



Legislative Fiscal Bureau

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Joint Committee on Finance

Paper #103

Waste Facility Siting Board Modifications (DOA -- General Agency Provisions)

[LFB 2005-07 Budget Summary: Page 21, #6 (part) and Page 29, #13]

CURRENT LAW

The Waste Facility Siting Board is administratively attached to the Department of Administration (DOA) and consists of: (1) the Secretary of the Department of Transportation or a designee; (2) the Secretary of the Department of Agriculture, Trade and Consumer Protection or a designee; (3) the Secretary of the Department of Commerce or a designee; (4) two town officials; and (5) one county official. The town and county officials are appointed by the Governor and serve staggered, three-year terms.

The Board's general program operations appropriation is funded through a transfer from the Department of Natural Resources (DNR). DNR assesses a Waste Facility Siting Board fee of 1.7¢ per ton of solid waste. The fee is credited to a DNR appropriation for transfer to the Board's general program operations appropriation under DOA.

The Waste Facility Siting Board facilitates negotiation and arbitration between local governments and individuals that propose to establish or expand waste disposal facilities. The Board must hire an unclassified executive director, who may request assistance from any state agency that is necessary for the Board to fulfill its duties.

It is the stated intent of the Legislature [under s. 289.33(2) of the statutes] to create and maintain an effective and comprehensive policy of negotiation and arbitration between an applicant for a license for establishing a solid waste or hazardous waste disposal facility (landfill) and the committee representing the affected municipalities, to assure the following: (1) arbitrary or discriminatory policies and actions of local governments which obstruct the establishment of solid waste disposal facilities and hazardous waste facilities can be set aside; (2) the legitimate concerns of nearby residents and affected municipalities can be expressed in a public forum,

negotiated and, if need be, arbitrated with the applicant in a fair manner and reduced to a written document that is legally binding; and (3) an adequate mechanism exists under state law to assure the establishment of environmentally sound and economically viable solid waste disposal facilities and hazardous waste facilities.

Currently, any person, municipality, or corporation may submit an application to DNR to begin a solid waste facility site approval process. If DNR approves the application, the applicant will be allowed to construct and operate a waste facility.

An affected municipality is defined as any town, village, city or county that: (1) would contain any or all of the proposed waste site; or (2) has a boundary within 1,200 feet of a facility that would handle disposal of solid waste or the treatment, storage or disposal of hazardous waste. Any affected municipality may start the negotiation-arbitration process after receiving the applicant's initial request for a list of local approvals.

To start the process, the governing body adopts a siting resolution, which declares the municipality's intent to negotiate, and if necessary, arbitrate, with the applicant concerning the proposed landfill. Any affected municipality that does not adopt a siting resolution may not participate in the negotiation-arbitration process. The municipalities that do adopt a resolution must appoint a member to a local committee, which would include all affected municipality's representatives, to negotiate and arbitrate with the applicant.

GOVERNOR

Board Funding. Provide \$61,600 PR annually for the following purposes related to the Waste Facilities Siting Board: (1) \$50,900 PR annually to the Board's general program operations appropriation for contracting for legal and clerical support services; and (2) \$10,700 PR annually to DOA's Division of Hearings and Appeals fees appropriation for additional administrative hearings services for the Board. The PR funding provided to Hearings and Appeals would derive from a portion of the \$50,900 PR that would be provided to the Board from tonnage fees. Current base level expenditure authority for the Board is \$6,400 PR annually. Standard budget adjustments would also delete \$3,400 PR annually related to the full funding of salaries and fringe benefits. The Board would retain \$3,000 PR from current base level funding for supplies and services. Under the bill, a total of \$53,900 PR annually would then be appropriated for the Board's operations.

Executive Director. Authorize the Board to appoint an executive director either under the unclassified or the classified service. Delete a reference to the executive director serving at the pleasure of the Board, in the event that the executive director would be appointed in the classified service. Modify the current enumeration of the Board's executive director in the listing of state employees who serve in unclassified positions to specify that the executive director would be unclassified unless the Board chooses to appoint the executive director under the classified service. Currently, the Board has no authorized positions.

Authorize the Board, rather than the executive director, to contract with any state agency to provide assistance to the Board.

Lapse of Unencumbered Year-end Waste Facility Siting Board Operations Balances. Provide that all unencumbered balances in the Board's general program operations appropriation account at the end of each fiscal year would lapse to the general fund. Estimate increased GPR-Earned receipts under DOA of \$100,000 annually to reflect this lapse requirement. A separate recommendation would also lapse \$150,000 in 2005-06 to the general fund from the Board's general program operations appropriation. Based on these two recommendations, an estimated \$250,000 PR in 2005-06 and \$100,000 PR in 2006-07 would be lapsed from the Board's general program operations appropriation to the general fund.

DISCUSSION POINTS

1. The Waste Facility Siting Board was created under Chapter 374, Laws of 1981 to administer the negotiation and arbitration function of siting solid and hazardous waste disposal facilities in the state. The Board was attached administratively to DOA, and the costs of its operation were GPR-funded.

2. As part of the 1993-95 biennial budget act, funding for the Board was converted from GPR support to PR support. This program revenue was funded from a fee of 1.7¢ per ton of solid and hazardous waste disposed of at a licensed solid or hazardous waste disposal facility.

3. As part of his 2003-05 biennial budget recommendations, the Governor initially proposed the elimination of all staff at the Board, as well as its authority to appoint an unclassified executive director. Under that proposal, DOA's Division of Hearing and Appeals would provide staff and assist the Board in the performance of its duties. A total of \$32,300 PR annually was initially recommended to fund these Division of Hearings and Appeals costs.

4. The Legislature instead specified that the Board: (a) retain the authority to appoint an unclassified executive director; and (b) be transferred to DNR along with the recommended funding of \$32,300 PR annually. The Legislature would also have restored the position authority and associated funding for the Board's executive director under DNR (\$73,900 PR and 1.0 PR unclassified position annually).

5. The Governor item vetoed the transfer of the Board to DNR and the elimination of the Board's appropriation under DOA. However, the Governor's item veto could not restore any funding to that appropriation. Consequently, the Board had no funding authority under the appropriation other than for certain standard budget adjustments that provided \$6,400 PR annually. This \$6,400 PR represents the current base level funding for the Board's operations.

6. During the 2003-05 biennium, the Administrator of the Division of Hearing and Appeals assumed the duties of the Board's executive director position and related staff. However, since limited funding is available under the Board's appropriation, the Division's Board-related activities are being paid through charges assessed to the users of those services.

7. There are three issues relating to the current operation of the Board that the Committee may wish to address.

- First, should the Board be authorized to appoint an executive director either under the unclassified or the classified service and contract with any state agency to provide assistance to the Board?

- Second, should there be an on-going lapse of the unencumbered year-end balances in the Board's general program operations appropriation, and if so, what should be the funding source of those lapsed revenues?

- Third, should the Board remain attached administratively to DOA, or should it be attached administratively to DNR?

Executive Director

8. Under current law, the Board must appoint an executive director from outside the classified service, and only the executive director may request assistance from any state agency that is necessary for the Board to fulfill its duties. Provisions of 2003 Wisconsin Act 33 deleted the unclassified position authority for the WFSB's executive director.

9. During the 2003-05 biennium, the Administrator of the Division of Hearing and Appeals assumed the duties of the Board's executive director position and related staff. However, the Administrator is a classified position. In the absence of an authorized executive director position for the Board, this arrangement appears to be a cost-effective way to manage the administrative needs of the Board.

10. The Committee may wish to approve the Governor's recommendation that would authorize the executive director to serve in the classified service, so that the duties of the function could continue to be fulfilled by the Administrator of the Division of Hearing and Appeals.

Funding and Board Lapses

11. Concerning the issue of lapsing additional amounts from the Board's unencumbered year-end appropriation balances, it may be noted that the Legislature has previously directed such lapses. Provisions of 2001 Wisconsin Acts 16 and 109 directed lapses to the general fund of \$120,000 in 2001-02 and \$150,000 in 2002-03, respectively.

12. The amounts available for any future lapses will be governed by the degree to which the Board's projected expenditures during each fiscal year of the next biennium are less than the amount of fees transferred by DNR in each year to the Board's appropriation.

13. The Board's expenditure authority under the bill would be \$53,900 PR annually for administrative oversight of the Board's functions by the Administrator of DOA's Division of Hearings and Appeals and related support costs. The Division's budgeted funding would also be increased by \$10,700 PR annually, and these amounts would be supported from the \$53,900 provided in each year under the Board's appropriation. However, these additional Division of Hearings and Appeals costs would not represent additional expenditures that would affect the

potential unobligated balances in the Board's year-end appropriation account.

14. DNR provides notice of assessment of a Waste Facility Siting Board fee of 1.7¢ per ton of solid waste every May as part of its consolidated environmental fees billing. The fee is assessed for waste disposed of in Wisconsin landfills in the preceding calendar year and is collected in June or July. DNR then transfers the fee revenue to the Board's appropriation, usually in August. The \$134,500 credited to the Board's appropriation in 2004-05 was assessed by DNR in the spring of 2004 (for waste disposed of in calendar year 2003), and was credited to the Board's appropriation in August, 2004.

15. The Board's appropriation will have an estimated unobligated closing balance of approximately \$197,000 PR at the end of 2004-05. The Governor's recommendation would direct a one-time lapse of \$150,000 PR from this balance in 2005-06. In addition, the Governor has recommended that all unencumbered balances in the Board's general program operations appropriation account at the end of each fiscal year lapse to the general fund on an on-going basis.

16. The following table summarizes estimated Board revenues and expenditures during the period 2005-06 through 2006-07, based on the Governor's recommendation. The table shows that with the one-time \$150,000 PR lapse, approximately \$302,900 PR would be credited to the general fund in 2005-06 and that an additional \$107,600 PR would be credited to the general fund in 2006-07, for a biennial total of \$410,500. This estimate would be \$60,500 greater than that included under the bill.

Waste Facility Siting Board Estimated Revenues and Expenditures

	<u>2005-06</u>	<u>2006-07</u>
Opening Balance	\$197,000	\$0
Estimated Revenues	<u>159,800</u>	<u>161,500</u>
Total Available	\$356,800	\$161,500
Board Expenditures	\$53,900	\$53,900
One-Time Lapse to General Fund	150,000	0
Estimated On-Going Lapse	<u>152,900</u>	<u>107,600</u>
Ending Balance	\$0	\$0

17. It could be argued that due to limited general fund resources, it is appropriate to lapse these balances to the general fund during this biennium, but that these lapses should be one-time in nature. This type of alternative would afford future Legislatures the opportunity to review the appropriateness of continuing the fees at current law levels and whether funds that are paid should be devoted to Board functions or lapsed to the general fund. The Committee could choose to approve the Governor's one-time lapse of \$150,000 PR in 2005-06 and, in addition, require one-time lapses of the remaining balance (estimated at \$152,900 PR in 2005-06 and \$107,600 in 2006-07). Under this alternative the Governor's recommendation to require all Board unobligated

operations balances in the future to be lapsed to the general fund would be deleted. Under this alternative, the reestimated lapse amounts would be \$52,900 higher in 2005-06 and \$7,600 higher in 2006-07 than the estimates under the bill.

18. Another possible consequence of establishing an ongoing lapse of the Board's unencumbered balances would be that it might discourage the Legislature from reviewing the necessity of charging a fee of 1.7¢ per ton of waste to support the Board's operations. It could be argued that these fees should be set at a level sufficient to fund only the Board's activities of facilitating negotiation and arbitration between local governments and individuals proposing to establish or expand waste disposal facilities.

19. If it is viewed as undesirable to maintain a fee of 1.7¢ per ton of waste to support, in part, an on-going lapse to the general fund, the Committee could choose to set the fee at a level sufficient to fund Board operating costs only. This would require a fee set at 0.7¢ per ton. Accordingly, the Committee could approve all of the Governor's recommended lapses from the Board's appropriation during the 2005-07 biennium as one-time lapses (estimated at \$302,900 in 2005-06 and \$107,600 in 2006-07), delete the on-going lapse provision, and specify that the fee be set at 0.7¢ per ton (instead of the current 1.7¢) beginning with waste disposed of in landfills on January 1, 2006.

20. Under this alternative, DNR would assess the current 1.7¢ fee in the spring of 2006 for calendar year 2005 waste, then assess the reduced 0.7¢ fee in the spring of 2007 for calendar year 2006 waste. The lower fee would generate approximately \$66,500 in revenue annually beginning in 2007-08 (from the fee assessed by DNR in the spring of 2007 on waste disposed of in landfills during calendar year 2006), and this would be sufficient to support the expenditure levels for Board operations that are provided in the bill.

21. On the other hand, it could be argued that the fee has not increased since it was implemented as part of 1993 Wisconsin Act 16, the state has maintained the Board at a lower cost, and therefore it could be viewed as appropriate that any excess funds support other state operations. Thus, the Committee could approve the Governor's recommendation providing for ongoing annual lapses.

22. During the 1990s, the unobligated balance in the appropriation grew as the increases in solid waste tons disposed of in the state provided revenues that exceeded the amounts appropriated for the Board. This revenue growth provided balances large enough to lapse \$270,000 to the general fund in the 2001-03 biennium and to lapse an estimated \$410,500 during the 2005-07 biennium under the bill.

23. The state collects other solid waste tonnage fees that total \$3.78 per ton (\$3.79 as of July 1, 2005) for waste that is not high-volume industrial waste. These fees support environmental management, recycling, and landfill license administrative activities. Of these fees, 64¢ per ton are deposited in the environmental management account.

24. It could be argued that the Board's appropriation should be converted from PR to SEG supported from the environmental management account of the environmental fund. The

separate 1.7¢ fee for the Board could either be eliminated or credited to the environmental fund. This type of change would eliminate the current extra steps of assessing a separate fee by DNR and then transferring the fee to DOA. Under this alternative, the unencumbered balance of the Board's appropriation at the end of 2004-05 could be deposited in the environmental management account, and the activities of the Board would be funded from a direct appropriation from the environmental management account.

25. If the separate 1.7¢ fee would be eliminated for the disposal of waste on or after January 1, 2006, DNR would assess the current 1.7¢ fee in the spring of 2006 for calendar year 2005 waste, then assess no separate tonnage fee in the spring of 2007 for calendar year 2006 waste, with a reduction in revenue of approximately \$162,000 per year beginning in 2007-08. Alternatively, the 1.7¢ fee could be deposited directly into the environmental management account, and any funds not required for the Board's activities would be available for appropriation to the contaminated land cleanup and brownfields activities funded from the environmental management account. The Committee could also transfer \$302,900 in 2005-06 and \$107,600 in 2006-07 from the environmental management account to reflect the revised lapse estimates described previously.

26. While it could be argued that funding the Board's activities would be simpler if done from the environmental management account, it could also be argued that such a change would improperly fund the Board from several other revenues besides solid waste tipping fees. More than half of the revenue to the environmental management account is derived from vehicle environmental impact title fees, and additional revenues are generated from petroleum inspection fees, pesticide and fertilizer fees, hazardous waste generator fees and hazardous spills reimbursements from persons responsible for contamination.

Administrative Attachment of the Board

27. As part of the 2003-05 biennial budget deliberations, questions were raised as to whether the Board should be transferred to DNR or should remain attached to DOA. While the Legislature ultimately chose to transfer the Board to DNR, this modification was item vetoed by the Governor.

28. Currently, there are two major elements of the statutory procedures governing the siting of a solid waste disposal facility in this state: (a) obtaining DNR approval for the site and the design of the proposed facility; and (b) negotiating and possibly arbitrating differences between the applicant and the affected municipalities.

29. The DNR approval process consists of a review of the technical aspects of the proposed landfill site and facility and the need for, and any alternatives to, the construction of a new waste facility. The DNR approval is needed before a proposed waste facility can be built. The site approval process is needed for all new or expanded solid waste facilities and hazardous waste treatment, storage and disposal facilities.

30. It could be argued that DNR officials are more informed and prepared to handle issues related to the siting of waste facilities. DNR already undertakes the review of both the need for the proposed waste facilities and whether the design of the facility is suitable. If the Committee

believes the Board's duties are better aligned with those of DNR, the Committee could attach the Board administratively to DNR.

31. However, the Board has been attached to DOA since its inception in 1982. It could be argued that the duties of the Board are more closely aligned to the hearings and appeals process that is also under DOA. Further, it might be viewed as inappropriate for DNR to administer the negotiation and arbitration of cases in dispute, since DNR is also responsible for approving applications for waste facilities. Arguably, DNR would have a stake in the outcome of the negotiation process since the agency has or will invest time and resources in reviewing the site applications. The Committee could choose to maintain current law by maintaining the Board's attachment to DOA.

32. The Board's activities could be funded from the current PR appropriation structure whether the Board continues to be attached to DOA or is transferred to DNR. Alternatively, the appropriation could be converted to SEG environmental management account whether the Board is attached to DOA or DNR.

ALTERNATIVES

A. Executive Director

1. Approve the Governor's recommendation to authorize the Waste Facility Siting Board to appoint an executive director either under the unclassified or the classified service and to authorize the Board, rather than the executive director, to contract with any state agency to provide assistance to the Board.

2. Delete the Governor's recommendation. [This alternative would maintain current law, which specifies that the executive director must be hired from unclassified service and the executive director, rather than the Board, is authorized to contract with any agency for assistance.]

B. Funding and Board Lapses

1. Approve the Governor's recommendations to provide: (a) \$10,700 PR for hearings and appeals under DOA [s. 20.505(4)(kp) of the statutes]; and (b) \$50,900 PR under the Waste Facility Siting Board's general program operations appropriation [s. 20.505(4)(k) of the statutes] to provide a total of \$53,900 annually for the Board's operations. Reestimate the amounts that would be lapsed to the general fund from the unencumbered balances from \$250,000 in 2005-06 and \$100,000 in 2006-07 to \$312,900 in 2005-06 and \$107,600 in 2006-07.

<u>Alternative B1</u>	<u>GPR-REV</u>
2005-07 REVENUE (Change to Bill)	\$60,500

2. *Approve the Governor's recommendations in Alternative B1.* However, specify that the lapses from the unencumbered balances would be one-time in 2005-06 and 2006-07 only.

3. *Approve Alternative B1 or B2.* In addition, reduce the Waste Facility Siting Board

fee by 1.0¢ to 0.7¢ per ton effective for waste disposed of on or after January 1, 2006, and assessed by DNR in 2006-07. (Revenue would decrease beginning in 2007-08.)

4. Approve the Governor's recommendations to provide: (a) \$10,700 for hearings and appeals under DOA [s. 20.505(4)(kp) of the statutes]; and (b) \$50,900 under the Waste Facility Siting Board's general program operations appropriation [s. 20.505(4)(k) of the statutes] to provide a total of \$53,900 annually for the Board's operations. Convert the Board's appropriation from PR to SEG from the environmental management account of the environmental fund. Transfer the unencumbered balance of the PR appropriation on the effective date of the provision (estimated at \$197,000) to the environmental management account. Delete the Governor's recommendations to: (a) transfer \$150,000 from the PR appropriation account to the general fund in 2005-06; and (b) lapse the unencumbered year-end balance to the general fund. Instead, transfer \$302,900 from the environmental management account to the general fund in 2005-06 and \$107,600 in 2006-07. Deposit the 1.7¢ Waste Facility Siting Board fee in the environmental management account instead of in the PR account (estimated as \$159,800 in 2005-06 and \$161,500 in 2006-07).

<u>Alternative B4</u>	<u>GPR-REV</u>	<u>PR</u>	<u>SEG</u>	<u>TOTAL</u>
2005-07 REVENUE (Change to Bill)	\$60,500	- \$321,300	\$107,800	\$0
2005-07 FUNDING (Change to Bill)		- \$107,800	\$107,800	\$0

5. *Approve Alternative B4*, except delete the 1.7¢ fee effective for waste disposed of on or after January 1, 2006, and assessed by DNR in 2006-07. (Revenue would decrease beginning in 2007-08.)

6. *Approve Alternative B4*, except reduce the Waste Facility Siting Board fee by 1.0¢ to 0.7¢ per ton effective for waste disposed of on or after January 1, 2006, and assessed by DNR in 2006-07. (Revenue would decrease beginning in 2007-08.)

7. Maintain current law with respect to funding and lapses.

<u>Alternative B7</u>	<u>GPR-REV</u>	<u>PR</u>
2005-07 REVENUE (Change to Bill)	- \$350,000	
2005-07 FUNDING (Change to Bill)		- \$123,200

C. Administrative Attachment of the Board

1. Transfer the attachment of the Board to DNR.
2. Maintain the current law attachment of the Board to DOA.

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