topic:

No specific pre topic given

Topic:

Joint finance passive review of stewardship spending

Instructions:

Make in addition to building comm. approval

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>
/1	rnelson2 09/30/2003	wjackson 09/30/2003	rschluet 09/30/2003	_____	lemery 09/30/2003	lemery 09/30/2003	
/2	rnelson2 10/01/2003	wjackson 10/01/2003	rschluet 10/01/2003	_____	lnorthro 10/01/2003	lnorthro 10/01/2003	

FE Sent For:

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10-1-03

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FE Sent For:

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WISCONSIN LEGISLATIVE COUNCIL

*Terry C. Anderson, Director
Laura D. Rose, Deputy Director*

TO: REPRESENTATIVE JOHN GARD

FROM: Mark C. Patronsky, Senior Staff Attorney *mcp*

RE: Joint Committee on Finance Review of Certain Projects Under the Stewardship Program

DATE: June 3, 2002

This memorandum is in response to your request for an analysis of the applicability of current s. 23.0917 (6), Stats., which relates to Joint Committee on Finance review of certain projects under the Stewardship Program.

Section 23.0917, Stats., comprises the Warren Knowles-Gaylord Nelson Stewardship 2000 Program. This is the new stewardship program that was created in the 1999 Budget Act. This statute includes a provision that requires review by the Joint Committee on Finance, as follows:

23.0917 (6) REVIEW BY JOINT COMMITTEE ON FINANCE. (a) The department may not obligate from the appropriation under s. 20.866 (2) (ta) [Stewardship Program bonding authority] for a given project or activity any moneys unless it first notifies the joint committee on finance in writing of the proposal. If the cochairpersons of the committee do not notify the department within 14 working days after the date of the department's notification that the committee has scheduled a meeting to review the proposal, the department may obligate the moneys. If, within 14 working days after the date of the notification by the department, the cochairpersons of the committee notify the department that the committee has scheduled a meeting to review the proposal, the department may obligate the moneys only upon approval of the committee.

(b) Paragraph (a) applies only to an amount for a project or activity that exceeds \$250,000, except as provided in par. (c).

(c) Paragraph (a) applies to any land acquisition under sub. (5m).

This statute is direct and clear. The Department of Natural Resources (DNR) "may not obligate" funds from the bonding authorization from the Stewardship Program "for a given project or activity" if

- 2 -

the amount for the project or activity exceeds \$250,000 unless it "first notifies the Joint Committee on Finance in writing of the proposal" and the Joint Committee on Finance has an opportunity to review the proposal. I cannot find any vagueness or ambiguity in the intent or effect of this statute. Further, the phrase "project or activity" is sufficiently broad to encompass anything for which the expenditure of bonding revenue from the Stewardship Program could be anticipated.

However, you have discovered that the DNR has not submitted for Joint Committee on Finance review certain property development projects that require review under the directive of this statute. The explanation provided by the DNR is that statutes applicable to Building Commission decision-making under ss. 13.48 (7) and 13.488 (4), Stats., prevail, and render the clear mandate of s. 23.0917 (6), Stats., a nullity. I have reviewed the Building Commission statutes carefully and cannot find any argument to support the DNR position. Sections 13.48 and 13.488, Stats., describe the authority of the Building Commission to supervise the state building program. It is clear that certain projects or activities that require review under s. 29.0917 (6), Stats., will also require review by the Building Commission. Neither statute contains express provisions that supersede the other statute. Review by both the Building Commission and the Joint Committee on Finance may occur, but nothing in the statutes indicates that this should not occur. You call attention specifically to s. 13.488 (4), Stats., which provides, with respect to the powers and duties of the Building Commission, as follows:

13.488 (4) All laws, conflicting with this section are, insofar as they conflict with this section and no further, superseded by this section.

Section 29.0917, Stats., contains nothing that conflicts with Building Commission powers and duties, so this statute is inapplicable to Joint Committee on Finance review of stewardship fund projects.

The prior stewardship program contains an identical provision regarding Joint Committee on Finance review. [s. 23.0915 (4), Stats.] This provision was created by 1995 Wisconsin Act 27. The legislative history of this provision is especially significant in the understanding of the current statute. The first stewardship program had already existed for approximately five years when this provision was adopted. When it was adopted, the provisions that you noted in ss. 13.48 and 13.488, Stats., already existed, but those latter statutes were not amended by 1995 Act 27, concurrent with the creation of s. 23.0915 (4), Stats. This evidence is clear legislative intent that, whatever authority the Building Commission may have, the review by the Joint Committee on Finance was also meant to apply to the Stewardship Program.

If you have further questions, please feel free to contact me.

MCP:wu:jal:tlu:ksm

Legislative Fiscal Bureau

Robert Wm. Lang, Director

One East Main, Suite 301 • Madison, WI 53703
Email: Fiscal.Bureau@legis.state.wi.us
Telephone: (608) 266-3847 • Fax: (608) 267-6873



State of Wisconsin

July 24, 2002

Mr. John Hagman
Capital Budget & Facilities Management Chief
Department of Natural Resources
101 S. Webster St.
Madison, WI 53707

Mr. Hagman:

I understand you had a question regarding the June 4, 2002, letter from Representative John Gard to DNR Secretary Bazzell, and the associated June 3, 2002, legal opinion of Legislative Council staff attorney Mark Patronsky, regarding the statutory requirement for a Joint Committee on Finance passive review procedure of all stewardship funded projects that exceed \$250,000. You had indicated to Rebecca Hotynski of our staff that you thought the \$690,000 project for a nature and conference center at Lapham Peak (design report and authority to bid approved by the Building Commission on June 19, 2002) may not be covered by the requirement since you would be using funds from the original stewardship program. However, the second to last paragraph of Mr. Patronsky's opinion states that an identical provision regarding Joint Finance review applies to the original program. Therefore, this project would clearly fall under the passive review requirement since it involves a commitment of stewardship funds in excess of \$250,000.

Further, you had indicated that you believed that certain projects that have been enumerated by the Legislature (when a building program is adopted in the biennial budget) may not be subject to the passive review requirements under s.23.0917 (6) or 23.0915 (4). Again, Mr. Patronsky's opinion deals with this issue directly in the first two full paragraphs on page 2. Further, DNR has interpreted this statute to apply to Joint Finance passive review of stewardship land purchases and grants that were enumerated by the Legislature (for example, the Grandfather Falls purchase on the Wisconsin River and a grant to Racine for the Root River Parkway, both of which were submitted by DNR for Joint Finance review). You raised a question regarding whether biennial budget review by Joint Finance and the Legislature could be considered adequate oversight of these stewardship funded projects (making the additional review by Joint Finance after final Building Commission approval of the budget, plans and specifications unwarranted). To do so would require a statutory change to current law. Additionally, it may be argued that the general building program review undertaken during biennial budget deliberations, and prior to final budget and design standards

being approved by the Building Commission, is not the equivalent review afforded for other stewardship expenditures of over \$250,000 (land purchases are reviewed after final DNR Board approval and grants after projects have completed DNR evaluation, been scored and an award has been made--subject to Joint Finance Committee review).

I hope this clarifies the questions you have raised regarding the applicability of the Joint Finance passive review requirements under current law.

Sincerely,



Daryl Hinz
Program Supervisor

DH/lah

cc: Representative John Gard
Senator Brian Burke
Senator Carol Roessler
Darrell Bazzell, Secretary, Department of Natural Resources
Robert Cramer, Administrator, DOA Division of Facilities Development



WISCONSIN LEGISLATIVE COUNCIL

Terry C. Anderson, Director
Laura D. Rose, Deputy Director

TO: SENATOR BRIAN BURKE AND REPRESENTATIVE JOHN GARD
FROM: Mark C. Patronsky, Senior Staff Attorney *MCP*
RE: Joint Committee on Finance Review of Certain Projects Under the Stewardship Program
DATE: October 31, 2002

On June 3, 2002, I provided Representative Gard with an analysis of current s. 23.0917 (6), Stats., which relates to Joint Committee on Finance (JCF) review of certain projects under the stewardship program. The Department of Natural Resources (DNR) forwarded a copy of my memorandum to the Department of Administration (DOA). In a letter dated September 6, 2002, Robert Cramer, Secretary, State Building Commission, sent a letter on behalf of DOA to Darrell Bazzell, Secretary, DNR, that responded to my memorandum. At your request, I am providing brief comments in response to the DOA letter, although nothing in the DOA letter convinces me that my original analysis of this statute was flawed. I have attached copies of my memorandum to Representative Gard and the DOA response for your information.

The key point in the DOA letter, stated in the concluding paragraph, is that projects which are authorized by the Legislature by enumeration are not within the scope of JCF review under s. 23.0917 (6), Stats. DOA asserts this even though s. 23.0917 (6), Stats., states that DNR may not obligate funds for a project or activity under the stewardship program until JCF has had an opportunity to review the proposal and approve the obligation of funds. As I indicated earlier, there is no apparent conflict between legislative enumeration and JCF review. All of the statutes cited by DOA regarding the authority of the Building Commission existed in 1995 when the stewardship program language regarding JCF review was first adopted. If JCF review was not meant to apply to projects or activities that are legislatively enumerated and funded in whole or in part with stewardship moneys, the Legislature could easily have stated that clearly in the statute.

DOA seems to question the wisdom of a statutory scheme that includes JCF review of projects that have been enumerated, but that is for the Legislature to determine. The controversy that has accompanied many projects and activities funded under the stewardship program tends to remove any doubt that the Legislature meant to have a heightened level of scrutiny, and an extra layer of review, for these projects and activities.

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In determining the meaning of a statute, it is common to use methods of analysis that are applied by courts. Conflicts between statutes occur frequently, and courts are often asked to determine the applicability of apparently conflicting statutes. Typically, courts avoid an interpretation that renders a statute or a part of it a nullity. Even where there are obvious conflicts, courts attempt to harmonize statutes and give meaning to as much of the statutes as possible.

As I stated in my original memorandum, I do not believe there is a conflict. Two committees (JCF and the Building Commission) have authority with respect to projects and activities funded under the stewardship program. As described in the DOA letter, the Building Commission focuses on the review of plans and specifications, methods for financing, and construction supervision. The JCF reviews and approves the use of stewardship funds for a particular project or activity. Also, there is no statute that precludes JCF review if a project has been enumerated by the Legislature.

However, even if it is assumed that there is some conflict, I do not believe that a court would concur with the DOA interpretation of the statutes, because it would require the court to ignore s. 23.0917 (6), Stats., for enumerated projects. This interpretation renders that statute a nullity for enumerated projects, and such an interpretation would not be favored by the court.

Further, the legislative history also supports my reading of the statute. As I noted in my initial memorandum, s. 23.0917 (6), and its predecessor in the earlier stewardship program, were enacted at a time when all of the statutes related to the Building Commission cited in the DOA letter already existed. Courts generally hold that if there is a conflict between two statutes, the one more recently enacted, and the one that is specific rather than general, prevails. That is clearly the case of s. 23.0917 (6), compared to the Building Commission statutes, and leads to the conclusion that JCF review is not negated by the more general authority of the Building Commission.

If you have further questions, please feel free to contact me.

MCP:rv:wu:flu;jal;wu

Attachments



500a (10/1)

State of Wisconsin
2003 - 2004 LEGISLATURE

LRBa1036/1 ✓
RPN:wlj:rs

2

SENATE AMENDMENT,
TO 2003 SENATE BILL 252

1 At the locations indicated, amend the bill as follows:

2 1. Page 2, line 7: delete "The" and substitute "In addition to obtaining any
3 necessary approval of the building commission under s. 13.48 ^{or 13.488} ~~the~~, the".

4 (END)