

2019 DRAFTING REQUEST

Assembly Amendment (AA-AB56)

For: Legislative Fiscal Bureau Drafter: mpfotenh
By: Bonderud Secondary Drafters:
Date: 5/29/2019 May Contact:

Same as LRB:

Submit via email: YES
Requester's email:
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Pre Topic:

LFB:.....Bonderud -

Topic:

Transfer abandoned tank removal program from DNR to DATCP

Instructions:

See attached

Drafting History:

Table with 6 columns: Vers., Drafted, Reviewed, Submitted, Jacketed, Required. It lists two draft versions: one by mpfotenh on 5/29/2019 reviewed by ccarmich, and another by P1 submitted by dwalker on 5/29/2019.

FE Sent For: <END>

Pfotenhauer, Mary

From: Bonderud, Kendra
Sent: Wednesday, May 29, 2019 10:48 AM
To: Pfotenhauer, Mary
Subject: drafting request - abandoned tank

Follow Up Flag: Follow up
Flag Status: Flagged

Hi Mary,

JFC took action on DNR-Environmental Quality on May 28. Please see Motion 105, #14, for action on the abandoned tank transfer. JFC maintained current law. Please prepare a budget amendment draft to accomplish that.

https://docs.legis.wisconsin.gov/misc/lfb/jfcmotions/2019/2019_05_28/003_natural_resources_departmentwide_and_environmental_quality/001_omnibus_motion_105_modifies_all_natural_resources_papers_listed_below

Thank you.

Kendra Bonderud

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NATURAL RESOURCES -- DEPARTMENTWIDE AND ENVIRONMENTAL
QUALITY AND AGRICULTURE, TRADE AND CONSUMER PROTECTION

Omnibus Motion
[LFB Papers #510 thru #537]

Motion:

Move to adopt the following provisions:

Natural Resources -- Departmentwide

1. *Natural Resources Science Bureau (Paper #510)*. Take no action on creation of a Bureau of Natural Resources Science. Adopt Alternative B3 to provide the Department of Natural Resources with 2.0 research scientist positions funded at \$123,200 environmental fund SEG (environmental management account) in 2019-20 and \$164,200 SEG in 2020-21.

2. *Transfers Between Appropriations (Paper #511)*. Approve the Governor's recommendation, as modified, to make several transfers between appropriations.

3. *Standard Budget Adjustments (Page 293, #1)*. Approve the Governor's recommendation to provide adjustments to the base budget totaling \$8,798,600 in 2019-20 and \$8,988,800 in 2020-21 for turnover reduction, removal of non-continuing elements from the base, full funding of salaries and fringe benefits, reclassifications and semi-automatic pay progression, overtime, and full funding of leases and directed moves.

4. *Debt Service Reestimate (Page 294, #3)*. Approve the Governor's recommendation to delete \$1,104,500 (-\$298,700 GPR and -\$805,800 SEG) in 2019-20 and \$6,598,200 (-\$4,152,300 GPR and -\$2,445,900 SEG) in 2020-21 to reflect a reestimate of debt service payments on bonds issued for various DNR programs.

5. *Transfers Within Appropriations (Page 297, #5)*. Approve the Governor's recommendation to transfer positions and funding between budgetary subprograms within the same appropriation to reflect current allocations of program responsibilities.

Natural Resources -- Environmental Quality

6. *Environmental Fund Overview (Paper #525)*. Transfer \$6,150,000 annually from the environmental management account to the nonpoint account of the environmental fund on an ongoing basis.

7. *Contaminated Sediment Bonding (Paper #526)*. Provide \$4,000,000 to increase from \$32 million to \$36 million the amount of SEG-supported general obligation bonding authority for contaminated sediment cleanup.

8. *Lake and River Protection Grants (Paper #527)*. Take no action.

9. *Multi-Discharger Variance Implementation (Paper #528)*. Take no action.

10. *Nonpoint Source Water Pollution Funding (Paper #530)*. Adopt Alternatives 2 and 5, which would provide \$100,000 nonpoint SEG for nonpoint source water pollution abatement grants on a one-time basis during the 2019-21 biennium.

11. *Nonpoint Source Contracts (Paper #531)*. Adopt Alternatives 2 and 3, which would provide an additional \$500,000 nonpoint SEG annually for nonpoint contracts on a one-time basis during the 2019-21 biennium. Nonpoint contracts would be budgeted at \$767,600 each year, the same amount as the 2017-19 biennium.

12. *Well Compensation Grant Program (Paper #532)*. Take no action on sections A, B, C, D, E, and G. Provide \$400,000 environmental management SEG for the well compensation grant program, and place the funding in the Joint Committee on Finance supplemental appropriation. DNR could submit a request to the Committee under s. 13.10 for release of the funding.

13. *PFAS Model and Study (Paper #533)*. Adopt Alternative 2, to provide \$200,000 environmental management SEG in 2019-20 (instead of GPR), including \$150,000 for a departmentwide PFAS model and \$50,000 for a survey to determine the level of use of PFAS-containing firefighting foam.

14. *Transfer Abandoned Tank Removal Program from DNR to DATCP (Paper #534)*. Take no action.

15. *PECFA Program Sunset (Paper #535)*. Adopt Alternative 4 to maintain the current PECFA claim submittal deadline of June 30, 2020. In addition, transfer \$7,500,000 from 2020-21 to 2019-20 for claims, to maintain \$15 million for claims in 2019-21, and provide all of it in 2019-20, in the current biennial appropriation.

16. *Dam Safety Bonding (Page 302, #2)*. Provide \$4,000,000 in GPR-supported general obligation bonding authority for dam safety grants.

17. *Total Maximum Daily Load Implementation Positions (Page 304, #5)*. Provide 1.0 FED, 1.0 PR, and 2.0 water resources (conservation fund) SEG four-year project positions within the Division of Environmental Management to facilitate implementation of total maximum daily load (TMDL) plans. No new funding is provided for the positions, which would be funded by a reallocation of existing supplies and services, and LTE salary and fringe benefits costs.

18. *Rural Nonpoint Source Bonding (Page 306, #8)*. Provide \$6,500,000 in nonpoint SEG-supported general obligation bonding for rural nonpoint source water pollution abatement grants.

Bond proceeds support the targeted runoff management (TRM) program and the notice of discharge and notice of intent (NOD/NOI) program.

19. *Urban Nonpoint Source Bonding (Page 306, #9)*. Provide \$4,000,000 in nonpoint SEG-supported general obligation bonding for the urban nonpoint source and storm water management (UNPS) and municipal flood control and riparian restoration (MFC) programs.

Agriculture, Trade and Consumer Protection

1. *Soil and Water Resource Management Funding (Paper #536)*. Adopt Alternatives A2, B2, and C2. Alternative A2 would provide an additional \$850,000 nonpoint SEG annually for soil and water resource management (SWRM) grants, primarily associated with nutrient management planning. Alternative B2 would provide an additional \$250,000 nonpoint SEG annually for producer-led watershed protection grants, and increase DATCP's authorization to award SWRM grants for producer-led watershed protection grants to \$500,000 annually. Alternative C2 would provide \$7,000,000 in general obligation bonding authority supported by the nonpoint account of the environmental fund to support cost-sharing grants to landowners for installation of structural practices that produce or prevent nonpoint pollution. SWRM grants (including producer-led watershed grants) would be budgeted at \$4,175,000 nonpoint SEG annually.

2. *County Conservation Staffing (Paper #537)*. Provide an additional \$475,000 nonpoint SEG annually on a one-time basis during the 2019-21 biennium for grants to county conservation staff. Grants would be budgeted at \$3,027,200 GPR and \$6,411,900 nonpoint SEG annually during the 2019-21 biennium.

[Change to Base: \$233,600 GPR, \$14,411,500 SEG, \$1,100,200 PR, \$2,347,000 FED in 2019-20 and -\$3,588,300 GPR, -\$2,269,400 SEG, \$1,100,200 PR, \$2,387,300 FED in 2020-21, and 4.0 SEG, 1.0 PR, and 1.0 FED positions. \$25,500,000 BR.]

[Change to Bill: -\$676,000 GPR and \$5,001,700 SEG in 2019-20 and -\$476,000 GPR and -\$10,301,400 SEG and -3.0 SEG positions. -\$28,000,000 BR.]



Legislative Fiscal Bureau

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May, 2019

Joint Committee on Finance

Paper #534

Transfer Abandoned Tank Removal Program from DNR to DATCP (Natural Resources -- Environmental Quality and Agriculture, Trade and Consumer Protection)

[LFB 2019-21 Budget Summary: Page 309, #14; and Page 43, #14]

CURRENT LAW

The abandoned tank removal program was created in 2009 Wisconsin Act 28 to pay for the removal of underground petroleum storage tank systems if the tank is abandoned and the owner of the system is unable to pay for the removal. The Department of Natural Resources (DNR) contracts with a contractor certified by the Department of Agriculture, Trade and Consumer Protection (DATCP) under the tank registration program to remove identified tanks. The program is provided \$100,000 annually from the segregated (SEG) petroleum inspection fund, in a separate appropriation. The program pays for costs to: (a) empty, clean, remove, and dispose of an underground petroleum product storage tank system; (b) assess the tank site to determine whether there is petroleum contamination at the site; and (c) backfill the excavation. When DNR incurs costs at a site, the Department records a lien for the costs with the Register of Deeds in the county where the site is located, which remains on the property until the amount is repaid to DNR. Payments received by DNR to satisfy the lien are deposited into the petroleum inspection fund. The program has spent \$573,500 between 2009-10 and 2017-18 to remove 200 underground petroleum tanks at 59 sites. Removal costs have averaged \$2,900 per tank. Gas stations have an average of three tanks per site.

GOVERNOR

Transfer the abandoned tank removal program from DNR to DATCP. Delete \$172,100 SEG petroleum inspection fund annually in DNR, including: (a) \$100,000 SEG annually from the separate appropriation (the DNR appropriation would not be deleted or transferred to DATCP);

and (b) \$72,100 SEG annually with 1.0 SEG position. Provide \$172,100 SEG annually with 1.0 SEG position in DATCP, and place all of the transferred funding and position in the DATCP petroleum inspection regulation administrative appropriation. Transfer any incumbent employee holding the DNR position, as well as assets, liabilities, personal property, contracts and pending matters primarily related to the program, as determined by the Secretary of the Department of Administration, to DATCP.

DISCUSSION POINTS

1. When the abandoned tank removal program was created in 2009 Act 28, it was located in the former Department of Commerce, which also administered petroleum inspection and tank regulation, along with financial administration of the petroleum environmental cleanup fund award (PECFA) program. Act 28 did not create positions to administer the program, and the act authorized Commerce to use staff under both the PECFA and petroleum inspection appropriations to administer the program. In 2011 Wisconsin Act 32, Commerce was eliminated and its responsibilities related to PECFA, petroleum inspection, tank regulation, and abandoned tank removal were transferred to the Department of Safety and Professional Services (DSPS). Under 2013 Wisconsin Act 20, the DSPS responsibilities related to PECFA and abandoned tank removal were transferred to DNR, and the DSPS responsibilities related to petroleum inspection and tank regulation were transferred to DATCP.

2. The PECFA program does not pay for removal of tanks. Abandoned tank removal funds pay for removal of tanks at sites for which a settlement has been reached with the Department of Justice (DOJ) or a party volunteers to remove tanks as part of a DATCP enforcement action. This includes the following types of sites: (a) the owner has abandoned property with leaking tanks; (b) the owner refused to remove abandoned tanks, died, and left the site for the heirs to address; (c) the owner has tank inspection violations and/or is under enforcement action from DATCP but does not have the financial means to address the violations; and (d) the courts authorized DNR to remove tanks on properties where owners refuse to comply with court orders to remove the tanks.

3. The administration indicates the rationale for transferring the program is that splitting operation of the program between two departments is inefficient and unnecessary. DATCP administers the registration and inspection of tank systems, enforces operational requirements, issues citations for violations, refers violations to DOJ, licenses tank removal professionals, and develops tank assessment requirements. DNR administers the cleanup of properties with contamination from tank systems, contracts for removal of a tank under the abandoned tank program, and pays the contractor.

4. DNR works with DATCP and DOJ in the spring to develop a list of prioritized tank removal projects for the year. DATCP writes administrative orders to remove tanks, investigates abandoned tanks, refers cases to DOJ, accepts voluntary applications for tank removals, provides DNR with information regarding the site and tanks, and answers site-specific questions from contractors bidding on the tank removal. DNR prepares a request for bids for the tank removal, awards the bid, pays the vendor, places a lien on the property for the cost of the work, and provides any follow-up contacts needed with the property owner.

5. It could be argued that the program should be transferred because it fits better with the tank regulatory programs of DATCP than with the contaminated land cleanup programs of DNR. The program could be transferred to DATCP [Alternative A1, A2, or A3, and B1 or B2], where much of the work related to identification of sites is currently being performed. Alternatively, it could be maintained in DNR, where any contamination found during the tank removal and assessment would be handled by the remediation and redevelopment staff in DNR [Alternative A4 and B3].

6. The bill would not transfer the DNR separate appropriation for abandoned tank removal to DATCP. Instead, the bill would place the funding in the petroleum inspection administrative appropriation, in a separate budgetary line for aids to individuals and organizations. The language in the DATCP administrative appropriation is broad enough for expenditures for the abandoned tank program, and the bill would therefore allow abandoned tank removal expenditures to be made without adding a DATCP appropriation. However, it might be argued that it would be administratively preferable to budget aids to individuals and organizations separately from the staff of the petroleum inspection regulatory program. The Committee could consider transferring the DNR abandoned tank removal appropriation to DATCP, and placing the \$100,000 annual funding in the separate appropriation under DATCP [Alternative B2]. If the program is transferred to DATCP, and the DNR appropriation is not transferred to DATCP, the DNR appropriation will not be needed and should be repealed [Alternative B1].

7. The DNR position identified for transfer to DATCP to handle the increased workload in DATCP is currently vacant. DNR indicates its current workload for the abandoned tank removal program is approximately 0.9 rather than 1.0 full-time equivalent, and that additional duties for the position have included work related to the PECFA program and contracting related to other contaminated land cleanup activities. DATCP indicates its current workload related to the program is 1.25 full-time equivalent position, and it anticipates the increase in workload after the transfer would increase by approximately 1.0 full-time equivalent.

8. When 2013 Act 20 transferred petroleum inspection responsibilities from DSPS to DATCP, the Governor recommended deletion of 6.5 positions. During consideration of the transfer proposal, DATCP sought time to gain experience with the combined program and assess program needs before adjusting position levels further. However, 2013 Act 20 deleted an additional 4.0 vacant positions, for a total deletion of 10.5 of 46.5 program positions authorized in DSPS, instead of being transferred to DATCP. At the time, the rationale of the administration and Legislature was that the combination of the petroleum inspection and tank regulation programs with the DATCP weights and measures program would consolidate similar functions and result in program efficiencies.

9. DATCP indicates that it has recently hired two staff to fill vacant petroleum inspector positions, and they will start work in May of 2019. At that time, all positions in the petroleum inspection administrative appropriation will be filled. DATCP indicates that it does not have a vacant position to reallocate to the program activities and does not have the capacity to take on the additional workload without the position proposed to be transferred. Approval of the recommended transfer of the position would recognize the anticipated workload increase in DATCP after the program transfer [Alternative A1]. However, as no positions were provided when the program was created, and DNR has been accomplishing the activities related to the program with 0.9 rather than 1.0 position, the

Committee could consider providing DATCP with \$36,100 annually with 0.5 position, instead of the \$72,100 and 1.0 position provided under the bill [Alternative A2]. Alternatively, the Committee could delete the position to require DATCP to absorb the workload with existing staff by reallocating from other petroleum inspection and tank regulatory activities [Alternative A3].

10. In 2017-18, in addition to spending \$89,500 from the abandoned tank removal appropriation, DNR spent \$50,200 from the DNR state-funded spills response appropriation from the segregated environmental management account of the environmental fund to remove six tanks at three sites. This appropriation is used for: (a) DNR expenditures related to DNR-led cleanups of contaminated sites where the responsible party is unknown or is unable or unwilling to clean up the site; (b) for certain state shares of federally-funded Superfund site cleanups; and (c) emergency spill responses and cleanups. Under the bill, if DATCP encounters a need for more than the appropriated \$100,000 for abandoned tank removal in a year, it could reallocate funds from its administrative appropriation. Alternatively, DATCP could request DNR to pay for the removal under the DNR state-funded spills response appropriation if DNR determines cleanup of contamination at the site is a high environmental priority in comparison with other cleanup projects.

11. If no action is taken to transfer the program, DNR would continue to administer the current tank removal program. DNR would continue to work with DATCP and DOJ to identify sites for which DNR would pay [Alternative A4 and B3].

ALTERNATIVES

A. Authority and Position

1. Approve the Governor's recommendation to transfer the abandoned tank removal program from DNR to DATCP, delete \$72,100 SEG petroleum inspection fund and 1.0 position annually from DNR, and provide \$72,100 SEG petroleum inspection fund and 1.0 position annually to DATCP. Transfer any DNR incumbent employee in the position to DATCP, and transfer all statutory authority and program matters from DNR to DATCP.

ALT A1	Change to Base		Change to Bill	
	Funding	Positions	Funding	Positions
DNR				
SEG	-\$144,200	- 1.00	\$0	0.00
DATCP				
SEG	<u>\$144,200</u>	<u>1.00</u>	<u>\$0</u>	<u>0.00</u>
Total	\$0	0.00	\$0	0.00

2. Modify the Governor's recommendation by transferring \$36,100 annually and 0.5 position (instead of 1.0) to DATCP.

ALT A2	Change to Base		Change to Bill	
	Funding	Positions	Funding	Positions
DNR				
SEG	- \$144,200	- 1.00	\$0	0.00
DATCP				
SEG	<u>\$72,200</u>	<u>0.50</u>	<u>- \$72,000</u>	<u>- 0.50</u>
Total	- \$72,000	- 0.50	- \$72,000	- 0.50

3. Modify the Governor's recommendation by deleting the position instead of transferring it to DATCP.

ALT A3	Change to Base		Change to Bill	
	Funding	Positions	Funding	Positions
DNR				
SEG	- \$144,200	- 1.00	\$0	0.00
DATCP				
SEG	<u>\$0</u>	<u>0.00</u>	<u>- \$144,200</u>	<u>- 1.00</u>
Total	- \$144,200	- 1.00	- \$144,200	- 1.00

4. Take no action. (The program and position would remain in DNR.)

ALT A4	Change to Base		Change to Bill	
	Funding	Positions	Funding	Positions
DNR				
SEG	\$0	0.00	\$144,200	1.00
DATCP				
SEG	<u>\$0</u>	<u>0.00</u>	<u>- \$144,200</u>	<u>- 1.00</u>
Total	\$0	0.00	\$0	0.00

B. Program Funding

1. Approve the Governor's recommendation to transfer funding of \$100,000 annually for the abandoned tank removal program from DNR to the DATCP administrative appropriation. In addition, repeal the separate DNR abandoned tank program appropriation.

ALT B1	Change to	
	Base	Bill
DNR		
SEG	- \$200,000	\$0
DATCP		
SEG	<u>\$200,000</u>	<u>\$0</u>
Total	\$0	\$0

2. Modify the Governor's recommendation by transferring the separate DNR abandoned

tank program appropriation to DATCP, and place the \$100,000 annual funding in the separate appropriation instead of in the DATCP administrative appropriation.

ALT B2	Change to	
	Base	Bill
DNR		
SEG	-\$200,000	\$0
DATCP		
SEG	<u>-\$200,000</u>	<u>-\$0</u>
Total	\$0	\$0

3. Take no action. (The program would remain in DNR.)

ALT B3	Change to	
	Base	Bill
DNR		
SEG	\$0	\$200,000
DATCP		
SEG	<u>\$0</u>	<u>-\$200,000</u>
Total	\$0	\$0

Prepared by: Kendra Bonderud



Jan 5/29

LFB:.....Bonderud - Transfer abandoned tank removal program from DNR to DATCP

**FOR 2019-2021 BUDGET -- NOT READY FOR INTRODUCTION
ASSEMBLY AMENDMENT ,
TO ASSEMBLY BILL 56**

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

2 **1.** Page 383, line 12: delete lines 12 to 15.

3 **2.** Page 431, line 9: delete lines 9 and 10.

4 **3.** Page 938, line 11: delete lines 11 to 17.

5 **4.** Page 987, line 9: delete lines 9 to 16.

6 **5.** Page 1112, line 21: delete the material beginning with that line and ending
7 with page 1114, line 10.

8 (END)

