



Legislative Fiscal Bureau

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Joint Committee on Finance

Paper #695

Environmental Cleanup and Restoration Settlement Appropriation (Natural Resources -- Air, Waste and Contaminated Land)

[LFB 2001-03 Budget Summary: Page 508, #24]

CURRENT LAW

The environmental fund receives revenues from several sources, including the vehicle environmental impact fee, solid waste tipping fees, transfer from the petroleum inspection fund, pesticide and fertilizer fees, and reimbursements from responsible parties recovered when DNR cleans up hazardous substances spills with state funds. Expenditures for state-funded cleanups and response actions are made from a continuing, sum certain appropriation from the environmental management account, under which expenditures cannot exceed budgeted amounts without legislative approval. The appropriation has expenditure authority of \$3,321,300 SEG in 2000-01. The appropriation is used for DNR expenditures related to: (a) DNR-lead cleanups of contaminated sites where the responsible party is unknown or can not or will not clean up the site; (b) the state share at certain Superfund site cleanups; (c) the state match to federal leaking underground storage tank cleanup expenditures; (d) emergency spill response and cleanups; (e) response and cleanup of abandoned containers of hazardous substances where the responsible party can not be identified; (f) \$3 per capita payments to certain municipalities for groundwater monitoring at specified landfills; (g) provision of temporary emergency water supplies; (h) DNR-lead remedial actions at abandoned privately-owned landfills; and (i) DNR-lead cleanups resulting from responsible party payment of court settlements. Of the \$3.3 million appropriation for these purposes, an estimated \$160,500 in base funding is related to moneys recovered under certain water pollution court actions (such as fish kills) that will be used in the future to restore or develop the water environment for public use, replace fish or other wildlife destroyed by the water pollution discharge, or provide grants to municipalities to develop recreational lands and facilities consistent with a court order issued in the water pollution case.

GOVERNOR

Create a continuing appropriation within the environmental fund for expenditures of all moneys received under settlement agreements or orders to remedy environmental contamination at specific sites and to restore the environment. Specify that moneys received in settlement of actions initiated under the federal CERCLA regulations (Comprehensive Environmental Response, Compensation and Liability Act) would be deposited in the environmental fund. The new appropriation would be used for expenditure of: (a) all moneys received, other than from the federal government, for the remediation of environmental contamination at specific sites, under settlement agreements or orders; and (b) moneys received in settlement of actions under certain federal regulations (CERCLA) for environmental remediation, restoration, and development, including the replacement of fish or wildlife, that has not been conducted when the moneys are received. The moneys received in the appropriation would be used to carry out the purposes for which they were received.

DISCUSSION POINTS

1. Currently, some moneys received under settlement agreements or orders for specific remediation, environmental restoration activities or other specified environmental purposes are not deposited in the State's accounts and, therefore, expenditures are not reported on the State's books. Examples are a 1997 settlement with Menards, Inc. where moneys were received for violations of hazardous waste laws and were used for household hazardous waste ("Clean Sweep") grants, or a proposed environmental restoration settlement with Fort James Corporation regarding contamination in the Fox River. In the Menards case, moneys paid by the responsible parties were deposited in an escrow account under the control of DNR but off the State's books, and a similar arrangement is included in the draft Fort James agreement. It is likely that some settlements may bring large amounts of money under DNR authority in the next several years.

2. There have been occasional situations where funds are deposited in the environmental fund as a result of specific court settlements that require a responsible party to make a payment to DNR and require DNR to oversee specific cleanup actions with the funds. DNR has used the state-funded response cleanup appropriation expenditure authority for the specific actions. However, there is not always clear statutory authority to deposit funds into the environmental fund that are received under court settlements or under negotiated agreements for remedial actions to happen in the future. Currently, DNR can take action under the state-funded response cleanup appropriation and seek cost recovery from the responsible party after the state action is taken. In addition to paying for costs already incurred by DNR, these actions may include funding for future remediation, environmental restoration or for restitution payments. Under the bill, DNR could make the specified expenditures from the proposed appropriation instead of from the state-funded response cleanup appropriation. This would allow the expenditure authority in the state-funded response cleanup appropriation to be reserved for intended DNR-lead cleanup activities while making funds received under a court-settlement available for the purposes specified in the agreement or order. DNR believes there may be only a few such actions per year.

3. The bill would deposit funds received by DNR in settlement of certain federal CERCLA actions in the environmental fund that are not currently deposited in the State's accounts (such as under the Fox River cleanup actions). The proposed appropriation would be used for expenditures for the specified projects. It could be argued that revenues received by the state should be received in such a manner that they can be recorded on the State's accounts.

4. The bill states the proposed appropriation would be used for expenditure of all moneys received, other than from the federal government, for the remediation of environmental contamination at specific sites, under settlement agreements or orders. However, the bill does not include language in the appropriation to spend moneys received under settlement agreements or court orders, other than fines or forfeitures, resulting from violations of environmental law to carry out the purposes for which received. Therefore, settlements such as in the Menards, Inc. case, that are not for specific environmental remediation would not be credited to the appropriation under the bill.

5. In addition, the bill does not contain a necessary cross-reference that would deposit the moneys received in such situations into the environmental fund if they are not currently deposited there. It would be appropriate to specify that the environmental fund would receive moneys received under settlement agreements or court orders for the remediation of environmental contamination at specific sites as well as other moneys received under settlement agreements or court orders, other than fines or forfeitures, resulting from violations of environmental law to carry out the purposes for which received.

6. The new appropriation would be used for expenditure of funds to undertake projects for the specified purposes for which the moneys were received under the settlement agreement or order. The existing state-funded spills response cleanup appropriation is used for DNR-lead cleanups where DNR may seek future cost recovery from a responsible party if it is able to identify one. However, the existing state-funded cleanup appropriation includes \$160,500 in base funding which is the estimated amount related to moneys recovered under certain water pollution court actions (such as fish kills) that will be used in the future to restore or develop the water environment for public use, replace fish or other wildlife destroyed by the water pollution discharge, or provide grants to municipalities to develop recreational lands and facilities consistent with a court order issued in the water pollution case.

7. This "prospective" restoration component of the existing spills cleanup appropriation could be transferred to the new appropriation. Under this alternative, the existing spills cleanup appropriation would be more clearly used for state-lead actions that might result in future cost recovery and the new site specific appropriation would be used for actions where funds have already been provided to the Department through a settlement agreement or order to be used in the future for the specific purpose for which received. Funds received by DNR as cost-recovery would be placed in the environmental fund to offset the state expenditures already made for these purposes.

8. An agency may not expend beyond the amount listed in the statutory Chapter 20 schedule for an annual or biennial appropriation without legislative approval. Expenditures beyond

the appropriated level may only be made through the passage of legislation or under the Joint Committee on Finance review provisions of s. 13.10 of the statutes. An agency may expend any funds available in a continuing appropriation subject only to the review of DOA. While a continuing appropriation provides the Department with greater flexibility in spending, it also limits legislative review and may make it more difficult to anticipate, control and track program expenditures. The Committee could choose to convert the appropriation to annual or biennial in order to maintain legislative oversight. A biennial appropriation allows a Department to transfer expenditure authority between fiscal years in the same biennium with DOA approval. However, the Legislature retains authority in setting biennial expenditure authority and thereby limiting expenditures to the amounts appropriated in the biennium, subject to modification after legislative review.

9. The new appropriation could be created as an annual or biennial instead of a continuing appropriation under the bill, in order to provide a level of legislative review over the expenditures made from the appropriation. The \$160,500 in estimated base funding for certain prospective actions could be transferred from the state-funded cleanup appropriation to the new appropriation. The \$160,500 would provide a base funding level that could be used for prospective actions for restitution, environmental resource restoration or other purposes specified. The new appropriation would receive all moneys specified under the bill and alternative changes related to settlement agreements or orders. If monies received under the new appropriation are in excess of the expenditure authority, DNR could request an increase in expenditure authority through future legislation or by the Joint Committee on Finance under s. 13.10.

ALTERNATIVES TO BASE

1. Approve the Governor's recommendation to: (a) create a continuing appropriation within the segregated environmental fund for expenditures of all moneys received under settlement agreements or orders to remedy environmental contamination at specific sites and to restore the environment; (b) specify that moneys received in settlement of actions initiated under the federal CERCLA regulations would be deposited in the environmental fund; (c) specify that the new appropriation would be used for expenditure of: (1) all moneys received, other than from the federal government, for the remediation of environmental contamination at specific sites, under settlement agreements or orders; and (2) moneys received in settlement of actions under certain federal regulations (CERCLA) for environmental remediation, restoration, and development, including the replacement of fish or wildlife, that has not been conducted when the moneys are received; and (d) specify that the moneys received in the appropriation would be used to carry out the purposes for which they were received.

2. Approve the Governor's recommendation and, in addition, specify that: (a) moneys deposited in the environmental fund would include all moneys received under settlement agreements or orders, other than fines or forfeitures, to settle alleged environmental violations, that are specified to be used to restore or develop environmental resources, to provide restitution or to take other actions or make expenditures required under the order or agreement; and (b) such moneys

received and not specifically appropriated elsewhere would be credited to the new appropriation to carry out the purposes for which received. (Funds received as cost-recovery of prior expenditures would be deposited in the environmental fund.)

3. Approve Alternative 2 and, in addition, transfer \$160,500 SEG annually from the existing state-lead cleanup appropriation to the new appropriation and make the new appropriation one of the following:

- a. annual
- b. biennial
4. Maintain current law.

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