



Legislative Fiscal Bureau

One East Main, Suite 301 • Madison, WI 53703 • (608) 266-3847 • Fax: (608) 267-6873

February 27, 2002

Joint Committee on Finance

Paper #1102

Lapse of Oil Overcharge Restitution Funds (DOA)

[LFB Summary of the Governor's Budget Reform Bill: Page 10, #7]

CURRENT LAW

Under s. 14.065 of the statutes, whenever oil overcharge restitution funds are disbursed to the state, the Governor must submit an expenditure plan for the use of the funds to the Joint Committee on Finance and to the standing energy committees of the Legislature. The standing energy committees have 30 days in which to recommend to this Committee any changes to the Governor's recommendations. No oil overcharge restitution funds may be expended under a proposed allocation plan until the plan has been approved, or modified and approved, by the Committee. Under s. 14.065(5) of the statutes, the Committee must also approve any reallocations of previously programmed oil overcharge funds.

Under the court orders and federal administrative rulings that govern the distribution of oil overcharge restitution funds, states have reasonably broad latitude in how they may use the funds. The funds may be used in accordance with purposes specified under five separate federal laws governing: (a) the weatherization of buildings and dwellings of low-income or handicapped individuals; (b) the implementation of state energy conservation programs; (c) the reduction of energy usage in schools and hospitals; (d) the promotion of energy conservation by small businesses and by individual; and (e) home heating bill assistance for low-income individuals. Additionally, oil overcharge funds may be used for any restitutionary purpose that has previously been approved in any other state by the federal Department of Energy.

GOVERNOR

Lapse \$1,000,000 FED in 2001-02 to the general fund from DOA's oil overcharge restitution funds appropriation. In addition, modify a nonstatutory provision under 1999 Wisconsin Act 113, which directed the allocation of all future unprogrammed oil overcharge

restitution funds and associated interest to support energy conservation projects in dwellings with lead paint hazards, to provide instead that all future unprogrammed amounts in excess of \$1,000,000 be directed to that purpose.

DISCUSSION POINTS

1. From mid-1984 through December 31, 2001, oil overcharge restitution funds (and accruing interest) totaling \$111,539,100 FED have been received by the state and programmed or subsequently reprogrammed for eligible energy conservation uses.

2. Currently, there are no unprogrammed oil overcharge restitution fund balances. However, as of December 31, 2001, the unexpended cash balances under previously approved allocation actions for all projects amounted to \$4,998,300. Much of this unexpended balance is attributable to recently approved project allocations that are currently being implemented or to projects that have multi-year funding cycles.

3. Nonetheless, DOA has identified approximately \$1 million of the unexpended cash balance that is attributable to inactive projects or to projects that will never be implemented. Under current law procedures, the Governor recommends amendments to previously approved oil allocation plans in order to reprogram these residual balances to other eligible energy conservation activities.

4. Since the oil overcharge funds received by the state must be used only for broadly restitutionary, energy-related purposes, it is highly unlikely that the federal Department of Energy would approve a lapse to the general fund of \$1,000,000 FED of available cash balances from approved oil overcharge projects. Consequently, the Committee may wish to delete the Governor's recommendation.

5. As a possible alternative to the Governor's recommendation, it would appear reasonable that the Committee could choose to direct the use of \$1,000,000 FED of residual balances to an approved energy-related purpose (such as weatherization activities funded from the state public benefits fund). An equivalent amount of state public benefits monies might then be diverted to offset a GPR-funded function, such as state agency fuel and utility costs. The offset GPR funds could then be lapsed to the general fund.

6. However, the federal court's Final Settlement Agreement governing the distribution of oil overcharge funds to the states required each state to file a letter of assurance with the court governing the manner in which the state would use the oil overcharge funds. Most notably for this discussion, states had to certify that "the funds received by each State will be used to *supplement, and not to supplant*, funds otherwise available for such programs under Federal or State law [emphasis added]."

7. This letter of assurance was required as a precondition to the release of oil overcharge funds to the state. On July 18, 1986, Governor Earl filed with the federal court of

jurisdiction a letter stating that "the terms and conditions concerning the uses of the funds to be disbursed pursuant to the [Final] Agreement and Order will be adhered to in the use of any such funds."

8. Consequently, it does not appear that the above possible alternative redirecting residual oil overcharge funds would be permissible under the assurances given by Wisconsin to the federal court.

9. Because of the above limitations on the use of oil overcharge funds, a more viable alternative to lapse an additional \$1,000,000 to the general fund in 2001-02 from amounts budgeted for energy-related functions might be the following. The Committee could chose to earmark additional existing public benefits fund balances for energy conservation programs to an energy conservation activity that is currently GPR-funded. The substitution of public benefits funds would then permit the lapse of an equivalent GPR amount.

10. The Governor has already proposed earmarking \$4,150,000 SEG in 2001-02 and \$18,150,000 SEG in 2002-03 from a portion of the utility public benefits fund that would otherwise be expended under DOA's energy conservation and efficiency and renewable resource grants sum sufficient appropriation and transferring these amounts to offset appropriated GPR funds for fuel and utilities and related costs in three state agencies.

11. One of the affected agencies is the University of Wisconsin System to which \$4,150,000 SEG in 2001-02 and \$17,122,600 SEG in 2002-03 would be transferred. The University would not be permitted to expend the offset GPR funds in either fiscal year without the approval of the DOA Secretary. [An exception is made with respect to \$2,300,000 GPR in 2001-02 to reflect the fact that the University was previously authorized under s. 13.10 action to use \$2,300,000 GPR appropriated in 2001-02 for carryover 2000-01 utility costs.]

12. Under this alternative, an additional \$1,000,000 SEG in 2001-02 could be transferred from the energy conservation public benefits funds to the University of Wisconsin System [for a total of \$5,150,000 SEG in 2001-02] to fund master lease payments related to the installation of energy conservation equipment at University power plants and related facilities. Currently, these types of expenditures are funded from the University's GPR-funded energy costs appropriation. The amount of GPR that the University could not expend without the approval of the DOA Secretary would also be increased by \$1,000,000 in 2001-02, and this additional amount would lapse to the general fund.

13. While this alternative would substitute a \$1,000,000 GPR lapse in 2001-02 from budgeted University of Wisconsin energy costs funds for an equivalent amount of oil overcharge funds (which cannot be lapsed to the general fund), the use of additional energy conservation public benefits funds could result in a possible one-year delay in the implementation of planned energy conservation projects funded from public benefits funds.

14. Regardless of the Committee's actions on the use of oil overcharge funds, a technical

amendment should also be adopted to delete that portion of 1999 Wisconsin Act 113, which directed the allocation of all future unprogrammed oil overcharge restitution funds and associated interest to support energy conservation projects in dwellings with lead paint hazards. On June 15, 2000, the federal Department of Energy disallowed the use of oil overcharge funds for energy conservation projects in dwellings with lead paint hazards. Consequently, the current Act 113 language is unenforceable and could be repealed.

ALTERNATIVES TO BILL

1. Approve the Governor’s recommendation.

2. Modify the Governor’s recommendation by deleting the required lapse to the general fund of \$1,000,000 FED in 2001-02 from DOA’s oil overcharge restitution funds appropriation. Instead, increase by \$1,000,000 SEG in 2001-02 the amounts transferred from the DOA public benefits fund energy conservation appropriation to a new SEG-funded energy costs appropriation under the University of Wisconsin System to be used to support current master lease payments for energy conservation projects. Increase by \$1,000,000 GPR the amounts in 2001-02 that the University could not encumber or expend under its current GPR-funded energy costs appropriation without the approval of the DOA Secretary.

<u>Alternative 2</u>	<u>FED-Lapse</u>	<u>SEG</u>
2001-03 REVENUE	- \$1,000,000	\$0
2001-03 FUNDING	\$0	\$1,000,000

3. Delete the Governor’s recommendation.

<u>Alternative 3</u>	<u>GPR-REV</u>	<u>FED-Lapse</u>
2001-03 REVENUE	- \$1,000,000	- \$1,000,000

4. *In addition to either Alternatives 1, 2 or 3*, include a technical amendment to delete that portion of 1999 Wisconsin Act 113, which directed the allocation of all future unprogrammed oil overcharge restitution funds and associated interest to support energy conservation projects in dwellings with lead paint hazards.

Prepared by: Darin Renner