



Legislative Fiscal Bureau

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Joint Committee on Finance

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PECFA Staff (Commerce -- Building and Environmental Regulation)

[LFB 2001-03 Budget Summary: Page 189, #2]

CURRENT LAW

In 2000-01, Commerce is authorized \$3,575,500 and 48.8 positions to administer its responsibilities under the Petroleum Environmental Cleanup Fund Award (PECFA) program related to processing and paying PECFA claims and administering cleanup of medium- and low-risk sites. Commerce funding includes: (a) \$2,699,900 SEG and 34.8 positions (2.0 of which are project) from the petroleum inspection fund; (b) \$763,400 PR and 12.0 PR positions (3.0 of which are project) from the Federal Leaking Underground Storage Tank (LUST) program grant received through an interagency agreement with DNR; and (c) \$112,200 PR with 2.0 PR project positions that end June 30, 2001, from petroleum tank plan review and installation inspection fees.

GOVERNOR

Provide \$276,500 SEG in 2001-02 with 3.0 SEG positions from the petroleum inspection fund and \$328,600 SEG and \$131,300 PR in 2002-03 with 4.0 SEG positions and 3.0 PR positions for the following staff changes in the PECFA program.

a. Provide \$44,400 SEG in 2002-03 with 1.0 SEG project position to extend an attorney position to four years and extend the expiration date from September 1, 2002, to September 1, 2004. Further, provide \$49,000 SEG in 2001-02 and \$56,700 SEG in 2002-03 for 1.0 two-year project attorney position. The positions would work on PECFA appeals and other PECFA-related legal matters.

b. Provide \$131,300 PR in 2002-03 to convert 3.0 project hydrogeologist positions to permanent for administration of cleanup provisions at PECFA sites. Program revenue for the positions comes from a federal LUST program grant received through an interagency agreement

with the Department of Natural Resources (DNR).

c. Provide \$82,500 SEG annually to convert the funding source for 2.0 PR project claim review positions that expire July 1, 2001, from program revenue in the safety and buildings general operations appropriation to SEG petroleum inspection fund and to extend the expiration date of the project positions by two years to July 1, 2003.

d. Provide \$145,000 SEG annually to pay for contractual services with the Department of Justice for two special investigators to investigate fraud under the program.

DISCUSSION POINTS

A. Attorneys to Handle Appeals

1. Claimants are authorized to file an administrative appeal of a Commerce decision related to a PECFA claim. Under the bill, the PECFA program would have the following attorney positions to handle PECFA appeals: (a) one permanent attorney who is allocated 70% of time to PECFA appeals and 30% to other responsibilities of the Environmental Regulatory Services Division; (b) one four-year project attorney whose term expires on January 13, 2002 and is deleted under standard budget adjustments; (c) one project attorney whose two-year term would be extended from September 1, 2002 to September 1, 2004 (the two-year project position was authorized by the Joint Committee on Finance under s. 13.10 on July 12, 2000); and (d) one new project attorney with a two-year term from approximately November, 2001, to November, 2003.

2. In the 14 months prior to the availability of revenue bond proceeds for payment of PECFA claims (January, 1999 through February, 2000), Commerce paid 1,677 claims, averaging 120 payments per month. Of this total, approximately 20% of the claim decisions were appealed, or an average of 24 per month. Bond proceeds were first available on March 15, 2000. During the three months March through May, 2000, Commerce used revenue bond proceeds to pay \$219.5 million for 3,759 PECFA claims. During the six months April, through September, 2000, Commerce received 887 appeals, an average of 148 per month. This continued a trend of an appeals rate of approximately 20% of claims.

3. In calendar year 2000, the Department received 1,092 appeals and closed 618 appeals. As of March 1, 2001, there was a backlog of 699 appeals received and pending final action. Commerce currently notifies claimants who submit appeals that the Department anticipates that by the end of 2001 it will schedule hearings for appeals filed prior to March 15, 2000. Commerce has reduced the time required to settle many appeals by referring the appeal back to the claim reviewer at the same time legal staff acknowledge receipt of the appeal so that the claim reviewer can review any new information submitted with the appeal. However, with the currently authorized legal staff the appeals backlog would be at least two to three years.

4. Commerce recently updated a detailed analysis that estimates the attorney workload between now and 2004. The original analysis assumed an experienced attorney can complete 100 "work units" per month, consisting of either 100 quick appeals settlements, 10 settlements that

involve more substantial work or five appeal hearings. The updated analysis showed that the original June, 2000, methodology demonstrated a reasonable approach to estimating the appeals workload between that date and now.

5. The extension of one project position from September 1, 2002, to September 1, 2004, and a new two-year project position provided in the bill would result in an estimated appeals backlog on June 30, 2003, that would take 2.7 attorneys approximately 1.8 years to resolve. The two project attorneys would likely shorten the appeals backlog from the current level of 700 to approximately 400 to 500 by June 30, 2003. The backlog would begin to increase after the recommended two-year project position expires in late 2003. This analysis does not include any appeals that would result from issuance of \$100 million in revenue obligation bonding authority under the bill. Appeals resulting from \$100 million in revenue obligation proceeds could add approximately one year to the appeals backlog.

6. The backlog would likely extend beyond the expiration dates of the project positions in the bill and represents long-term workload for the PECFA program of four or more years. It is likely that the ongoing nature of the appeals workload will be at least one full time position greater than the 0.7 position that is provided through the permanent attorney position. When workload is of an ongoing nature that continues beyond four years, it is appropriate to provide permanent position authority. Both of the attorney positions could be provided as permanent rather than project, to reflect the ongoing workload. Alternatively, the existing project attorney position that expires on September 1, 2002 could be converted to permanent and the new project position could be provided for a four-year instead of two-year term.

7. Commerce may be more likely to attract and retain experienced and qualified candidates if it offered permanent, rather than project position employment. The two current project attorneys began employment with Commerce in February, 2001. It is possible that the program could minimize turnover and time lost to training new attorneys if a permanent position would be available.

B. Hydrogeologists

8. On May 3, 2000, the Joint Committee on Finance approved 9.0 PR permanent and 3.0 PR, two-year project positions. The project positions expire on July 1, 2002. The three positions were approved as project instead of permanent because during 1999-01, Commerce reallocated some of the federal leaking underground storage tank (LUST) funds received from the interagency agreement with DNR to support existing Commerce staff funded from SEG petroleum inspection funds, in order to free up SEG funds to pay for two Department of Justice positions (described in section "D" of this paper) through June 30, 2001.

9. In federal grant year 2000, DNR was the Wisconsin recipient of a \$1,661,000 LUST grant from EPA. After approval of a funding allocation by the Joint Committee on Finance in May, 2000, EPA, DNR and Commerce agreed that DNR would provide Commerce with \$798,200 of the grant. DNR and Commerce have applied for separate LUST grants for 2001. EPA approved a separate grant for Commerce, effective April, 2001.

10. Commerce has recently requested DOA authorization under s. 16.54 for 12.0 federal positions to be funded from the federal LUST grant. Legislative authorization is not needed for the federal positions. With the creation of the federal positions, the 12.0 PR positions and associated funding will not be needed and could be deleted as noncontinuing items.

C. Claim Reviewers

11. 1999 Act 9 provided Commerce with \$84,200 SEG in 1999-00 for 2.0 SEG two-year project claim review positions. The act converted the 2.0 SEG positions to PR and provided \$112,200 PR in 2000-01 in a new program revenue annual appropriation. Act 9 authorized Commerce to promulgate rules to assess and collect fees to recover its costs of approving requests by owners or operators for case closure and providing other assistance requested by claimants at petroleum sites. Fees collected under the provision would have funded the two claim review staff.

12. Any fees charged by Commerce or DNR after October 29, 1999, for the approval of case closure and other requested assistance are not reimbursable expenses under the PECFA program. Since September 19, 1998, DNR has charged fees related to case closures and much of the technical and redevelopment assistance provided by DNR for various brownfields initiatives. Prior to Act 9, the DNR fees were reimbursable under the PECFA program.

13. On May 3, 2000, the Joint Committee on Finance approved 2.0 PR one-year project positions funded from petroleum tank review and inspection fees in the safety and buildings general operations appropriation and deleted 2.0 PR project positions under the appropriation for petroleum storage remedial action fees. The Governor's 2001-03 budget includes a separate recommendation to deposit the petroleum tank review and inspection fees in the SEG petroleum inspection fund instead of in the safety and buildings program revenue appropriation.

14. In May, 2000, Commerce argued that it did not want to charge new fees because: (a) a fee related to site closure could have the unintended consequence of delaying rather than expediting the closure of sites, which is counter to a program goal of closing sites; (b) new fees would create an additional workload to administer; and (c) Act 9 included other program changes that may increase costs to PECFA claimants such as larger deductibles and fees as a condition of submitting a bid for remediating a site. Commerce has not promulgated fees under the Act 9 authority. At the March, 2001, Joint Committee on Finance agency budget briefings, the Commerce Secretary indicated the Department would be willing to review the issue.

15. Under the bill, Commerce would receive an additional two years of position authority for two claim review staff. Further, under the bill Commerce would not utilize the Act 9 provision to collect fees from PECFA claimants to pay for a portion of program costs. While this would be less burdensome to the two-thirds of site owners currently under Commerce jurisdiction who would not pay a fee for case close-out, it would continue a disparity that existed prior to enactment of Act 9. Site owners under DNR jurisdiction would continue to pay a fee for case close-out or certain other requests for technical assistance while Commerce site owners would not. The DNR fee for a closeout determination on a PECFA site is currently \$750. Further, had Commerce complied with the Act 9 provisions, the Governor and Legislature could have evaluated whether fee

revenues were adequate to support additional program costs in the 2001-03 biennium.

16. Currently, the two project positions are vacant. One of the individuals formerly in the positions filled a permanent claim reviewer position funded from the PECFA SEG appropriation, and the other individual moved on to another job. There are 11 permanent claim reviewer positions, one of which is vacant and going through the recruitment process.

17. If the Governor's recommendation is not approved, Commerce could choose to promulgate rules to establish fees under the Act 9 provision to fund claim reviewer activities. This would also encourage more equal treatment of PECFA claimants. Commerce could request PR position and expenditure authority from the Joint Committee on Finance under section 16.505/515 once it begins to assess fees.

18. Further, the Committee could consider requiring DNR and Commerce to charge uniform fees to ensure equal treatment of petroleum tank owners.

D. Department of Justice Contract

19. On May 3, 2000, the Joint Committee on Finance approved a Department of Justice (DOJ) section 16.505 request for 2.0 PR permanent special agent positions to investigate criminal activity under the PECFA program. The positions are funded from an interagency agreement with Commerce. The positions have investigated several issues of potential fraud under PECFA.

20. During the 1999-01 biennium, Commerce paid for the DOJ staff by reallocating some of the federal LUST funds received from the interagency agreement with DNR to support existing Commerce staff funded from SEG petroleum inspection funds, thus freeing up SEG funds to pay for the two DOJ positions through June 30, 2001. In addition, in 2000-01, Commerce received DOA approval to release \$51,500 from unallotted reserve that is authorized for contracts for field audit of the remediation work at PECFA sites, and to use those funds for a portion of the DOJ investigator costs. Commerce has determined that it can accomplish the original goals of the field audit activities with existing staff.

21. The DOJ contract will cost Commerce \$202,700 in 2000-01, and will cost approximately \$204,300 in 2001-02 and \$206,000 in 2002-03 (depending on DOJ staff salary increases). The \$145,000 provided in the bill, combined with the reallocated \$51,500, would provide Commerce with \$196,500 to pay DOJ costs. This would require Commerce to reallocate approximately \$7,300 during the 2001-03 biennium from existing resources to pay the remainder of DOJ costs.

22. Another option for paying for the DOJ PECFA fraud investigators would be to transfer SEG funding from the petroleum inspection fund to a DOJ investigations appropriation and convert the DOJ positions from PR to SEG. However, it could be argued that funding the DOJ costs through an interagency agreement would allow Commerce more involvement in PECFA investigation decisions by DOJ than may occur if the DOJ costs are funded through a separate appropriation.

23. If the \$145,000 is not provided, Commerce could continue to reallocate SEG funds currently allocated to PECFA audit, claim review or administration of cleanup activities.

ALTERNATIVES TO BASE

A. Attorneys to Handle Appeals

1. Approve the Governor’s recommendation to (a) provide \$44,400 SEG in 2002-03 with 1.0 SEG project position to extend an attorney position to four years and extend the expiration date from September 1, 2002, to September 1, 2004; and (b) provide \$49,000 SEG in 2001-02 and \$56,700 SEG in 2002-03 for 1.0 two-year project attorney position.

| Alternative A1 | SEG |
|---|-------------|
| 2001-03 FUNDING (Change to Base) | \$150,100 |
| <i>[Change to Bill]</i> | <i>\$0</i> |
| 2002-03 POSITIONS (Change to Base) | 2.00 |
| <i>[Change to Bill]</i> | <i>0.00</i> |

2. Approve the Governor’s recommendation with one or both of the following modifications:

- a. Convert the existing project attorney position that expires on September 1, 2002, to permanent.
- b. Provide a new project attorney position with a four-year instead of two-year term.

3. Instead of approving the Governor’s recommendation, provide \$49,000 SEG in 2001-02 and \$101,100 SEG in 2002-03 for 2.0 permanent attorney positions.

| Alternative A3 | SEG |
|---|-------------|
| 2001-03 FUNDING (Change to Base) | \$150,100 |
| <i>[Change to Bill]</i> | <i>\$0</i> |
| 2002-03 POSITIONS (Change to Base) | 2.00 |
| <i>[Change to Bill]</i> | <i>0.00</i> |

4. Maintain current law. (The PECFA program would maintain the existing permanent attorney, the existing project attorney that expires on January 13, 2002 and the existing project attorney that expires on September 1, 2002.)

| Alternative A4 | SEG |
|---|-------------------|
| 2001-03 FUNDING (Change to Base) | \$0 |
| <i>[Change to Bill]</i> | <i>- 150,100]</i> |
| 2002-03 POSITIONS (Change to Base) | 0 |
| <i>[Change to Bill]</i> | <i>- 2.0]</i> |

B. Hydrogeologists

1. Approve the Governor's recommendation to provide \$131,300 PR in 2002-03 to convert 3.0 project hydrogeologist positions to permanent for administration of cleanup at PECFA sites.

| Alternative B1 | PR |
|---|--------------|
| 2001-03 FUNDING (Change to Base) | \$131,300 |
| <i>[Change to Bill]</i> | <i>\$0]</i> |
| 2002-03 POSITIONS (Change to Base) | 3.00 |
| <i>[Change to Bill]</i> | <i>0.00]</i> |

2. Delete \$612,100 PR in 2001-02 and \$655,700 PR in 2002-03 with 12.0 PR positions to reflect that ongoing funding for the positions will be provided through a direct federal LUST grant to Commerce instead of through an interagency agreement with DNR.

| Alternative B2 | PR |
|---|---------------------|
| 2001-03 FUNDING (Change to Base) | - \$1,226,600 |
| <i>[Change to Bill]</i> | <i>- 1,267,800]</i> |
| 2002-03 POSITIONS (Change to Base) | - 12.00 |
| <i>[Change to Bill]</i> | <i>- 12.00]</i> |

C. Claim Reviewers

1. Approve the Governor's recommendation to provide \$82,500 SEG annually to convert the funding source for 2.0 PR project claim review positions from program revenue in the safety and buildings general operations appropriation to SEG petroleum inspection fund and to extend the expiration date of the project positions by two years to July 1, 2003.

| Alternative C1 | SEG |
|---|--------------|
| 2001-03 FUNDING (Change to Base) | \$165,000 |
| <i>[Change to Bill]</i> | <i>\$0]</i> |
| 2002-03 POSITIONS (Change to Base) | 2.00 |
| <i>[Change to Bill]</i> | <i>0.00]</i> |

2. Provide \$41,200 PR in 2001-02 and \$82,500 PR in 2002-03 and 2.0 PR positions and require Commerce and DNR to charge uniform fees for case closure and providing other assistance requested by claimants at petroleum sites.

| Alternative C2 | PR |
|---|-------------------|
| 2001-03 FUNDING (Change to Base) | \$123,700 |
| <i>[Change to Bill]</i> | <i>\$123,700]</i> |
| 2002-03 POSITIONS (Change to Base) | 2.00 |
| <i>[Change to Bill]</i> | <i>2.00]</i> |

3. Maintain current law. (Commerce could seek program revenue staff after administrative rules are promulgated to assess fees under 1999 Act 9.)

| Alternative C3 | SEG |
|---|---------------------|
| 2001-03 FUNDING (Change to Base) | \$0 |
| <i>[Change to Bill]</i> | <i>- \$165,000]</i> |
| 2002-03 POSITIONS (Change to Base) | 0.00 |
| <i>[Change to Bill]</i> | <i>- 2.00]</i> |

D. Department of Justice Contract

1. Approve the Governor's recommendation to provide \$145,000 SEG annually to pay for contractual services with the Department of Justice for two special investigators to investigate fraud under the program.

| Alternative D1 | SEG |
|---|-------------|
| 2001-03 FUNDING (Change to Base) | \$290,000 |
| <i>[Change to Bill]</i> | <i>\$0]</i> |

2. Instead of providing funds to Commerce to pay the DOJ contract, provide a direct appropriation to DOJ from the petroleum inspection fund to pay for the positions. Provide DOJ with \$204,300 SEG in 2001-02 and \$206,000 SEG in 2002-03 with 2.0 SEG positions. In DOJ, delete \$157,200 PR and 2.0 PR positions annually. In Commerce, delete \$196,500 SEG annually (\$145,000 provided in the bill to pay the DOJ contract and \$51,500 annually in base authority that would be reallocated under the bill to pay DOJ costs).

| <u>Alternative D2</u> | <u>PR</u> | <u>SEG</u> | <u>TOTAL</u> |
|---|-------------|------------|--------------|
| 2001-03 FUNDING (Change to Base) | \$0 | \$307,300 | \$307,300 |
| <i>[Change to Bill]</i> | - \$314,400 | \$17,300 | - \$297,100] |
| 2002-03 POSITIONS (Change to Base) | - 2.00 | 2.00 | 0.00 |
| <i>[Change to Bill]</i> | - 2.00 | 2.00 | 0.00] |

3. Maintain current law. (Commerce would have to reallocate existing resources to pay for any contract with DOJ.)

| <u>Alternative D3</u> | <u>SEG</u> |
|---|--------------|
| 2001-03 FUNDING (Change to Base) | \$0 |
| <i>[Change to Bill]</i> | - \$290,000] |

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