



Legislative Fiscal Bureau

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Joint Committee on Finance

Paper #305

PECFA -- Interest Cost Reimbursement (Commerce -- Building and Environmental Regulation)

[LFB 2001-03 Budget Summary: Page 191, #4]

CURRENT LAW

Under the Petroleum Environmental Cleanup Fund Award (PECFA) program, the maximum reimbursable interest costs are 1% above the prime rate for loans secured on or after October 17, 1997, and before November 1, 1999. For loans secured on or after November 1, 1999, reimbursement for interest costs is limited based on the applicant's gross revenues in the most recent tax year as follows: (a) if gross revenues are up to \$25 million, interest reimbursement is limited to the prime rate minus 1%; and (b) if gross revenues are over \$25 million, interest reimbursement is limited to 4%.

GOVERNOR

Limit interest cost reimbursement for PECFA claimants as follows: (a) if an applicant submits the final PECFA claim for reimbursement of cleanup costs under the program later than the 60th day after receiving written notification from DNR or Commerce that no further remedial action is necessary with respect to the discharge, the applicant is ineligible for reimbursement for interest costs incurred after that day; (b) if cleanup activities are not completed within 10 years (the first day of the 121st month) after the investigation of the petroleum storage tank discharge was completed, the applicant is ineligible for reimbursement for interest costs incurred after the 10-year period; and (c) if the site investigation was completed more than five years (the first day of the 61st month) after the applicant notified DNR or Commerce about the discharge or more than two years (the first day of the 25th month) after the effective date of the bill, whichever is later, the applicant is ineligible for reimbursement for interest costs incurred after the later of those periods.

Create a definition of "category one high-cost sites" that have incurred more than \$200,000 in PECFA costs on November 30, 2001, for which written approval of the completion of remedial action activities has not been issued on or before that date. Specify that for category one high-cost sites, if the 121st month after completion of the investigation happens before December 1, 2006, and the site cleanup has not been completed, interest costs would be ineligible after December 1, 2006, rather than being ineligible costs after the 121st month as for sites that are not category one high-cost sites.

The interest cost reimbursement limits under the bill would not apply to: (a) local government applicants who receive federal or state financial assistance other than PECFA for the expansion or redevelopment; and (b) applicants engaged in the expansion or redevelopment of brownfields, if federal or state financial assistance other than PECFA was provided for the expansion or redevelopment.

DISCUSSION POINTS

1. The provisions would end loan interest cost reimbursement after specific dates for PECFA sites that do not complete specified activities after the date. The effect of the bill would vary for individual PECFA sites, depending on the time that elapses: (a) between notification of the discharge and completion of the site investigation; (b) between completion of the site investigation and completion of the remedial action activities; and (c) after completion of remedial action activities until submittal of the final PECFA claim. The effect would also vary depending on whether a site has incurred more than \$200,000 in PECFA costs on November 30, 2001.

2. The administration indicates that the intent of the provision is to encourage owners and consultants to complete site cleanup, and that the potential to lose interest cost reimbursement should compel them to bring their sites to closure in a timely manner. Further, the provision would limit state PECFA reimbursement for interest costs at sites where cleanups may be proceeding slowly.

3. Most sites would have five years between the notification of the discharge and completion of the site investigation, 10 years between completion of the site investigation and completion of the remedial action activities and 60 days between completion of the cleanup and submittal of the final claim before the owners lose any interest cost reimbursement.

4. In comparison, the agricultural chemical cleanup program administered by the Department of Agriculture, Trade and Consumer Protection specifies that applicants lose program eligibility if they do not submit a claim within three years of completing the investigation and cleanup of the agricultural chemical spill. The program does not reimburse loan interest costs incurred before the applicant submits the claim to DATCP, but pays interest reimbursement at the prime rate from the date DATCP receives a complete application to the date DATCP pays the claim.

Submittal of a Final Claim

5. Under the bill, PECFA claimants would have 60 days after receiving written notification that no further action is necessary with respect to the discharge, to submit the final PECFA claim. Claimants would be ineligible for reimbursement of interest costs after that date. Eligible costs and interest costs incurred before the 60 days would continue to be eligible costs. The provision would encourage claimants to submit the final PECFA claim in a timely fashion after completion of the cleanup. The provision would also limit state expense for interest costs incurred after a cleanup is completed.

6. Commerce and industry officials note that it may be difficult in some cases for claimants to gather the necessary paperwork in 60 days. It might take 90 to 180 days for claimants to receive all invoices from contractors and consultants, pay invoices, obtain required canceled checks from lenders and assemble documentation of expenses before submitting a claim to Commerce. The bill could be amended to provide a longer deadline to assemble required documentation for submittal of a claim, yet retain the bill's incentive to submit a claim in a timely manner. However, the administration indicates that 60 days should be adequate in most cases.

7. If written notification that no further remedial action is necessary occurred more than 60 days before the effective date of the bill, claimants could lose reimbursement of interest costs on the effective date of the bill. In addition, while it might be difficult for Commerce to impose the interest cost limitation retroactively, the bill does not prohibit Commerce from doing so if the 60 days happens before the effective date of the bill. It could be argued that claimants should not potentially lose interest cost reimbursement retroactively. The bill could be amended to clarify this.

8. It could also be argued that all claimants should have time after the effective date of the bill to submit their final claim before losing interest cost reimbursement. The bill could be amended to allow a claimant who received written notification before the effective date of the bill the same number of days to submit a claim as a claimant who receives written notification on or after the effective date of the bill. For example, if the Governor's recommendation would be adopted to require that interest costs incurred after the 60th day after receiving the written notification would be ineligible costs, the bill could also be amended to provide that if the written notification occurred before the effective date of the bill, interest costs incurred after the 60th day after the effective date of the bill would be ineligible costs.

Time Period after Completion of a Site Investigation

9. Under the bill, if the remedial action activities are not completed within 10 years after the site investigation was completed, the claimant would be ineligible for reimbursement for interest costs incurred after the 10-year period. However, "category one high-cost sites" that have incurred more than \$200,000 in PECFA costs on November 30, 2001, would have at least until December 1, 2006, to complete the remedial action activities before losing interest cost reimbursement.

10. It could be argued that 10 years is a sufficiently long period of time for a site to be in the cleanup phase after the site investigation is completed, and that the provision would provide an incentive for a site owner or operator to hasten the cleanup to closure. However, it is likely that many sites that take more than 10 years to finish the cleanup take a long time because they have complex environmental issues, affect groundwater or drinking water supplies, have contamination from petroleum and non-petroleum sources, have complicated business or ownership issues, or have a responsible party that is unable or unwilling to finance a cleanup. Site owners for some of these sites may have requested DNR or Commerce to approve the completion of the remedial action activities and may have been told to complete additional activities before the approval will be granted.

11. DNR officials estimate that there are 3,534 open sites in the databases of both DNR and Commerce that have site investigations. In the database of DNR sites that have not been reconciled with the Commerce database, there are an additional 227 sites that have site investigations. Out of these two groups of sites, approximately 80-110 sites will have site investigations older than 10 years old in the fall of 2001. If remedial action activities are not completed at these sites between now and the effective date of the bill, these sites would lose interest cost reimbursement for costs incurred on the effective date of the bill (if the site investigation is 10 years on the effective date). Additional sites will reach the 10-year milestone after the effective date of the bill.

12. The bill does not prohibit Commerce from limiting interest cost reimbursement retroactively if the date that the site investigation reaches 10 years old happens before the effective date of the bill. It could be argued that claimants should not lose interest cost reimbursement retroactively. The bill could be amended to specify that if 10 years after the completion of the site investigation occurred before the effective date of the bill, interest cost reimbursement would end on (not before) the effective date.

13. A "category one high-cost site" that incurs more than \$200,000 in eligible costs on November 30, 2001, with a site investigation older than December 1, 1996 (approximately five years before the effective date of the bill) would have approximately five years after the effective date of the bill to complete the cleanup (fall of 2001 to December 1, 2006). If a category one high-cost site has a site investigation that was completed since December 1, 1991, it would have 10 years after the date of the site investigation to complete the cleanup before losing interest cost reimbursement.

14. If a site incurs \$200,000 or less in costs on or before November 30, 2001, it may or may not incur more than \$200,000 in costs after November 30, 2001, and would lose interest cost reimbursement at whatever date it reaches 10 years after the site investigation. This distinction could cause three sites with similar costs and similar site investigation completion dates to lose interest cost reimbursement on very different dates. For example, if hypothetical Site "A", Site "B" and Site "C" all had site investigations completed on January 1, 1992, their eligibility for interest cost reimbursement could end on different dates. If Site A incurs \$201,000 in eligible costs by November 30, 2001, it would lose interest cost reimbursement if the cleanup is not completed by December 1, 2006. If Site B incurs \$199,000 in costs by November 30, 2001, and no costs after that

date (but does not receive a site closeout authorization until 2002), it would lose interest cost reimbursement if the cleanup is not completed by January 1, 2002. If Site C incurs \$199,000 in costs by November 30, 2001, and an additional \$2,000 in costs in December, 2001, it would have the same total costs as Site A but would lose interest cost reimbursement on January 1, 2002.

15. It could be argued that all sites with 10-year old site investigations, not just category one high-cost sites that have incurred more than \$200,000 in eligible costs on or before November 30, 2001, should have time after the effective date of the bill to move their site from investigation to completion of cleanup. An alternative to the bill would be to allow all sites until December 1, 2006, to complete the cleanup. Another alternative would be to delete the provision that category one high-cost sites have until December 1, 2006, and instead allow all sites a specified time after the effective date of the bill. For example, the bill could be amended to allow the applicant 10 years after completion of the site investigation, or two years after the effective date of the bill, whichever is later, to complete the cleanup before losing interest cost reimbursement. This would allow such sites two construction seasons to complete the cleanup. Another alternative would be to allow three years instead of two years after the effective date of the bill.

Time Period After Notification About the Discharge

16. Under the bill, an applicant that notified DNR or Commerce about a discharge before the effective date of the bill would have between two and five years after the effective date of the bill to complete a site investigation before losing interest cost reimbursement. An application with a discharge notification date at three or more years before the effective date of the bill would have two years after the effective date to complete the site investigation. An applicant who notified the agencies about a discharge less than three years before the effective date of the bill would have five years after the effective date of the bill to complete the site investigation. Similarly, an applicant who notifies the agencies about a discharge on or after the effective date of the bill would have five years after the notification date to complete a site investigation.

17. DNR officials estimate that there are 1,354 open sites in the databases of both DNR and Commerce that have not yet completed site investigations. Of this total, approximately 974 of the sites would have a discharge notification date more than three years old as of the fall of 2001 and would have two years to complete their site investigation. In the database of DNR sites that have not been reconciled with the Commerce database, there are an additional 1,155 sites that have not completed site investigations, of which 691 have a discharge notification date more than three years before the fall of 2001.

18. It could be argued that it is reasonable to require owners to complete the site investigation within five years after the owner notifies DNR or Commerce about the discharge. Every owner of a site with a notice over three years old would have two years to complete the site investigation.

Exemptions from the Interest Cost Limitations

19. The exemption from the interest cost reimbursement limitations of certain local

governments and persons engaged in the expansion or redevelopment of brownfields would provide that such parties would not face the same time limits as other parties to complete the PECFA cleanup. It could be argued that the exemption would recognize that local governments or persons engaged in brownfields projects often get involved only after a property has been abandoned or has sat idle with contamination identified but no remediation work being accomplished for a long period of time.

ALTERNATIVES TO BASE

A. Submittal of Claim

1. Provide an applicant with one of the following numbers of days after receiving written notification that no further remedial action is necessary, to submit a final PECFA claim for reimbursement of cleanup costs before becoming ineligible for interest cost reimbursement after that date.

- a. 60 days (the Governor's recommendation).
- b. 90 days.
- c. 120 days.
- d. 180 days.

2. In addition to approving Alternative A1, specify that if an applicant received written notification that no further action is necessary before the effective date of the bill, he or she would have the specified alternate number of days after the effective date of the bill to submit a final claim.

3. Maintain current law.

B. Completion of Cleanup after Site Investigation

1. Adopt the Governor's recommendation to provide that: (a) if the remedial action activities were completed more than 10 years after the investigation was completed, the applicant is ineligible for reimbursement for interest costs incurred after the 10-year period; and (b) category one high-cost sites that incur more than \$200,000 in eligible PECFA costs on November 30, 2001, would have until the later of 10 years after the investigation or December 1, 2006, to complete the cleanup before losing interest cost reimbursement.

2. Approve Alternative B1 and in addition, specify that if cleanup activities are not completed within 10 years after the investigation of the petroleum storage tank discharge was completed, or before the effective date of the bill, the applicant is ineligible for reimbursement for interest costs incurred after the later of those periods.

3. Approve Alternative B1 and in addition, specify that if cleanup activities are not

completed within 10 years after the investigation of the petroleum storage tank discharge was completed, or within two years after the effective date of the bill, the applicant is ineligible for reimbursement for interest costs incurred after the later of those periods.

4. Approve Alternative B1 and in addition, specify that if cleanup activities are not completed within 10 years after the investigation of the petroleum storage tank discharge was completed, or within three years after the effective date of the bill, the applicant is ineligible for reimbursement for interest costs incurred after the later of those periods.

5. Modify Alternative B2, B3 or B4 to delete the Governor's recommendation that would provide category one high-cost sites that incur more than \$200,000 in eligible PECFA costs on November 30, 2001, until the later of 10 years after the investigation or December 1, 2006, to complete the cleanup before losing interest cost reimbursement.

6. Specify that: (a) if the remedial action activities were completed more than 10 years after the investigation was completed, the applicant is ineligible for reimbursement for interest costs incurred after that date or December 1, 2006, whichever is later; and (b) delete the separate interest cost reimbursement limitation for category one high-cost sites.

7. Maintain current law.

C. Completion of Site Investigation After Notification of Discharge

1. Adopt the Governor's recommendation to provide that if the site investigation was completed more than five years after the applicant notified DNR or Commerce about the discharge or more than two years after the effective date of the bill, whichever is later, the applicant would be ineligible for reimbursement for interest costs incurred after the later of those periods.

2. Maintain current law.

D. Exemptions from Interest Cost Limitations

1. Approve the Governor's recommendation to provide that the interest cost reimbursement limits would not apply to: (a) local government applicants who receive federal or state financial assistance other than PECFA for the expansion or redevelopment; and (b) applicants engaged in the expansion or redevelopment of brownfields, if federal or state financial assistance other than PECFA was provided for the expansion or redevelopment.

2. Maintain current law.

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