



Legislative Fiscal Bureau

One East Main, Suite 301 • Madison, WI 53703 • (608) 266-3847 • Fax: (608) 267-6873

May 11, 2005

Joint Committee on Finance

Paper #305

Fox River Navigational System Authority

[LFB 2005-07 Budget Summary: Page 169, #1 & Page 373, #11]

CURRENT LAW

Under current law, when the Fox River navigational system is transferred from the federal government to the state, the Fox River Navigational System Authority is required to assume responsibility for the rehabilitation, repair, replacement, operation, and maintenance of the system and the authority of the Fox River Management Commission expires. In addition, the state is required to enter into a lease with the Authority once the transfer from the federal government to the state has occurred. In September, 2004, the 17 locks and associated property were transferred from the United States Army Corps of Engineers to the state, and the Authority subsequently signed a lease with the state to assume responsibility for the locks.

The Fox River Navigational System Authority has base level SEG funding of \$30,700 for the operations and management of the Fox River locks. The Department of Natural Resources has base level funding of \$44,600 PR and \$96,000 SEG annually for operations and management of the locks. In total, \$126,700 SEG from the water resources account of the conservation fund is budgeted in 2004-05 for Fox River locks operational costs.

GOVERNOR

Delete the Fox River Management Commission and associated obsolete statutory provisions.

In addition, delete \$44,600 PR and \$96,000 water resources SEG annually, and delete the two associated DNR appropriations that had been used to fund the Fox River Management Commission, and seasonal operations of the Fox River locks.

DISCUSSION POINTS

1. The Fox River navigational system consists of 17 locks and over 90 acres of land along the Fox River from Lake Winnebago to Green Bay.

2. 2001 Act 16 (the 2001-03 biennial budget) created the Fox River Navigational System Authority for the purpose of assuming responsibility for the rehabilitation, repair, replacement, and operation of the navigational system of the Fox River from the federal government. The Authority is directed by a nine-member board made up of the heads of three state agencies (Natural Resources, Transportation, and the Historical Society) and six local members appointed by the Governor, with Senate confirmation. The statutes allow the nine-member board of directors of the Authority to appoint a chief executive officer, along with other employees of the Authority, and determine compensation for these positions. The Authority's board members are not compensated, but are reimbursed for necessary expenses, including travel, incurred while performing Authority duties.

3. Pursuant to a memorandum of agreement signed between the United States Army Corps of Engineers and the state, the federal government officially transferred the Fox River locks to the state on September 17, 2004. Later that day, the Authority entered into a lease agreement with the Department of Administration (DOA), as required by 2001 Act 16, and assumed responsibility for the locks.

4. With the transfer of the locks, the federal government paid the state \$11.8 million to help fund the rehabilitation of the locks. This funding included the \$10 million specified in the memorandum of agreement and an additional \$1.8 million adjustment based on the Engineers News Record cost index (which accounts for inflation and increased rehabilitation costs related to the delay in the transfer of the locks), as the transfer was originally anticipated to occur as early as October, 2001. In addition, the federal government is to provide up to \$5.5 million (which will also be adjusted for inflationary construction costs at the time the payments are made) in matching funds over seven years to be applied toward the cost of repairing and rehabilitating the locks. Funding provided by the federal government may only be used for construction and rehabilitation costs, and may not be used to fund operations of the locks.

5. The \$5.5 million in federal rehabilitation funds are to be matched by an equal amount from state and local contributions. DNR is required to set aside \$400,000 annually for seven fiscal years (\$2.8 million in total) in water resources account segregated (SEG) funding from the recreational boating aids grant program to meet the state's match requirement. DNR is required to release the set-aside funding on an annual basis in an amount to match the amounts raised by a local nonprofit corporation. State funds would be available beginning in the fiscal year after the Authority submits a management plan for the financing, management, repair, maintenance and operation of the navigational system. The plan must also address how the Authority will manage its funds to ensure that sufficient resources are available to abandon the system if continued operation becomes infeasible. The initial plan was due within 180 days after the Authority and DOA signed the lease agreement for maintenance and operations of the locks (by March 15, 2005). In March,

2005, DOA received a preliminary management plan from the Authority, and the two entities are currently reviewing and revising this plan. Authority officials hope to have a final plan adopted by the Authority Board and submitted to DOA by the end of May, 2005. Through April, 2005, about \$1.6 million has reportedly been raised toward the local contribution in funding. Further, the Authority is currently attempting to raise an additional \$5 million from private funds before the end of the calendar year, although portions of these funds may be pledged for future years. The Authority is undertaking this initiative in order to attempt to shorten the construction schedule surrounding the locks from 10 years to five years. Under original plans, some construction was to be funded from investment earnings from the initial federal payment (of \$11.8 million), requiring the delay of some construction into the future after enough investment revenue was realized. However, the Authority is attempting to expedite the construction schedule by raising additional funds so the Authority does not need to rely on investment income to fund a portion of construction costs. Further, it is possible that construction costs could rise at a faster rate than investment income.

6. Prior to the transfer of the locks, the Fox River Management Commission was responsible for the operation and maintenance of the Fox locks under s. 30.93 of the statutes. The Fox River Management Commission was funded by two appropriations. Appropriation 20.370(9)(ju) is a biennial appropriation funded from the segregated water resources account of the conservation fund (motorboat fuel tax revenues) for the operation and management of the locks system of the Commission. Appropriation 20.370(9)(jL) is a program revenue (PR) continuing appropriation in the Department of Natural Resources (DNR) that received the fees collected for the use of the locks, which were then used for the same purposes. However, the Commission ceased operations in anticipation of the transfer and DNR oversaw management of the three locks currently in operation.

7. Due to the fact that the transfer of the locks from the federal government to the state had yet to take place, 2003 Act 33 (the 2003-05 biennial budget act) provided DNR \$96,000 in water resources account SEG annually for the operation of the Locks. In addition to this SEG funding, DNR is authorized \$44,600 annually in expenditure authority from the PR appropriation that collects revenue from lock user fees. This appropriation has collected \$11,000 in program revenue in 2004-05, through March. Further, \$30,700 in water resources account SEG was provided to the Fox River Navigational System Authority each year in the 2003-05 biennium for any start-up costs faced by the Authority prior to the transfer of the locks.

8. Tables 1 and 2 provide an overview of the two DNR appropriation account conditions in the 2003-05 biennium. As seen in these tables, transfers from DNR to the Authority are expected to total \$52,000 in 2004-05 (\$39,600 from the SEG appropriation and \$12,400 from the PR appropriation).

TABLE 1

DNR's Fox Locks SEG Appropriation Account

	<u>2003-04</u>	<u>2004-05</u>
Opening Balance	\$0	\$0
Revenue	96,000	96,000
Expenditures	<u>96,000</u>	<u>56,400</u>
Net Transfer to the FRNSA	\$0	\$39,600

TABLE 2

DNR's Fox Locks PR Appropriation Account

	<u>2003-04</u>	<u>2004-05</u>
Opening Balance	\$0	\$12,900
Fee Revenues	12,900	11,000
Expenditures	<u>0</u>	<u>11,500</u>
Closing Balance	\$12,900	\$12,400
Transfer to the FRNSA		\$12,400

9. As a result of the creation of the Authority and the transfers of the SEG and PR funds, as a technical matter, the Governor recommends eliminating statutory references to the locks and the Fox locks appropriations in DNR.

10. However, it should be noted that the Authority's SEG appropriation, which is provided \$30,700 SEG annually under the bill, is a continuing appropriation. Further, the Authority opened 2004-05 with a balance of \$260,600 (\$247,700 SEG and \$12,900 from user fees). Under a continuing appropriation all revenues received may be expended with DOA approval. The Authority has unused SEG expenditure authority from prior years totaling \$208,100. As a result, in addition to revenue from user fees charged by the Authority, Authority expenditures from state funding could exceed \$320,000 in the biennium (\$30,700 SEG annually appropriated plus \$247,700 in SEG balances and \$12,400 PR transferred from DNR to the Authority's SEG appropriation).

11. Administration officials indicate that the Governor recommended providing \$30,700 SEG to the Authority annually as a compromise between two points of view. Some argue that the

\$126,700 SEG was provided as start-up funding for the Authority in the 2003-05 biennium, and should be repealed in the 2005-07 biennium. They cite the Authority's SEG operations appropriation, which indicates the funding is for the establishment and initial costs of operating the system, and note that the Authority will receive over \$17 million in federal funds for rehabilitation of the locks, in addition to another \$5.5 million from DNR and private sources. As a result, the Committee could consider eliminating Authority funding for operation and management of the locks (Alternative #2). Further, commitments under the bill for the water resources account are expected to substantially exceed available revenues (as described in a separate budget paper under DNR -- Water Quality). Others argue that this funding was intended to be used for continued operations and management of the locks, and note that the federal monies received by the Authority generally may not be used for operational costs of the locks. Further, they argue that even if the SEG funding was intended to be used for the initial start-up costs of the Authority, the majority of funding provided for these purposes in the 2003-05 biennium (\$192,000 of \$253,400) was provided to DNR for its continued management and operational costs of the locks. Therefore, now that the locks have been transferred to the state and the Authority has come into existence, the Committee could consider providing the Authority with \$126,700 SEG annually to maintain base funding for operational costs of the lock system (Alternative #3).

12. Authority officials indicate they primarily fund operational costs of the Authority from revenues from user fees of the locks and the state appropriation funded by water resources account SEG. However, they may also use certain interest earnings from the federal funding received by the Authority upon the transfer of the locks from the federal government, which Authority officials indicate the Department of Administration agreed to allow the Authority to use to cover any gap between available revenues (water resources SEG and fees) and operational costs. However, any amount of interest income used for operational costs reduces funds available for construction and rehabilitation costs.

13. DNR expenditures for operation of the locks were \$113,800 in 2000-01, \$109,500 in 2001-02, \$100,000 in 2002-03, and \$101,700 in 2003-04 (this includes the \$96,000 shown in Table 1 and \$5,700 in expenditures made by DNR from a general operations appropriation). While DNR costs of operating the three locks currently in seasonal use have averaged approximately \$110,000 annually, Authority costs could be expected to be somewhat higher. The Authority is authorized to hire a chief executive officer and other employees. DNR used primarily limited-term employees on a seasonal basis to tend the locks during the boating season. However, the chief executive officer would likely be a permanent manager to assist the nine-member board and oversee day-to-day operations of the locks system. Therefore, providing \$150,000 annually (\$130,000 in 2004-05 based on a partial year of Authority operation) for costs of the Authority may provide a level of services more consistent with that under DNR operations. Further, revenues collected by DNR from fees for permits for use of the locks were \$14,700 in 2001-02, \$19,100 in 2002-03, and \$12,900 in 2003-04. These revenues could be estimated at \$20,000 annually in the 2005-07 biennium.

14. Table 3 shows an estimated account condition for the combined PR and user fee sources of the Fox River locks in 2003-05, as well as a comparison of Fox River Navigational

System Authority under the bill and if no additional SEG were appropriated in 2005-07 (Alternative #2). It should be noted that 2004-05 estimated expenditures reflect both DNR and Authority expenditures.

TABLE 3

Combined Fox River Locks Operations Costs and Funding

	<u>2003-04</u>	<u>2004-05</u>	<u>AB 100</u>		<u>Alternative 2</u>	
			<u>2005-06</u>	<u>2006-07</u>	<u>2005-06</u>	<u>2006-07</u>
Opening Balance	\$217,000	\$260,600	\$271,300	\$172,000	\$271,300	\$141,300
SEG revenue	126,700	126,700	30,700	30,700	0	0
Additional state SEG			0	0	0	0
PR/fee revenue	<u>12,900</u>	<u>14,000</u>	<u>20,000</u>	<u>20,000</u>	<u>20,000</u>	<u>20,000</u>
Available revenue	\$139,600	\$140,700	\$50,700	\$50,700	\$20,000	\$20,000
Expenditures	96,000	130,000	150,000	150,000	150,000	150,000
Closing Balance	\$260,600	\$271,300	\$172,000	\$72,700	\$141,300	\$11,300

15. While it should be noted that expenditures of \$150,000 shown in the table are based on operation of the current three locks, additional locks are eventually expected to be refurbished and reopened for recreational use. However, revenue would also be expected to increase with the opening of additional locks.

16. As shown in the table, if no SEG funding were provided to the Authority in the 2005-07 biennium, the Authority could be expected to have annual expenditures of \$150,000 and still maintain a July 1, 2007, balance. However, due to the structural imbalance (expenditures exceed revenues) of \$130,000, the Committee could require the Authority to submit its 2007-09 budget request to the Governor as though it had base funding of \$30,700 SEG (the amount recommended by the Governor), or \$126,700 SEG (current base level water resources SEG).

ALTERNATIVES

1. Approve the Governor's recommendation to delete the Fox River Management Commission and associated obsolete statutory provisions, delete \$44,600 PR and \$96,000 water resources SEG annually, and delete the two associated DNR appropriations that had been used to fund the Fox River Management Commission, and seasonal operations of the Fox River locks.

2. Adopt the Governor's recommendation, except delete \$30,700 SEG annually that would be provided for operation and management of the Fox Locks in 2005-07 (no additional state funding would be provided for operations of the locks in 2005-07). This would increase the

available balance of the water resources account by \$61,400. Further, require the Authority to submit its 2007-09 budget request to the Governor as though the following amount of funding was provided as base level funding:

- a. \$30,700 SEG (the level recommended by the Governor);
- b. \$126,700 SEG (current base-level funding); or,
- c. Provide no base-level funding

<u>Alternative 2</u>	<u>SEG</u>
2005-07 FUNDING (Change to Bill)	- \$61,400

3. Adopt the Governor's recommendation. Further, provide an additional \$96,000 SEG annually to the Fox River Navigational System Authority for operation and management of the Fox locks (to continue base-level funding of \$126,700 water resources SEG annually for operations of the locks).

<u>Alternative 3</u>	<u>SEG</u>
2005-07 FUNDING (Change to Bill)	\$192,000

Prepared by: Christopher Pollek