



Legislative Fiscal Bureau

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Joint Committee on Finance

Paper #476

Concentrated Animal Feeding Operation Fees (Natural Resources -- Water Quality)

[LFB 2021-23 Budget Summary: Page 447, #15]

CURRENT LAW

The federal Clean Water Act requires the Environmental Protection Agency (EPA) to regulate point source dischargers of pollutants into waters of the United States. Under a 1974 memorandum of understanding with EPA, the Department of Natural Resources (DNR) is delegated regulatory authority to enforce national water pollution standards in Wisconsin. Under this authority, DNR regulates concentrated animal feeding operations (CAFOs) as point sources of discharges with Wisconsin Pollutant Discharge Elimination System (WPDES) permits issued under s. 283.31 of the statutes. CAFOs are defined as large-scale animal feeding operations of 1,000 animal units or more and some smaller operations with certain discharges of pollutants into state waters. Permitting on the basis of animal units adjusts for the relative size and manure production of different animals, with 700 dairy cows, 1,000 beef cattle, and 125,000 broiler chickens each approximating 1,000 animal units. Permits are issued with five-year terms, and DNR reports 319 permitted CAFOs as of January 1, 2021.

CAFO permittees currently pay a fee of \$345 annually, which is deposited into a PR continuing appropriation, authorized to expend all monies received on staff and operations costs associated with CAFO regulation. DNR is required to report annually to the Legislature on use of CAFO fee revenues. In 2019-20, DNR reports revenues supporting nutrient management planning, spill and runoff response and inspections, engineering review of CAFO project specifications, communication and outreach, policy development, permit drafting, enforcement and compliance efforts, and information technology improvements.

In 2020-21, CAFO permitting and oversight staff at the Department, including both administrative and field staff, totaled 26.0 positions, consisting of 8.5 from general purpose

revenues (GPR), 12.5 from the nonpoint account of the segregated (SEG) environmental fund, 2.0 environmental improvement fund SEG, 1.0 from program revenues (PR) collected from WPDES permit fees assessed on CAFO operators, and 2.0 from federal (FED) funding. Funding associated with these positions totaled \$2,715,800, consisting of \$966,800 GPR, \$1,245,000 nonpoint SEG, \$184,900 environmental improvement fund SEG, \$79,700 PR and \$239,400 FED.

DISCUSSION POINTS

1. Assembly Bill 68/Senate Bill 111 would increase the annual fee for CAFOs from \$345 annually to \$545 annually, and establish an application fee of \$3,270 for those applying for a new permit. As written, the bill does not specify if the proposed application fee applies only to operations first applying for a CAFO permit, or also to operations applying for renewal of their permit, which occurs every five years. The administration indicates it intends for the new fee to apply only to applications submitted by new operations. (Alternatives incorporate language to clarify this intent.)

2. As of January, 2021, there are 319 permitted CAFOs in Wisconsin. Further, DNR estimates approximately nine new CAFOs are permitted each year. An additional annual fee of \$200 is estimated to produce approximately \$66,000 PR each year, and an application fee of \$3,270 for new CAFOs is estimated to produce \$29,000 PR each year, for a total of \$190,000 PR over the biennium. Under current law, CAFOs are expected to generate total fee revenues of approximately \$115,000 each year. Thus, under AB 68/SB 111, CAFO fees would generate approximately \$210,000 each year of the 2021-23 biennium.

3. The proposed increase in CAFO fees is intended to provide additional funding for DNR's regulatory efforts related to CAFOs. The administration contends that the proposed increase represents a reasonable increase in the share of regulation costs passed on to CAFOs, noting that CAFO fees cover only 4% of staff costs related to CAFO oversight under current law. The proposed increase under AB 68/SB 111 would increase fees to approximately 7% of CAFO regulatory staff costs.

4. Regulatory fees are often assessed on regulated entities to cover the state's costs associated with their oversight and regulation. For example, the Department of Safety and Professional Services, Department of Financial Institutions, and Public Service Commission are all largely funded by program revenue assessments on the entities that they are charged with regulating. However, under current law, CAFO fees are insufficient to support staff dedicated to CAFO regulation, which are estimated to cost approximately \$2,715,000 each year of the 2021-23 biennium. A fee structure sufficient to raise the approximately \$2,715,000 annually necessary to fully fund current and proposed CAFO staff would require an annual fee of \$8,500 per permitted facility or \$2.00 annually per animal unit kept at a facility.

5. As part of a WPDES permit, CAFOs are required to report the number of animal units they keep. As of May, 2021, DNR reports CAFO facilities kept approximately 1,400,000 animal units, with the average CAFO keeping approximately 4,450 units, and the median CAFO keeping approximately 2,760 units. Due to their size and complexity, CAFOs with more animal units would be expected to require more staff time associated with both permit application review, and inspection

and enforcement activities. Establishing a fee based on animal units would result in fees that are more proportional to the expected cost of regulating each entity. Further, as CAFOs increase in size, the amount of manure and wastewater produced also increases. Because measurement in animal units reflects the relative size and manure production of different animals, a fee per animal unit would allow DNR to correlate fees with the expected manure production and wastewater discharge of an operation. As a result, operations with larger potential environmental impacts would contribute more towards DNR regulatory efforts intended to prevent and reduce any environmental impacts of CAFOs.

6. During the Department's April 7, 2021, agency briefing before the Joint Committee on Finance, the DNR Secretary indicated that increased CAFO fees would be intended to support additional staff related to inspection and oversight of CAFOs. However, AB 68/SB 111 does not provide additional position authority associated with the fee increase. The Committee could consider providing additional position authority, or DNR could submit a request under section 16.505 of the statutes for additional PR positions if revenues support additional staffing.

7. If the Committee wished to increase the contribution of CAFOs to their cost of regulation, it could increase the annual CAFO fee by \$200 and create an application fee of \$3,270 for new CAFOs [Alternative 1]. Given the relatively increased regulatory cost and potential environmental impact of CAFOs with more animal units, the Committee could consider assessing additional CAFO fees based on the number of animal units kept at a facility. An additional fee of 7¢ per animal unit annually would generate an equivalent amount of revenue to the increase proposed under AB 68/SB 111 [Alternative 2].

8. Alternatives 1 and 2 each would reestimate the PR appropriation receiving deposits of CAFO permit fees, which is authorized to expend all monies received to the account. Under base funding and Committee action to date on standard budget adjustments, the appropriation is budgeted \$92,600 each year. Alternatives 1 and 2 would estimate expenditures at \$210,000 each year, consistent with expected fee revenues.

9. If the Committee wished to increase fees to support additional CAFO regulatory staff, it could also consider providing an additional 1.5 PR positions for CAFO regulation [Alternative 3]. The Committee could also take no action [Alternative 4], and CAFOs would continue to pay annual fees of \$345, which would generate approximately \$115,000 PR per year.

ALTERNATIVES

1. Increase annual CAFO fees from \$345 to \$545, and establish an application fee for new CAFOs of \$3,270. Reestimate CAFO fee revenue at \$210,000 PR each year, an increase of \$117,400 each year.

ALT 1	Change to Base	
	Revenue	Funding
PR	\$190,000	\$234,800

2. In addition to the current law fee of \$345, create an annual CAFO fee equal to 7¢ per animal unit kept at the CAFO. Reestimate CAFO fee revenue at \$210,000 PR each year, an increase of \$117,400 each year.

ALT 2	Change to Base	
	Revenue	Funding
PR	\$190,000	\$234,800

3. Provide an additional 1.5 PR positions for CAFO regulation. (This alternative could be selected in addition to Alternative 1 or 2.)

ALT 3	Change to Base
	Positions
PR	1.50

4. Take no action.

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