



## Legislative Fiscal Bureau

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Joint Committee on Finance

Paper #578

### **Transfer Petroleum Inspection and Tank Regulation from DSPTS to DATCP (DSPTS and Agriculture, Trade and Consumer Protection)**

[LFB 2013-15 Budget Summary: Page 62, #8 and Page 422, #2 (part)]

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#### **CURRENT LAW**

The petroleum inspection and tank regulation program was transferred from the former Department of Commerce to the Department of Safety and Professional Services (DSPTS) in 2011 Act 32, effective July 1, 2011. It was part of the Division of Environmental Regulatory Services, along with the petroleum environmental cleanup fund award (PECFA) program. In 2012, DSPTS created the Division of Industry Services by combining the Division of Environmental Regulatory Services with the Division of Safety and Buildings.

DSPTS is responsible for the following functions in the petroleum inspection and tank program: (a) inspection of petroleum product storage tanks at retail service stations, non-retail locations (such as businesses which maintain tanks for their business fleet), bulk plants, and terminals; (b) inspection of petroleum products that enter the state, including products that enter and leave terminals, retail service stations and other tank locations; (c) operation of 10 petroleum labs throughout the state, where staff perform tests on inspected petroleum products; (d) administration of state statutes and administrative rules related to flammable, combustible, and hazardous liquid storage (found in Chapter 101 of the statutes and SPS 310 of the administrative code); (e) permitting and registration of aboveground and underground flammable, combustible, and hazardous liquid product storage tanks (petroleum and non-petroleum products); (f) maintenance of the state's database of aboveground and underground flammable, combustible, and hazardous liquid product storage tanks; (g) administration of a credentialing program for businesses and persons required to be certified to work in certain tank specialties (such as persons who install, remove, clean, reline, or test the tightness of tank lines); (h) regulation of the proper closure, removal and abandonment of tank systems; (i) administration of federally delegated requirements for the construction, maintenance, and abandonment of tanks for the storage, handling or use of federally regulated hazardous liquids; (j) administration of contracts

with local governments and private entities authorized to inspect tanks on behalf of DSPS (local program operator agents); and (k) plan review related to the storage, handling, or use of flammable or combustible liquids or federally regulated substances.

The program is provided segregated funding from the petroleum inspection fund, and federal funding from a U.S. Environmental Protection Agency (EPA) grant for underground storage tank regulation.

The Department of Agriculture, Trade and Consumer Protection (DATCP) has general regulatory authority over the construction and use of commercial weights and measures in Wisconsin. Chapter 98 of the statutes and administrative rule ATCP 92 specify obligations of owners or operators of certain devices, but in general all weights and measures must be maintained to standards established by the National Institute of Standards and Technology (NIST). Among its duties, DATCP: (a) maintains a metrology lab to verify the accuracy of weights and measures equipment used in the state; (b) employs field inspectors to provide regular inspections of devices in commercial use throughout the state, including retail fuel pumps; and (c) enforces corrections for devices in violation of state standards. Any municipality with a population of more than 5,000 must administer its own weights and measures program, or contract with DATCP to provide such services. DATCP is therefore responsible at a minimum for inspecting weights and measures in municipalities with populations below 5,000.

The DATCP weights and measures program in 2012-13 is supported by: (a) \$199,000 GPR with 2.0 positions; (b) \$1,343,600 PR with 13.05 positions; and (c) \$771,400 petroleum inspection fund SEG with 6.0 positions. The weights and measures inspection program is part of DATCP's Regulatory and Safety Section, currently housed in the Bureau of Consumer Protection. The section currently includes 24.8 positions, including a section chief, 15 inspectors, two field supervisors, two metrologists and 4.8 technical and other program staff.

## **GOVERNOR**

Transfer the petroleum inspection and tank regulation program from DSPS to DATCP. Transfer all of the DSPS responsibilities described above under (a) through (j) to DATCP. Provide DATCP with the SEG, FED, GPR, and PR appropriation authority previously provided to DSPS. (The GPR appropriation, with no base funding, is for conducting an inventory of tanks. The PR appropriation, with no base funding, relates to fees for petroleum product testing services.)

The following table shows funding deleted in DSPS and provided to DATCP under the bill.

## Petroleum Inspection and Tank Regulation Funding Under the Bill

<u>Appropriation</u>	<u>Funding</u> <u>2013-14</u>	<u>Funding</u> <u>2014-15</u>	<u>Positions</u> <u>2014-15</u>
Federal Funds:			
General operations			
DSPS	-\$325,400	-\$325,400	-2.00
DATCP	<u>329,100</u>	<u>329,100</u>	<u>2.00</u>
Subtotal FED	\$3,700	\$3,700	0.00
Segregated Revenues:			
Petroleum inspection and tank operations			
DSPS	-\$5,368,300	-\$5,372,900	-44.50
DATCP - ongoing	4,543,800	4,658,800	38.00
DATCP - one-time	<u>609,300</u>	<u>304,700</u>	<u>0.00</u>
Subtotal SEG	-\$215,200	-\$409,400	-6.50
Total:			
DSPS	-\$5,693,700	-\$5,698,300	-46.50
DATCP	<u>5,482,200</u>	<u>5,292,600</u>	<u>40.00</u>
Net Change	-\$211,500	-\$405,700	-6.50

Transfer the assets, liabilities, tangible personal property, records, pending matters, contracts, administrative rules, and orders related to the petroleum inspection and tank regulation program under section 101.09, s. 101.142, and Chapter 168 of the statutes, as determined by the Secretary of the Department of Administration (DOA), from DSPS to DATCP. Transfer positions and incumbent employees, with their current rights and status. Transfer any unexpended federal funds received by DSPS for the state's petroleum inspection and tank regulation program from the DSPS federal administrative appropriation to the DATCP federal administrative appropriation on the effective date of the bill.

Retain the requirement that DSPS specify fees, by administrative rule, for plan reviews relating to the storage, handling, or use of flammable or combustible liquids or federally regulated hazardous substances. Retain the requirement that DSPS continue to deposit the plan review fees in the segregated petroleum inspection fund for plan reviews relating to the storage, handling, or use of flammable or combustible liquids or federally regulated substances as defined in statutory section 168.21(3) (see "(k)" in the above section related to responsibilities).

Amend the current DSPS segregated appropriation for petroleum inspection and tank activities to only be used for the purposes of plan reviews relating to flammable or combustible liquids or federally regulated hazardous substances, and retain \$100,000 SEG annually for supplies to pay for plan review, with no positions. In 2011-12, DSPS deposited bulk tank plan review fees totaling \$99,000 in the petroleum inspection fund. Retain within DSPS the responsibility for administering section SPS 310.100 of the administrative code, which currently requires plan review and written approval from DSPS or its authorized agent before performing several activities related to tanks.

Transfer to DATCP the requirement to specify fees, by administrative rule, for inspection of tanks for the storage, handling, or use of flammable or combustible liquids and for any

certification or registration required for persons who work in certain tank specialties (such as persons who install, remove, clean, reline, or test the tightness of tank lines), and require DATCP to deposit the fees in the petroleum inspection fund. In 2011-12, DSPS deposited tank inspection fees totaling \$76,200 in the petroleum inspection fund.

## **DISCUSSION POINTS**

1. The Governor and DATCP Secretary contend transferring the program would consolidate similar functions and increase administrative efficiencies between the two programs. Specifically, DATCP inspections of retail fuel pumps are intended to ensure the devices properly deliver amounts reported as dispensed, while DSPS inspections are intended to verify the quality of the fuel, as well as the compliance of tanks and tank systems with requirements for installation and operation. In many states, these functions are combined in one agency. In Wisconsin, the two functions have historically been separated in two agencies.

2. DATCP reports 23.8 positions from the current Regulatory and Safety Section would be combined with 40.0 current DSPS positions to form a Bureau of Weights and Measures following the transfer. All inspectors from the respective programs would be cross-trained to perform both types of inspections, allowing one person to make both inspections at a gas station instead of two persons. DATCP also expects to close the 10 regional petroleum inspection laboratories currently operated by DSPS and centralize petroleum sample testing at the metrology laboratory in Madison.

3. Currently, DATCP operates a 7,100-square-foot metrology laboratory near the Department's central offices on Madison's southeast side. The facility is privately owned. DATCP is seeking to occupy an additional 2,500 square feet in the current laboratory building to accommodate new facilities for petroleum testing. DATCP hopes to have a central petroleum testing laboratory operational by July 1, 2014. Under a centralized laboratory, DATCP would contract with a delivery service to transport samples to Madison. The Department reports Wisconsin is unique among Midwest states in having regional petroleum testing laboratories.

4. DATCP would begin closing regional petroleum testing labs throughout the state upon the central petroleum testing laboratory opening. These laboratories currently are located in Chippewa Falls, Green Bay, Hazel Green, Holmen, Hudson, Janesville, McFarland, Sturtevant, Stevens Point and Waukesha; facilities in Hazel Green, Hudson, McFarland and Waukesha are state-owned properties. However, DSPS reports at least three leases on the privately held facilities expire in 2015, 2017 and 2018, meaning the full savings of centralizing the laboratories may not be realized until the leases expire. DSPS has moved some facilities to month-to-month lease arrangements, and DATCP would expect to seek the same for other facilities in the future, if possible, under the program transfer.

5. Of the funding the bill would provide to DATCP, \$609,300 SEG in 2013-14 and \$304,700 SEG in 2014-15 would be one-time funding that would not continue in DATCP base funding for the 2015-17 biennium. DATCP reports the \$914,000 biennial total was originally budgeted as: (a) \$413,600, or \$18,800 per person for 22 incoming petroleum inspectors, for

equipment such as scales, weight kits, kits for testing gasoline delivery volume, computer equipment, safety gear and other tools; and (b) \$500,400 for petroleum testing equipment for the central petroleum laboratory. Currently, DATCP estimates one-time costs for the biennium may be up to \$40,000 higher, due mostly to changes in vendor price quotes and estimated program activities based on DSPS reporting.

6. DSPS has reduced expenditures to approximately \$800,000 less SEG annually than authorized during 2011-13 by holding positions vacant for various amounts of time, and implementing reductions in program operations. The ongoing SEG funding provided under the bill (\$4,543,800 in 2013-14 and \$4,658,800 in 2014-15), which excludes the one-time costs, is \$714,100 less SEG in 2014-15 than DSPS had been authorized. This means that the ongoing amount provided to DATCP, excluding the one-time funding, is about the same amount as DSPS has been spending during the 2011-13 biennium. Further, DATCP would be authorized to fill approximately the same number of positions that DSPS had filled in June of 2012.

7. It could be argued that the level of positions provided in the bill implements efficiencies by providing a reduction of 6.5 in the authorized level of staff, and is necessary to address the cross-training and program activity that would be needed during the 2013-15 biennium. For example, DATCP officials have identified a need to increase compliance and enforcement at petroleum tank sites, as DSPS data indicate 34% of all sites with petroleum storage tanks were fully compliant in 2011-12 with all requirements for petroleum storage and delivery equipment, consumer information postings, record keeping and other provisions in law. Further, DATCP has identified an increasing disparity in weights and measures inspection frequencies over the last several years between: (a) cities with populations of more than 5,000 that contract with DATCP to conduct the statutorily required municipal weights and measures programs; and (b) cities with populations up to 5,000 and rural areas, neither of which are required to conduct their own weights and measures programs, and which would typically rely on DATCP for those services. In contract cities, DATCP reports retail fuel pumps and other locations subject to weights and measures inspections, such as grocery stores, may expect average frequencies of approximately 1.2 years. For noncontract cities and unincorporated areas, the average frequency is approximately 1.7 years.

8. On the other hand some have argued that the combined programs should be able to achieve greater efficiencies during 2013-15, than DSPS and DATCP realized during 2011-13 under the separate administration of the two agencies. Under this view, additional positions could be deleted rather than being transferred to DATCP. For example, an additional \$134,200 SEG annually and 2.0 SEG positions could be deleted (Alternative 2a) or an additional \$268,400 SEG annually and 4.0 SEG positions could be deleted (Alternative 2b). It should be noted that these DSPS positions have recently become vacant. However, DATCP is planning to fill them in the reorganized bureau. Further, DATCP officials have argued any further program reductions should be delayed until DATCP has some experience with the combined program and may better assess resource needs in the 2015-17 budget.

### **Tank Plan Review**

9. The bill would retain tank plan review functions in DSPS. Administration and DSPS officials indicate the rationale for retaining tank plan review in DSPS is that it is a similar

function to other building-related plan reviews DSPPS provides for other industries. For example, the safety and buildings program performs plan reviews for commercial buildings, boilers, and plumbing, heating, and electrical systems.

10. DSPPS would continue to administer SPS 310.100 of the administrative code, which currently requires plan review and written approval from DSPPS or its authorized agent before performing the following activities: (a) commencing construction of new or additional tank or piping installation; (b) changing operation from storage of a non-regulated substance to a regulated substance; (c) adding or modifying tank or pipe corrosion protection; (d) adding or modifying leak detection when performed in conjunction with other changes that require plan review; (e) upgrading or modifying spill or overfill protection; (f) lining or relining underground tanks; (g) converting a full-service motor fuel dispensing facility or a self-service motor fuel dispensing facility to the use of a point-of-sale dispensing system or device; (h) converting from the storage and dispensing of flammable or combustible liquids containing 10% or less ethanol by volume to liquids containing more than 10% ethanol by volume; (i) converting from the storage and dispensing of flammable or combustible liquids containing 5% or less of biodiesel fuel by volume to liquids containing more than 5% biodiesel fuel by volume; (j) using a tank system to store a substance that poses a significant fire hazard or safety hazard to people or the environment; and (k) adding or modifying any device or system component making an underground connection to a tank, product pipe or vent pipe.

11. The bill would retain \$100,000 SEG in the tank regulation appropriation, to be used to pay for the plan review activities performed by the plan reviewer on a position in the safety and buildings operations program revenue appropriation. The continued use of SEG, and the associated \$100,000 SEG annual funding, would be based on the 2011-12 bulk tank plan review fees totaling \$99,000, which were deposited in the petroleum inspection fund. This would be the only SEG petroleum inspection fund appropriation and funding remaining in DSPPS. If the Committee wishes to retain the tank plan review functions in DSPPS, it would be appropriate to consider simplifying the budget and appropriation for the tank plan review program by changing the deposit of plan review fees into the safety and buildings operations PR appropriation instead of the petroleum inspection fund, deleting the SEG appropriation, and providing the \$100,000 in expenditure authority in the safety and buildings PR appropriation instead of as SEG (Alternative 3a).

12. Tank plan review has been performed by the tank inspection and regulation program for over 20 years. It could be argued that it is appropriate to move the tank plan review function to DATCP to be performed by the program that regulates tank installation, inspection, and removal, instead of having tank plan review performed by staff who perform plan reviews for buildings and building components.

13. If the Committee wishes to continue to have the tank plan review functions performed by the same program that is responsible for tank inspection and regulation, these functions could also be transferred to DATCP (Alternative 3b). The DSPPS tank plan review appropriation could be repealed instead of being retained in DSPPS, and the associated funding of \$100,000 SEG annually could be deleted. The DATCP petroleum inspection and tank regulation appropriation could be provided with \$100,000 SEG annual expenditure authority.

**ALTERNATIVES**

1. Approve the Governor's recommendation to transfer the petroleum inspection and tank regulation program from DSPS to DATCP.

2. Approve the Governor's recommendation. In addition, approve one of the following alternatives to delete additional positions in DATCP:

a. Delete \$134,200 SEG and 2.0 SEG petroleum inspection and tank positions annually in DATCP.

<b>ALT 2a</b>	<b>Change to Bill</b>	
	Funding	Positions
SEG	- \$268,400	- 2.00

b. Delete \$268,400 SEG and 4.0 SEG petroleum inspection and tank positions annually in DATCP.

<b>ALT 2b</b>	<b>Change to Bill</b>	
	Funding	Positions
SEG	- \$536,800	- 4.00

3. Approve the Governor's recommendation, as modified related to tank plan review functions in one of the following ways:

a. Approve the Governor's recommendation to retain tank plan review in DSPS, as modified to: (1) deposit tank plan review fees received by DSPS in the safety and buildings operations program revenue appropriation instead of the segregated petroleum inspection fund; (2) delete \$100,000 SEG annually and repeal the DSPS SEG tank operations appropriation; and (3) provide \$100,000 PR annually in the safety and buildings PR appropriation.

<b>ALT 3a</b>	<b>Change to Bill</b>	
	Revenue	Funding
PR	\$200,000	\$200,000
SEG	<u>- 200,000</u>	<u>- 200,000</u>
Total	\$0	\$0

b. Transfer all tank plan review functions from DSPS to DATCP. In addition: (1) delete \$100,000 SEG annually in DSPS and repeal the DSPS SEG tank operations appropriation; and (2) provide \$100,000 SEG annually in the DATCP SEG petroleum inspection and tanks operations appropriation.

4. Maintain current law.

<b>ALT 4</b>	<b>Change to Bill</b>	
DSPS	Funding	Positions
FED	\$650,800	2.00
SEG	<u>10,741,200</u>	<u>44.50</u>
Total	\$11,392,000	46.50

<b>ALT 4</b>	<b>Change to Bill</b>	
DATCP	Funding	Positions
FED	- \$658,200	- 2.00
SEG	<u>- 10,116,600</u>	<u>- 38.00</u>
Total	- \$10,774,800	- 40.00

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