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Joint Committee on Finance

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Unobligated Bonding Authority (Natural Resources -- Stewardship)

[LFB 2021-23 Budget Summary: Page 421, #1 (part)]

CURRENT LAW

Under the Warren Knowles-Gaylord Nelson stewardship program, DNR is authorized to obligate up to \$1,088,850,000 in state debt through June 30, 2022. Since the first enactment of the program, statutes have provided an annual allotment for several statutory subprograms and categories of land acquisitions. DNR is restricted from carrying forward unobligated bonding authority from most subprograms into subsequent fiscal years, unless directed by the Legislature.

DISCUSSION POINTS

Stewardship Bonding Practice

1. Under normal practice, the Legislature authorizes bonds for a particular purpose, project enumeration, or category of projects. Once bonds for a particular appropriation are authorized, funding from those bonds is available until the value of the bonds issued for that authorization meets the statutorily defined bonding authority. For instance, the original stewardship program, which was in effect from 1989 to 2001 was authorized \$231,000,000 in bonding authority. While the authorization for the program has ended, as of April 30, 2021, \$31,500 remains available from the 1989 bonding authorization.

2. The stewardship program works differently. The stewardship bonding authorization is divided into annual allotments. DNR may expend no more than a statutorily defined amount for particular purpose or category of projects in a given subprogram in a given year. Unlike other bonding appropriations, underspent bonding authority may be used on a subsequent project, if DNR does not "obligate" its full annual allotment in a particular year, the amount by which DNR underspends lapses and cannot be used without statutory authorization.

3. Under s. 23.0917(1)(e) of the statutes, obligate for purpose of the stewardship program is defined as "encumber or otherwise commit or to expend without having previously encumbered or otherwise committed." Under typical practice, this means that DNR has entered into a formal contract for a particular land acquisition or property development project, or has provided an award letter formally committing to fund a grant to a local unit of government or nonprofit conservation organization (NCO) for a stewardship-eligible project. Without legislative direction, any funds that are not obligated on June 30 of a given fiscal year lapse, as described above.

4. Prior to 2011, if DNR obligated less than its annual allotment for a given subprogram in any year, the Department could increase that subprogram's annual allotment by an amount equal to the unobligated amount in the following fiscal year. 2011 Wisconsin Act 32 specified that this did not apply effective with fiscal year 2011-12. 2013 Wisconsin Act 20 provided an exception for the county forest program. At the end of any fiscal year, DNR may carry forward the unobligated balance from the NCO acquisition subprogram to be used in the following fiscal year for grants to county forests, in addition to the \$5 million that is available to the county forest subprogram under statute.

Unobligated Bonding Authority

5. Between July 1, 2000, and June 30, 2020, DNR estimates that a cumulative \$105.2 million was unobligated at the end of each fiscal year after projects were awarded funds. Occasionally the Legislature has directed DNR to use these funds for specific purposes, including earmarked projects, DNR development projects, and to fund an extension of the program.

6. *Earmarks.* Beginning in the 1991-93 biennium, statutory earmarks from the stewardship program have been included in some legislative acts. Some earmarks directed use of funds from specified subprograms. Since fiscal year 2011-12, various legislative acts have set aside unobligated bonding for directed state and local projects. Between July 1, 2000, and June 30, 2020, approximately \$73.2 million of stewardship bonding authority has been statutorily earmarked.

7. *DNR Development.* Both 2017 Wisconsin Act 71 and 2019 Wisconsin Act 93 authorized DNR to use unobligated bonding authority for critical health and safety-related water infrastructure projects in state parks. Priority is to be given to projects in parks with the highest demands. The acts authorized DNR to expend a cumulative \$9.8 million. DNR may expend or encumber these funds until the existing stewardship bonding authorization expires on June 30, 2022.

8. The original stewardship program, which was in effect from 1989 through 2000, was funded through the bonding authorization under s. 20.866(2)(tz) of the statutes. 1999 Wisconsin Act 9, which created the current stewardship program, created a new bonding authorization for the program, s. 20.866(2)(ta) of the statutes. When the current stewardship program was enacted, approximately \$33.3 million out of \$231 million authorized remained unobligated. 1999 Act 9 authorized DNR to continue to expend the original bonding authorization past the June 30, 2000, sunset date for the program. In recent years, DNR has used these funds for capital development. As of April 30, 2021, approximately \$31,500 remains available from this authorization.

9. *Program Extension.* 2019 Wisconsin Act 9 provided the stewardship program with a two-year extension with \$33.25 million annual allotments. To minimize the amount of new bonding

needed to fund the program, the act authorized DNR to use \$23.9 million previously authorized stewardship bonding that had lapsed prior to fiscal year 2018-19. The act increased bonding authority for the program by \$42.6 million to fully fund the program during the extension.

10. AB 68/SB 111 would allow DNR to use unobligated bonding authority for one of two purposes: (a) for use in the following fiscal year for the same subprogram for which the unobligated funds were authorized; or (b) for use in later fiscal years for DNR property development. Under the bill, if the Department does not obligate the full amount allocated under a stewardship subprogram in an odd-numbered year (e.g. 2022-23), DNR may raise the annual bonding authority for the subprogram by an amount equal to the unobligated amount in the subsequent year. If, in the subsequent even-numbered year, DNR does not obligate the full allotment for a given subprogram, including any carried-over amount, DNR may use all unobligated allotments from the biennium for property development on DNR properties or easements adjacent to DNR lands through 2031-32 [Alternative A1].

11. The Department indicates that the ability to carry forward odd-year subprogram balances would provide the Department more time to award, encumber, and expend stewardship funds before the bonding authority lapses and becomes unavailable. The Governor's proposal would also allow DNR to use lapsed bonding authority for DNR property development. This would provide funding for DNR's estimated \$25 million maintenance backlog.

12. Under the bill, the subprogram carry-over authority would only apply at the end of odd-numbered years. The bill would authorize DNR to carry forward unobligated balances at the end of even-numbered years into future years for DNR property development. Therefore, the bill would provide DNR additional time to award and encumber funds only every other year. DNR would continue to risk lapsing awarded funds before they may be obligated in even-numbered years.

13. Prior to 2011, if DNR did not obligate the full annual allotment for a subprogram, the Department could carry forward underspent bonding authority for that subprogram into the subsequent fiscal year. This provided DNR with flexibility to award funds under the stewardship program over more than one fiscal year.

14. DNR notes that many stewardship projects are long-term projects, taking years from ideation to funding obligation. While recreational boating aids and local assistance grants operate on an annual funding cycle, with applicants applying for funds on a regular timeline each year, project sponsors typically begin working with DNR years earlier to design a project that meets the objectives of the stewardship program. Additionally, counties may begin acquiring tracts of land to enroll in county forest and use as a match for a stewardship grant years prior to application. Large land acquisitions and easement purchases tend to be lengthy processes. The Department is occasionally contacted by large property owners who seek to begin the process of negotiating a land sale. These discussions may involve lengthy discussions to define the area that will be purchased, negotiate the terms of easement access, and identify the fair market value of the properties.

15. Allowing DNR to carry forward unobligated bonding authority into a second year would give the Department greater flexibility to award funds. The Department could guarantee funds for a land acquisition over a year prior to the closing date of that sale. Alternatively, the Department would

be able to reduce acquisitions in one year in order to carry forward funds into a following year. This could allow DNR to finance larger or more expensive acquisitions than its annual allotment may otherwise be able to fund. Under this perspective, the Committee could allow DNR to raise its annual allotment for a subprogram by the amount that was unobligated in the prior year [Alternative A2].

16. As described above, most bonding authorizations allow an agency to spend bond funds until either the bonding authorization is exhausted or the purpose for which those bonds were authorized is accomplished. Consideration could be given to providing DNR with this flexibility in the stewardship program [Alternative A3]. The Committee could provide expected annual allotments for the program but authorize DNR to obligate funds as needs arise. DNR would likely continue to fund the local assistance and the recreational boating aids subprograms with a defined annual allotment to provide funding stability for applicants. However, the flexible allotment levels would allow DNR to adjust its allotments to reflect the planning processes used for department acquisition and development.

17. Under current law and Alternative A2, lapsed bonding authority accrues each year as DNR underspends its authorized bonding allotment. AB 68/SB 111 would authorize DNR to expend these funds for property development. The DNR Secretary estimated that the DNR property development backlog is \$25 million. Allowing DNR to use lapsed bonding authority for property development would allow the Department to improve state park, forest, and other recreational properties while addressing infrastructure needs that have been unfunded in recent years. It would also reduce the amount of new bonding authority needed to be authorized by the Legislature each biennium as a part of DNR's capital budget. Therefore, the Committee could consider authorizing DNR to use lapsed bonding authority for property development [Alternative A4].

18. It could be argued that providing carry-forward flexibility would limit legislative oversight. One argument in favor of strict annual allotments is that they provide DNR funding for land acquisition while limiting the level of debt that the state must repay. Under this perspective, the Committee could take no action to allow DNR to spend unobligated bonding authority [Alternative A5].

NCO Carry-Forward

19. Under current law, DNR may carry unobligated bonding authority from the NCO acquisition subprogram forward into the subsequent year for county forest grants. Between fiscal year 2014-15 and 2019-20, DNR carried between \$271,000 and \$4,984,600 forward under this provision, making as much as \$9,984,600 available for county forest grants. However, over the same time period, DNR has awarded a maximum of \$4,559,100 in county forest grants in any given year, less than the \$5,000,000 base allotment for these grants.

20. While the NCO carry-forward provision provides flexibility for county forest grants, it could be argued that it is unnecessary based on program demand. AB 68/SB 111 would allow DNR to carry forward unobligated amounts from NCO acquisitions into the following fiscal year for local assistance grants. Since 2015-16, DNR has received between \$15.2 million and \$23.2 million in requests for local assistance grants annually. Over the same period, DNR has been authorized to award \$6 million for these grants. DNR has been able to fund 37% of local assistance grant requests.

Furthermore, there are limited state sources of funding for local recreation and conservation projects. Given the disparity in program demand and program funding, the Committee could allow DNR to carry forward unobligated amounts from the NCO acquisition subprogram to be used in the following year for local assistance grants [Alternative B1].

21. Alternatively, the Committee could take no action [Alternative B2]. Unobligated amounts from the NCO acquisition subprogram would carry forward to be used in the following fiscal year for county forest grants.

Fiscal Year 2019-20 Lapsed Bonding Authority

22. When the original (1989-2001) stewardship program expired, approximately \$33.3 million remained authorized from the program's bonding authorization. 1999 Act 9 authorized DNR to continue to expend these funds for capital development. Through June 30, 2020, DNR underspent its 2019-20 annual allotment by \$14.3 million. Without legislative direction, this unobligated bonding authority will remain authorized even though it cannot be issued. Joint Finance action to date would provide \$3 million from the 2019-20 unobligated allotment for the Pierce County Islands Wildlife Area restoration project, reducing the unobligated balance to \$11.3 million. The Committee could consider allowing DNR to expend any unobligated bonding allotments from the 2020 through 2022 fiscal years for Department property development [Alternative C1]. This would enable the Department to fund a portion of its maintenance and development backlog while reducing the amount of additional bonding the Legislature must authorize for DNR capital projects.

23. Alternatively, the Committee could use this lapsed bonding authority to fund an extension of the program [Alternative C2]. This would reduce the amount of additional bonding the Legislature must authorize to fully fund the program. It should be noted that as fiscal year 2020-21 awards have not been finalized, it is not possible to know the amount of unobligated bonding authority that will lapse on June 30, 2021. Therefore, the Committee could only authorize DNR to use \$11.3 million in unobligated bonding authority to fund a stewardship extension.

Obligations Pending Joint Finance Passive Review

24. As of June 4, 2021, there are 10 projects totaling \$5,777,900 under review by the Committee for which objections have been raised. Of these, eight projects totaling \$3,837,400 were requested by DNR and sent the Committee for 14-day passive review in 2020-21. Two projects totaling \$1,940,500 were requested in past fiscal years. If the Committee approved the project awards, DNR would be required to postpone providing funding to current year applicants in order to award funds for past years' applicants. Awarding project funds from a subsequent fiscal year while funding from the award year lapses effectuates a cut in program funding, reducing the number of local governments that receive project funds.

25. The Committee could consider amending the statutes to allow DNR to obligate funds for projects that must be reviewed by the Committee in the fiscal year in which DNR submits a project for passive review [Alternative D1]. This would allow DNR to obligate within the full statutory authorization for the local assistance subprogram each year regardless of the timing of project approvals under passive review.

26. As noted above, there are currently projects totaling \$5,777,900 under Committee review where objections have been raised. Additionally, in 2020-21 the Committee approved three projects totaling \$1,350,000 that were submitted to for Committee review in fiscal year 2019-20. Awarding these funds in 2020-21 required DNR to use its stewardship annual allotment that otherwise would have funded projects for current year applicants. The Committee could consider providing DNR with a one-time annual allotment of \$5,777,900 in 2021-22 to accommodate projects under Committee review as well as to provide an additional \$1,350,000 to DNR's 2021-22 annual allotment for local assistance grants to allow DNR to fund projects that were delayed due to the timing of approval. [Alternative D2]. The Committee would need to allow DNR to use \$7,127,900 unobligated bonding authority from fiscal year 2019-20 and 2020-21 in 2021-22 to accomplish this. Adopting Alternative D2 would effectively allow Alternative D1 to apply retroactively for projects currently pending before the Committee or that were awarded in the current fiscal year.

27. Alternatively, the Committee could take no action [Alternative D3]. This would reduce the effective funding for local assistance grants during the 2021-22 application cycle.

ALTERNATIVES

A. Unobligated Bonding Authority

1. Authorize DNR to carry forward bonding authority that is not obligated in a fiscal year to the subsequent fiscal year as follows: (a) if the Department does not obligate the full amount allocated under a stewardship subprogram in an odd-numbered year (for example, 2022-23), DNR may raise the annual bonding authority for the subprogram by an amount equal to the unobligated amount in the subsequent year; and (b) if, in the subsequent even-numbered year, DNR does not obligate the full allotment for a given subprogram, including any carried-over amount, DNR may use all unobligated allotments from the biennium for property development on DNR properties or easements adjacent to DNR lands through 2031-32.

2. Authorize DNR to raise its annual allotment for a subprogram by the amount that was unobligated in the same subprogram in the prior year. (If DNR did not obligate the amount that was carried forward in the second year, the carried forward amount would lapse.)

3. Authorize DNR to obligate funding each year without regard to annual allotments. (DNR would be able to carry forward bonding authority unobligated in a given fiscal year into any subsequent fiscal year. The Department could also borrow from future years' annual allotments.)

4. In addition to Alternative A2, authorize DNR to use lapsed bonding authority for property development in any year through 2031-32.

5. Take no action. (This would maintain current law that DNR may not obligate more than its annual allotment for any subprogram. Bonding authority would lapse without legislative direction.)

B. NCO Carry-Forward

1. Authorize DNR to carry forward unobligated amounts from the NCO acquisition

subprogram to be used in the following year for local assistance grants. (This could be selected in addition to Alternatives A1, A2, or A4.)

2. Take no action.

C. Fiscal Year 2019-20 Unobligated Bonding Authority

1. Authorize DNR to use any amounts unobligated from fiscal year 2020 through 2022 for DNR property development.

2. Reallocate any amounts unobligated from fiscal year 2020 through 2022 to fund a program extension.

3. Take no action.

D. Obligation Pending Joint Finance Passive Review

1. Allow DNR to obligate funds for projects reviewed by the Committee in the fiscal year in which DNR submits a project for passive review.

2. Provide DNR with a one-time annual allotment of \$5,777,900 in 2021-22 to accommodate projects under Committee review as well as an additional \$1,350,000 to DNR's 2021-22 annual allotment for local assistance grants to allow DNR to fund projects that were delayed due to the timing of JFC approval. Authorize DNR to use \$7,127,900 unobligated bonding authority from fiscal year 2019-20 and 2020-21 in 2021-22. (This Alternative could be selected in addition to Alternative D1.)

3. Take no action.

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