



Legislative Fiscal Bureau

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October 31, 2007

TO: Members
Joint Committee on Finance

FROM: Bob Lang, Director

SUBJECT: Assembly Bill 486: Payment of Claim to Klemme Brothers Well Drilling, Inc.

SUMMARY OF BILL

Assembly Bill 486 was introduced on August 14, 2007, and referred to the Joint Committee on Finance. AB 486 would direct the state to pay \$10,317.93 from the Department of Natural Resources' (DNR) SEG environmental fund appropriation for Water Division operations for payment of a claim against the state made by Klemme Brothers Well Drilling, Inc, to reimburse the company for the cost of drilling two wells in the Town of Jackson in Washington County. DNR required the two wells to be abandoned because the wells were constructed improperly, possibly as a result of incorrect information provided by DNR. The bill specifies that acceptance of the payment would release the state from any further liability resulting from the failure to construct these wells in an appropriate manner.

BACKGROUND

DNR regulates the drilling and installation of wells that withdraw groundwater for human consumption. DNR administrative rules require wells installed in certain areas to be constructed with a special casing.

Klemme Brothers Well Drilling, Inc. (Klemme), of Kewaskum, Wisconsin, submitted a claim to the state in 2006 for \$17,405 for costs incurred in abandoning two wells and drilling two new ones in the Town of Jackson in Washington County. The Wisconsin Claims Board June 14, 2007, report described the claim that was included in hearings on May 21 and 23, 2007. Klemme was contracted to install two wells in 2004. Klemme asserted that a DNR employee told him the property was not located in an area which required special casing, and the wells were installed without special casing. A special casing area is a geographic area established by DNR in which

cement-grouted well casings must be constructed in wells to depths specified by the Department. A year later, the wells tested as unclean. At that time, DNR informed Klemme that the property was in an area that required special casing for wells to a depth of 120 feet. (The first two wells were constructed with casings of 63 and 60 feet.) Subsequently, DNR required the wells to be abandoned, and DNR required that two new wells be constructed with special casing. Klemme Brothers asserted that DNR made an error, and that the state should pay for the cost of abandoning the original wells and for the cost of drilling new ones.

DNR informed the Claims Board that Klemme discussed several well locations with the DNR employee during the same phone call, and that the legal description provided by Klemme for the property was incorrect and may have contributed to the incorrect information being provided by DNR that led to the construction of the abandoned wells. DNR stated that it is possible that the DNR employee gave the correct instruction (that no special casing was required) for the incorrect legal description provided by the claimant. DNR informed the Claims Board that there is no way to determine exactly what happened, but that there was a reasonable possibility of an error on the part of the state.

DNR recommended that the claim be paid in a reduced amount of \$10,317.93 rather than the original request of \$17,405. The recommended \$10,317.93 was the cost of constructing the first set of wells and subsequently abandoning the first set. The Klemme Brothers original request of \$17,405 was for the second set of wells, and was higher because of the special casing expenses. DNR informed the Claims Board that if an error had been made, the Department should only pay for the result of the error, which was the first set of wells. Further, if an error had not been made, Klemme would have been told about the special casing requirements and the first set of wells would never have been drilled. DNR further recommended that the payment for the claim be made from the DNR SEG environmental fund appropriation for Water Division operations.

In its June 14, 2007, report, the Claims Board recommended payment of the claim in the reduced amount of \$10,317.93 based on equitable principles. The Board also agreed with DNR that the claim be paid from the DNR environmental fund appropriation.

FISCAL EFFECT

The bill would direct the state to pay \$10,317.93 from the DNR's SEG environmental fund appropriation for Water Division operations [s.20.370 (4)(mq)] to Klemme Brothers Well Drilling, Inc. Under 2007 Act 20 (the 2007-09 biennial budget act), the DNR appropriation is authorized \$4,433,700 in 2007-08 with 34.92 positions. The appropriation is funded from the environmental management and nonpoint accounts. While the bill does not specify which account would fund the claim, DNR indicates it would pay the claim from the portion of this appropriation which funds drinking water and groundwater administration, including regulation of well drilling. This program is funded from the environmental management account, and is authorized \$2,313,800, with 19.04 positions, in 2007-08. Payment of the claim would modestly reduce funds otherwise available for activities such as high capacity well plan review, well installation compliance review, and review of

well construction logs.

The environmental management account of the environmental fund provides funding for Department of Commerce brownfields grants, DNR brownfield site assessment and green space grants, and DNR administration of contaminated land cleanup, groundwater management, state-funded remediation actions, and debt service for general obligation bonds for remedial action. Revenues to the account are generated from the \$9 per title vehicle environmental impact fee, solid waste tipping fees, a transfer from the petroleum inspection fund, certain pesticide and fertilizer fees, a sanitary permit surcharge, and other smaller fees.

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