

DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-4567/1dn
JTK&RAC:nwn&jld:jf

March 23, 2010

Representative Clark:

1. This draft contains two sum certain appropriations [proposed s. 20.505 (4) (q) and (qm)] that, together with the program revenue appropriation in proposed s. 20.505 (4) (jm), constitute the funding for the operations and programs of the Wisconsin Conservation Corps Board. Because the 2011-13 biennial budget act (like all biennial budget acts) will repeal and recreate the appropriation schedule in s. 20.005 (3), stats., any sum certain appropriation for the next fiscal biennium will be eliminated by that act unless that act also contains the same appropriations. Because the proposed program revenue appropriation contained in this draft is continuing and is not dependent upon that act to specify a funding level, it will probably not be affected by that act. However, since the proposed sum certain appropriations in this draft are dependent upon that act to specify a funding level for the 2011-13 fiscal biennium, this draft makes these appropriations effective on the last day of the 2009-11 fiscal biennium so that they will be in force before the new budget act takes effect. This may help to ensure that these appropriations will be considered "cost to continue" rather than "new" appropriations, giving them a slightly better chance of surviving the 2011-13 budget decision-making process. It will also enable the WCC board to commence operations on July 1, 2011 even if (as has usually been the pattern in recent decades) the 2011-13 biennial budget act is not enacted by July 1, 2011.

2. You requested a provision providing for preparation of an "implementation plan" together with passive review and approval of the plan by the Joint Committee on Finance (JCF). If we insert such a provision, as I understand it, we would need to change the draft to create the WCC board sooner than July 1, 2011 (and to provide some funding sooner as well). The staff and board would then prepare the implementation plan for the passive review of JCF. This would require both a new effective date for at least some portions of the draft and a somewhat later deadline by which time the plan should be submitted to JCF. Under passive review, if JCF wants to meet, the WCC program could not be implemented until the meeting is held and the implementation plan is either approved or approved with modifications.

3. As the draft stands, DOA is responsible for budgeting, payroll, and accounting functions for the board and the board's staff (but not the manager's or sponsors' staffs). This would require relatively little effort for DOA and should be manageable with the use of DOA's existing staff. This is the normal model for attached boards in state

government. If you want to have DOA perform this function for sponsors as well, we need to change the draft. I should note that such a provision would be unusual and complicated because these sponsors are governed by different laws and ordinances than those that apply to the state. In fact, if I were DOA and I had to do this, I would contract this function out to an employment services company.

4. You requested a variety of provisions that interlock with other laws: 1) *Unemployment insurance*: UI coverage for nonprofit organizations employing 4 or more persons is controlled by federal law. Federal law contains some exclusions for individuals engaged in work relief or work training or individuals employed to address emergencies. See 26 USC 3309. 2) *Worker's compensation*: Existing state law provides employees of nonprofit organizations with worker's compensation protection. 3) *Prevailing wage law*: This draft exempts services performed by WCC crews from coverage under state and local prevailing wage laws. See the proposed changes to ss. 66.0903, 66.0904, and 103.49 (3g), stats. 4) *State agency collaboration, cooperative purchasing, and intergovernmental agreements*: This draft specifically permits the WCC board to request and enter into interchange assistance with other state agencies, enter into cooperative purchasing agreements, and intergovernmental service agreements, either on its own behalf or on behalf of the manager or a sponsor. See proposed s. 16.24 (11). 5) *State procurement laws*: This draft specifically permits the WCC board to enter into a contractual services agreement for management of the WCC program without public notice and solicitation of bids and without complying with state contractual service procedures. The draft also requires an outside manager to be retained, notwithstanding current law which permits, but does not require, state agencies to enter into contractual services agreements, and then only if the services can be more economically or efficiently performed by contract. See proposed changes to ss. 16.705 and 16.75, stats.

5. This draft, in proposed s. 16.24 (4) (b), prohibits the WCC board from displacing the services of a state or local government employee. It does not preclude the displacement of seasonal or other limited-term employees who may or may not be retained from year to year. It also provides no penalty or enforcement mechanism to address potential violations. If you would like to permit an employee or former employee who believes that his or her position was displaced to appeal the matter to the personnel commission, where such commissions exist, we can add such a provision.

6. The previous draft provided for a project sponsor to erect a plaque and to provide a wrap-up report and follow-up reports only when a project receives funding from the youth corps program. Looking at the purpose of these plaques and reports and recalling my discussions with you regarding their purposes, it did not make sense to me to limit these plaques and reports only to those instances in which a project received youth corps funding. As the draft now reads, a project may have funding from the conservation fund, from program revenue, or from the normal school fund. Therefore,

I have revised proposed s. 16.24 (12) so that it applies regardless of the source of project funding. Please let me know if this is not in accord with your intent.

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Earnings and interest from the normal school fund are used to pay for the operations of the WCC and the payment of grants under s. 24.89 (4). Please note that generally moneys in the school fund and the normal school fund must be used solely for the support of the public schools. See, *Vincent v. Voight*, 236 Wis.2d 588, 614 N.W.2d 388 (2000). I understand that moneys from the normal school fund have been diverted for other purposes in recent years. Again, you may wish to speak with BCPL about this issue.

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