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Joint Committee on Finance

Paper #577

PECFA Awards Appropriation (DSPS -- Buildings and Environmental Regulation and DNR -- Environmental Quality)

[LFB 2013-15 Budget Summary: Page 348, #7 (part) and Page 419, #1 (part)]

CURRENT LAW

The petroleum environmental cleanup fund awards (PECFA) program reimburses owners for a portion of the cleanup costs of discharges from petroleum product storage tank systems and home heating oil systems. PECFA awards are funded from the segregated petroleum inspection fund, which receives revenue from a 2¢ per gallon petroleum inspection fee assessed on all petroleum products that enter the state, including gasoline, diesel, and heating oil. In the 2011-13 biennial budget act, \$9.1 million was appropriated for PECFA claims in a biennial appropriation, including \$4.55 million in 2011-12 and \$4.55 million in 2012-13. On February 25, 2013, the Joint Committee on Finance approved an additional \$3.2 million for PECFA claims, to provide a total of \$12.3 million during the biennium. DSPS paid \$6,970,000 in PECFA claims in 2011-12, and is authorized to pay up to \$5,330,000 in 2012-13.

GOVERNOR

Maintain base funding for the PECFA awards appropriation of \$4,550,000 SEG annually, for a total of \$9.1 million for payment of PECFA claims during the 2013-15 biennium.

DISCUSSION POINTS

1. The PECFA claims appropriation was decreased in the 2011-13 biennial budget to \$9.1 million for the biennium, from the \$19.2 million appropriated in 2009-11. The decrease was made primarily to ensure petroleum inspection funds were available for transfer to the transportation fund. The program ran out of money in November, 2012, and an additional \$3.2 million was approved by the Joint Committee on Finance in February, 2013, to provide \$12.3 million during the biennium.

2. Administration officials indicated the PECFA awards appropriation was maintained at the current \$4.55 million annual level because of the uncertainty over future liabilities under the PECFA program. They further indicated that if PECFA demand exceeds the appropriated amount during the 2013-15 biennium, DNR could submit a s. 13.10 request to the Joint Committee on Finance for an increase in expenditure authority for PECFA awards, if a sufficient balance exists in the petroleum inspection fund.

3. Consideration of the 2013-15 biennial budget would be an appropriate time to evaluate demand for PECFA claims and establish the PECFA awards appropriation at a level necessary to meet estimated claim demand. The petroleum inspection fund is estimated to have a June 30, 2015, balance of \$10.4 million, under the bill, as modified by the Joint Committee on Finance on April 25, 2013.

4. The following table shows the actual PECFA claim payments made in 2003-04 through 2011-12, budgeted amounts for 2012-13, and amounts provided under the bill.

PECFA Claim Payments, 2003-04 Through 2014-15

<u>Year</u>	<u>Amount Paid</u>	<u>Percent Change from Prior Year</u>
2003-04	\$92,931,400	
2004-05	44,542,900	-52.1%
2005-06	21,311,100	-52.2
2006-07	22,514,100	5.6
2007-08	14,591,100	-29.8
2008-09	10,408,500	-28.7
2009-10	9,521,200	-8.5
2010-11	8,828,300	-7.3
2011-12	6,970,000	-21.0
2012-13 budgeted	5,330,000*	-23.5
2013-14 bill	4,550,000	-14.6
2014-15 bill	4,550,000	0.0

*It is anticipated \$1.2 million of the 2012-13 amount will not be spent due to the timing of submittal of DOT claims, and will lapse to the balance of the petroleum inspection fund.

5. It is probable that work conducted at PECFA sites and associated claims would have been greater during the 2011-13 biennium if DSPS had not implemented a moratorium on approving new work at sites between mid-November, 2011, and late-April, 2012, while it evaluated the program. In addition, DSPS expended all appropriated funds in November, 2012. This resulted in a significant slowdown or stoppage of work at most PECFA sites, and a backlog of almost \$1,000,000 in claims waiting to be paid, between November, 2012, and March, 2013. The claim backlog was paid in March, 2013, after an additional \$3,200,000 was made available for payment of claims. The combination of these two actions means limited work was being performed at most PECFA sites for over eight months of the biennium.

6. After DSPS assumed responsibility for claims payment in 2011-12, the Department evaluated the liability of the PECFA program for work approved for approximately 928 open sites

prior to November 16, 2011, and estimated the remaining liability for those sites would be approximately \$6.6 million. DSPS has not performed more recent estimates of potential future liability under the PECFA program. DNR officials indicate they do not currently have data to estimate potential PECFA claim demand for 2013-15, but they plan to perform a detailed estimate of future program liability during 2013-15.

7. DSPS received claims totaling \$11.2 million in 2011-13, as of the end of March, 2013, averaging \$535,000 per month. While claim levels have generally been declining from year to year, it is likely additional claims would have been received during the biennium if the program had not been under a moratorium on accepting new sites or approving new work activities for five months, and out of money for three months.

8. Funding approved by the Joint Committee on Finance in February, 2013, was anticipated to be sufficient to pay \$1.2 million in claims submitted by the Department of Transportation (DOT) during 2012-13. However, it is now unlikely DOT will submit a PECFA claim to DSPS in time for DSPS to audit, approve, and pay the claim before the end of 2012-13. This means the \$1.2 million approved in February, 2013, will lapse to the balance of the petroleum inspection fund, and will be needed in 2013-14.

9. While it is probable that PECFA claim demand will continue to decline from the levels experienced 10 years ago, demand may continue at a rate of \$450,000 to \$500,000 per month during 2013-15. This would equal demand of \$10.8 million to \$12.0 million during the 2013-15 biennium. Based on this potential level of demand, it is possible the PECFA program could run out of money in late 2014 or early 2015.

10. If the PECFA program runs out of money during 2013-15, owners and consultants may again decide to stop work at sites until funds become available, as occurred during the 2011-13 biennium. DNR would have the option of submitting a s. 13.10 request to the Joint Committee on Finance if additional funds are needed.

11. The Committee could choose to appropriate a portion of the estimated \$10.4 million June 30, 2015, petroleum inspection fund balance to provide sufficient funds for estimated PECFA claim demand. This would avoid a disruption in cleanup activity and avoid the potential redevelopment of a PECFA claim backlog.

12. If the Committee chooses to appropriate additional funds for the program, an option would be to authorize the funds in the first year of the biennial appropriation. This would maintain the current base funding of \$4.55 million in 2014-15, and PECFA claim demand could be reevaluated during 2015-17 biennial budget deliberations.

13. If PECFA claims funding would be provided in anticipation of potential demand of an average of approximately \$450,000 per month, \$10.8 million would be needed for payment of claims during the biennium. If \$1.2 million would also be provided for the DOT claims anticipated to be received during 2013-15 instead of 2011-13, the 2013-14 appropriation could be increased by \$2,900,000 (Alternative 2). Under this alternative, the petroleum inspection fund would have an estimated June 30, 2015, balance of \$7.5 million.

14. If the demand for PECFA claims averages approximately \$500,000 per month,

\$12.0 million would be needed for payment of claims during the biennium. If \$1.2 million would also be provided for the DOT claims anticipated to be received during 2013-15 instead of 2011-13, the 2013-14 appropriation could be increased by \$4,100,000. (Alternative 3). Under this alternative, the petroleum inspection fund would have an estimated June 30, 2015, balance of \$6.3 million.

15. Owners and representatives of PECFA-eligible sites argue that the PECFA awards appropriation should be set at a level that meets estimated claim demand, and that avoids a reduction in cleanup activity and/or the redevelopment of a PECFA claim backlog as existed in the late 1990s and during part of the 2011-13 biennium. It could also be argued that, after petroleum inspection fund revenues are used for the required first purpose of paying debt service for revenue obligations issued for the PECFA program, available revenues should next be used to pay PECFA claims.

16. If the Legislature approves more funding for the PECFA claims appropriation than is needed to pay PECFA claims during 2013-15, the unspent balance of the appropriated amount would lapse to the petroleum inspection fund on June 30, 2015. That balance would then be available during future biennia for any of the authorized uses of the petroleum inspection fund. If the Legislature approves less than is needed to pay approved PECFA claims during 2013-15, DNR could either submit an additional request for funding under s. 13.10 later during 2013-15, or develop a list of claims that would wait to be paid after separate legislative authorization or approval of funding in the 2015-17 biennial budget.

ALTERNATIVES

1. Approve the Governor's recommendation to provide \$4,550,000 SEG annually for PECFA awards, to provide \$9.1 million for PECFA awards during the 2013-15 biennium.

2. Provide an additional \$2,900,000 SEG in 2013-14 for PECFA awards, to provide \$12.0 million for PECFA awards during the 2013-15 biennium (an average of \$450,000 per month, plus \$1.2 million for the anticipated DOT claims).

ALT 2	Change to Bill Funding
SEG	\$2,900,000

3. Provide an additional \$4,100,000 SEG in 2013-14 for PECFA claims, to provide \$13.2 million for PECFA awards during the 2013-15 biennium (an average of \$500,000 per month, plus \$1.2 million for the anticipated DOT claims).

ALT 3	Change to Bill Funding
SEG	\$4,100,000

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