



## Legislative Fiscal Bureau

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Joint Committee on Finance

Paper #224

### **PECFA Alternative Reimbursement Method (Commerce -- Housing, Buildings, and Environmental Regulation)**

#### *Base Agency*

[LFB 2007-09 Budget Summary: Page 101, #7]

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#### **CURRENT LAW**

The PECFA program reimburses owners or operators (claimants) for eligible cleanup expenses of discharges from petroleum product storage tank systems and home heating oil tank systems after the owner or operator has paid for the cleanup costs.

#### **GOVERNOR**

Authorize Commerce to create an alternative reimbursement method of paying for cleanup expenses under the PECFA program. Commerce would be allowed to authorize an owner or operator to submit a claim to the Department for an award to be paid by the Department directly to consultants and contractors with whom the Department contracts to: (a) conduct an investigation to determine the extent of environmental damage caused by a petroleum product discharge from a petroleum product storage system or home oil tank system; (b) prepare a remedial action plan that identifies specific remedial action activities proposed to be conducted; and (c) conduct remedial action activities at the site of the discharge from the petroleum product storage system or home oil tank system. If Commerce determines that the owner or operator is eligible to submit a claim for costs to be paid to consultants and contractors, Commerce may approve the claim, contract with consultants and contractors for the investigation, remedial action plan, and remedial action activities, and pay the award to the service providers.

A consultant or contractor would not be eligible to receive an award under the bill for compensation to third parties for bodily injury and property damage caused by a petroleum

products discharge from an underground petroleum product storage tank system. Currently, an owner or operator can receive reimbursement for such compensation.

The following current requirements would apply to a consultant or contractor receiving an award under the provision, instead of the owner or operator: (a) investigation of the extent of environmental damage caused by the petroleum product discharge; (b) recovery of any recoverable petroleum products from the tank; (c) disposal of any residual solid or hazardous waste consistent with local, state and federal laws; and (d) groundwater restoration consistent with DNR groundwater rules, and restoration of the environment, to the extent practicable, according to the standards required for the site.

## **DISCUSSION POINTS**

1. Commerce anticipates that the alternate payment method might be used: (a) at sites where the owner or operator (claimant) is not able to obtain financing to undertake or complete cleanup work at the site, which would be the most common situation for using the provision; (b) when an owner or operator prefers that Commerce, rather than the owner or operator, enter into the contract for cleanup activities; or (c) when Commerce wants to take a more active role in managing cleanup activities at a specific site.

2. There may be hundreds of sites where no remediation work has occurred for at least a few years because the owner or operator is unable or unwilling to obtain traditional bank financing to complete the cleanup. The proposal would allow Commerce and DNR to work directly with consultants and contractors to resume and complete cleanup work at these sites.

3. Commerce officials anticipate that the alternate payment method would be implemented by signing an agreement between the claimant and the Department, under which: (a) the claimant would continue to be responsible for the environmental pollution; (b) Commerce and DNR would direct the cleanup (DNR administers high-risk sites and Commerce administers medium- and low-risk sites); (c) the state would select the consultant or contractor to undertake the cleanup; (d) Commerce would make direct payments to the consultant or contractor for PECFA-eligible costs; and (e) the consultant or contractor would have the right to enter the claimant's property to perform the cleanup. Generally, the PECFA programs public bid process would be used to develop a scope-of-work and a maximum reimbursable amount, and to select the lowest cost contractor. A contract would be signed between the state and the consultant, specifying activities, timelines, and requirements for completing work at the site. Commerce would directly pay the consultant or contractor after the remedial activities are performed.

4. The provision should result in a decrease in the average site costs because there would be no reimbursement of loan interest costs. (In 2006-07, through May 1, 2007, almost 13%, or \$2.7 million of claim costs processed were for loan interest.) However, in the short term, there could be an increase in the number of sites submitting claims as the direct payment to contractors would allow cleanup work to resume at sites where work had stopped.

5. Commerce believes it could start to use the alternate payment method for 50 to 100 sites, and anticipates it would take approximately two years to complete the process at a given site. It is possible that the provision would allow cleanup of contamination to proceed at sites where work has stopped, and to increase the number of sites closed under the program.

6. The direct payment approach would probably not work at sites where the owner refuses to allow access to Commerce or DNR to enter the property to direct the cleanup. The agencies would continue to have the authority to take enforcement action when necessary to direct the owner to cleanup the site.

7. It is uncertain how much of the PECFA awards appropriation (\$20 million annually under the bill) would be used for the alternate payment process during the 2007-09 biennium. It is also unclear how many more sites could be cleaned up with the provision than without it. However, it is likely that the provision would increase the number of sites that could be closed over the next several years.

## **ALTERNATIVES TO BASE**

1. Approve the Governor's recommendations to: (a) authorize Commerce to create an alternative reimbursement method of paying for cleanup expenses under the PECFA program; (b) allow Commerce to authorize an owner or operator to submit a claim to the Department for an award to be paid by Commerce directly to consultants and contractors with whom the Department contracts to conduct an investigation, prepare a remedial action plan, and conduct remedial action activities at the site of the discharge; (c) authorize Commerce to contract with consultants and contractors for the investigation, remedial action plan, and remedial action activities, and pay the award to the service providers; (d) specify a consultant or contractor would not be eligible to receive an award for compensation to third parties for bodily injury and property damage caused by a petroleum products discharge from an underground petroleum product storage tank system; and (e) specify that certain current requirements would apply to a consultant or contractor receiving an award under the provision, instead of to the owner or operator.

2. Maintain current law.

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