



## Legislative Fiscal Bureau

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2017

Joint Committee on Finance

Paper #476

### **Environmental Improvement Fund Use for Wastewater Permitting (Natural Resources – Environmental Quality)**

[LFB 2017-19 Budget Summary: Page 332, #2]

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#### **CURRENT LAW**

The segregated (SEG) environmental improvement fund (EIF) is a separate program for state budgetary purposes, and is staffed by positions in the Department of Natural Resources (DNR) and the Department of Administration (DOA). The EIF includes: (a) the clean water fund program, which provides low-interest loans to municipalities for planning, designing, constructing or replacing a wastewater treatment facility, or for nonpoint source pollution abatement or urban storm water runoff control projects; and (b) the safe drinking water loan program, which provides low-interest loans to municipalities for planning, designing, constructing, or modifying public drinking water systems.

The DNR EIF appropriations are authorized to be used for administration of the clean water fund program and safe drinking water loan program under the environmental improvement fund. The source of EIF revenues includes: (a) interest income from the loan portfolio balance from certain clean water fund loans for municipal wastewater treatment facilities; (b) a portion of the federal capitalization grant received for clean water fund program and authorized to be used for administrative purposes; (c) proceeds from certain general obligation bonds issued to pay state subsidies on clean water fund loans to municipalities; and (d) loan servicing fees that will be assessed on clean water fund loans entered into as of 2017-19. DNR is authorized EIF annual base funding of \$599,800 SEG with 5.0 positions in the Division of Water (renamed to the Division of Environmental Management under the bill) and \$1,532,200 SEG with 10.0 positions in the Division of Customer Assistance and External Services (renamed to the Division of External Services under the bill).

Concentrated animal feeding operations (CAFOs) are regulated as point sources of wastewater discharges under the Wisconsin pollutant discharge elimination system (WPDES)

under s. 283.31 of the statutes. As of May 23, 2017, DNR reports 294 permitted CAFOs. DNR investigates CAFOs on the basis of its general inspection authority for WPDES-permitted CAFOs. In 2016-17 DNR allocated 8.5 GPR, 9.5 environmental fund (nonpoint account) SEG and 2.0 FED positions with \$754,400 GPR, \$806,400 SEG, and \$196,400 FED, for a total of 20 positions and \$1,757,200. However, this amount includes 2.0 SEG positions reallocated in the fall of 2016, in response to the June, 2016, Legislative Audit Bureau (LAB) audit of wastewater permitting and enforcement. This paper discusses further allocation of 2.0 staff to the CAFO permitting program.

## **GOVERNOR**

Expand the use of the environmental improvement fund administrative appropriations in the Division of Environmental Management and Division of External Services to include wastewater (WPDES) permitting activities under s. 283.31 of the statutes. Convert \$114,600 GPR annually with 2.0 GPR positions to EIF SEG. Provide the 2.0 positions in the water quality operations subprogram of the Division of Environmental Management.

## **DISCUSSION POINTS**

1. In response to the June, 2016, LAB audit of wastewater permitting and enforcement, DNR reported a CAFO permit-to-staff ratio of 20:1 was necessary to achieve recommendations of LAB to improve regulatory inspections and reporting. At that time, the ratio was 27:1, with 10.5 regional staff (of a total 18 staff, the remainder of which are administrative staff at the central office in Madison) dedicated to CAFO regulation. In order to achieve the 20:1 ratio, DNR found that an additional 4.0 positions were necessary. Reallocation of 2.0 nonpoint SEG positions and 2.0 EIF SEG positions would approximately achieve this goal, with 14.5 field staff, resulting in a ratio of 20.3:1, based on 294 permitted CAFOs. While the reallocation increases the amount of staff dedicated to CAFO regulation, it does not change the total number of DNR staff.

2. Under this reallocation of staff to CAFO permitting, the Department would budget 1.0 GPR position from public safety and business support and 1.0 GPR position from customer and external assistance as 2.0 positions in the watershed and runoff management subprogram. The bill would convert these 2.0 GPR positions to EIF SEG under the water quality operations subprogram. Further, 2.0 nonpoint SEG positions would transfer from nonpoint research and monitoring to CAFO administration. The administration suggests that expanding the use of EIF for wastewater permitting would allow the state to use additional non-GPR funding for water-related programs, including for staff to issue wastewater permits and conduct inspections of facilities, focus on CAFO regulatory activities, and respond to concerns raised about surface and groundwater.

3. The DNR 2017-19 biennial budget submittal did not include requests to expand the use of EIF for wastewater permitting activities, to convert positions from GPR to EIF, or to use EIF funds for CAFO regulatory purposes. However, the DNR budget submittal did include a request to reallocate 4.0 positions from non-CAFO activities to CAFO regulation. DNR indicates that it has already filled the 4.0 positions for CAFO regulatory activities, including 2.0 nonpoint SEG and 2.0

GPR.

4. DNR and DOA suggest that DNR prefers that the 2.0 EIF positions be moved with CAFO regulatory and other runoff and watershed management staff to the Division of External Services instead of the bill's placement of the positions in water quality operations in the Division of Environmental Management with municipal and industrial wastewater permitting activities. The administration did not submit a formal errata request to the Joint Committee on Finance to make this change, but indicated it would be agreeable to the change. Considering this change would place staff in the program more closely associated with CAFO permitting, the Committee could consider moving them to the Division of External Services to meet the Department's intent that they be used for CAFO activities [Alternative 2].

5. Currently, EIF administrative funds are used to administer clean water fund loans provided to municipalities under the environmental improvement fund. Consideration can be given to whether it is appropriate to expand the use of EIF funds to wastewater permitting activities for municipalities and industries. If it is considered appropriate to expand the use of EIF funds to wastewater permitting activities, consideration can also be given to whether it is appropriate to also expand the use of EIF funds to wastewater permitting activities for CAFOs. Some, but not all, municipalities borrow under the clean water fund program. Industrial sources and CAFOs do not borrow under the clean water fund program. Adoption of the Governor's proposal would result in EIF funds being allocated to regulation of entities that do not borrow from the clean water fund, and do not, therefore, contribute to the EIF through interest payments on loans.

6. DOA and DNR indicate the U.S. Environmental Protection Agency (EPA) would not have to approve the use of EIF funds for wastewater permitting activities instead of clean water fund loan activities because the state funds are outside of the clean water fund federal accounts.

7. The statutes authorize DNR and DOA to charge loan servicing fees for the purposes of recovering the costs of administering the clean water fund and safe drinking water loan programs. The agencies are not required to obtain legislative approval of such fees. The March, 2017, EIF biennial finance plan states that the two agencies plan to begin charging a loan servicing fee for clean water fund financial assistance agreements entered into beginning in 2017-18. The annual fee would be 0.25% of the outstanding balance of loans entered into during the 2017-19 biennium. The loan servicing fee would not be a separate or additional charge paid by municipal borrowers under the clean water fund, but would rather result from a reallocation of that portion of interest payments from future use for new loans to administrative purposes.

8. The loan servicing fee was not in the September, 2016, original biennial finance plan submission by DNR and DOA to the Legislature and Building Commission. DOA indicates that the loan servicing fee was added to the March, 2017, biennial finance plan based on departmental decisions made after the fall plan was submitted, consideration of how other states fund administration of clean water fund programs, and consideration of how the state could fund the administrative costs of the program if federal annual capitalization grants were discontinued in the future. The Department indicates the loan servicing fee would become the primary source of EIF revenue to support CAFO regulatory activities intended to be performed by the 2.0 positions. DOA estimates it will collect \$250,000 in loan servicing fees in 2017-18 and \$614,600 in 2018-19.

9. The two agencies indicate the new clean water fund loan servicing fee is intended to maintain administrative funds for the clean water fund program if federal capitalization grants for the program are discontinued. Some may consider it inappropriate to immediately reallocate a portion of those fees to be used for CAFO permitting and regulatory fees. Any EIF fees reallocated from clean water fund administration to wastewater permitting make fewer funds available in the future for clean water fund administration. Further, it could be considered inappropriate to use fees paid by municipalities for CAFO permitting, instead of to administer the clean water fund program for municipal wastewater facilities. Under this rationale, the recommendation to expand use of EIF funds for wastewater permitting could be deleted [Alternatives 3, 4, or 5].

10. Municipal and industrial wastewater permittees (including CAFOs) pay annual wastewater discharge fees under Chapter NR 101 of the Wisconsin Administrative Code. The fees are deposited in the general fund, and totaled \$5.3 million in 2014-15 and \$5.6 million in 2015-16. A portion of the DNR staff who administer wastewater permitting activities are funded from GPR. Use of GPR for wastewater permitting has historically been considered an appropriate use of that fund source because the fees paid by permittees are deposited in the general fund. The June, 2016, LAB audit on the DNR wastewater permitting and enforcement programs estimated that approximately 45.2% of the DNR expenditures for administering the wastewater permitting program were from GPR. Remaining expenditures were funded from the SEG environmental management and nonpoint accounts of the environmental fund, SEG EIF (for clean water fund administration), federal revenues, and a small amount (\$25,900 in 2015-16) of program revenue (PR) fees paid annually by CAFOs. The LAB audit indicated that DNR did not record wastewater permitting program expenditures in a way that allowed LAB to separate expenditures associated with municipal and industrial permittees. The LAB audit identified 87.1 DNR full-time equivalent (FTE) staff allocated in 2014-15 to municipal, industrial, and CAFO permitting and oversight activities. Of the total, 34.8 FTE were allocated to permitting, 32.9 FTE to compliance and enforcement, and 19.4 FTE to other activities such as permittee education and assistance, administration and policy development, and information technology support.

11. GPR has been considered a reasonable funding source to fund several other wastewater permitting staff because of the fees paid by wastewater permittees that are deposited in the general fund. The Committee could consider deleting the Governor's proposal and preserving funding for the positions as GPR, but transferring the positions to the CAFO permitting program to meet the administration's preference that the positions perform CAFO activities rather than municipal and industrial wastewater permitting activities [Alternative 5].

12. The Committee could consider providing a portion of GPR for CAFO permitting staff, given that a portion of current CAFO permit staff are funded from GPR. Under current law, CAFOs are assessed a fee of \$345 annually, including \$250 deposited into the general fund and \$95 into a PR appropriation for management of the state's water resources. Given concerns about increased GPR spending, the Committee could consider increasing CAFO permitting fees by \$200, for a base fee of \$450 GPR and an additional \$95 PR. The increased fee would raise approximately \$58,800 GPR annually, which would be expected to offset the cost of 1.0 position. If the Committee chose to raise CAFO permitting fees to cover costs related to their regulation, it could delete the Governor's proposal to fund the 2.0 positions from EIF SEG and instead provide 1.0 GPR position and 1.0

nonpoint SEG position, which would provide similar funding to CAFO permitting staff as current practice [Alternative 4].

13. As noted, 9.5 CAFO permitting staff are funded from nonpoint account SEG. Although CAFOs are regulated as point sources of water pollution, smaller farming operations considered nonpoint sources must also practice wastewater and manure management. While CAFOs are not eligible for cost-share assistance available to nonpoint sources, achievement of water quality goals in rural settings is dependent in part on CAFOs complying with applicable performance standards. As a result, CAFO permitting staff have been funded from nonpoint SEG. The nonpoint account could be considered a more appropriate funding source for CAFO programs than the EIF revenues provided by municipalities. The 2.0 positions could be converted from GPR to nonpoint SEG instead of EIF SEG [Alternative 3].

14. It should be noted that under the bill, nonpoint account expenditures are estimated to exceed revenues by approximately \$3.5 million during the biennium. If the Committee adopts Alternatives 3 or 4 to convert the GPR position(s) to nonpoint SEG, it may wish to consider additional funding to the account, as discussed in LFB Papers #475 and #477.

15. Some may consider it appropriate to create an additional funding source for wastewater permitting activities for municipal, industrial, and CAFO wastewater dischargers. Some may view it as appropriate to decrease the use of GPR for wastewater permitting activities and to reallocate funds from clean water fund revenues to instead be used for wastewater permitting for municipalities, industrial sources and CAFOs; while these entities may not have borrowed under the clean water fund, the bill would use existing revenues, and not new fees on municipalities, for the newly specified purposes. Under this rationale, the Governor’s recommendation could be approved to provide the positions as EIF SEG in the municipal and industrial wastewater permitting program [Alternative 1] or the positions could be provided as EIF SEG but moved to the CAFO permitting program [Alternative 2].

## ALTERNATIVES

1. Approve the Governor’s recommendation to: (a) expand the use of environmental improvement fund (EIF) SEG for wastewater permitting activities under s. 283.31 of the statutes, for activities performed by the Division of Environmental Management (municipal and industrial sources) and the Division of External Services (concentrated animal feeding operations); (b) convert \$114,600 GPR annually with 2.0 GPR positions to SEG EIF; and (c) locate the positions in the Division of Environmental Management to use for municipal and industrial wastewater permitting activities.

ALT 1	Change to Base		Change to Bill	
	Funding	Positions	Funding	Positions
GPR	-\$229,200	- 2.00	\$0	0.00
SEG-EIF	<u>229,200</u>	<u>2.00</u>	<u>0</u>	<u>0.00</u>
Total	\$0	0.00	\$0	0.00

2. Approve the Governor’s recommendation under Alternative 1, but modify the provision to transfer the 2.0 EIF SEG positions from the Division of Environmental Management to the Division of External Services to be used for CAFO wastewater permitting activities.

3. Delete the expansion of use of EIF SEG for wastewater permitting activities. Convert \$114,600 GPR annually with 2.0 GPR positions to SEG from the nonpoint account of the environmental fund. Transfer the 2.0 positions and funding from the Division of Environmental Management to the Division of External Services to be used for CAFO wastewater permitting activities.

ALT 3	Change to Base		Change to Bill	
	Funding	Positions	Funding	Positions
GPR	- \$229,200	- 2.00	\$0	0.00
SEG-ENV	229,200	2.00	229,220	2.00
SEG-EIF	<u>0</u>	<u>0.00</u>	<u>- 229,200</u>	<u>- 2.00</u>
Total	\$0	0.00	\$0	0.00

4. Delete the expansion of use of EIF SEG for wastewater permitting activities. Convert \$57,300 GPR annually with 1.0 GPR position to SEG from the nonpoint account of the environmental fund. Additionally, increase the base CAFO permit fee deposited into the general fund to \$450 from \$250. (Total annual permit fees for CAFOs would be \$545, including \$95 deposited to a DNR water resources PR appropriation.) Transfer 2.0 positions and funding from the Division of Environmental Management to the Division of External Services to be used for CAFO wastewater permitting activities.

ALT 4	Change to Base		Change to Bill	
	Funding	Positions	Funding	Positions
GPR	- \$114,600	- 1.00	\$114,600	1.00
SEG-ENV	114,600	1.00	114,600	1.00
SEG-EIF	<u>0</u>	<u>0.00</u>	<u>- 229,200</u>	<u>- 2.00</u>
Total	\$0	0.00	\$0	0.00
GPR-REV	\$117,600		\$117,600	

5. Delete the expansion of use of EIF SEG for wastewater permitting activities. Delete the conversion of \$114,600 GPR annually with 2.0 GPR positions to SEG EIF. Transfer the GPR funding and positions from the Division of Environmental Management to the Division of External Services to be used for CAFO permitting activities.

ALT 5	Change to Base		Change to Bill	
	Funding	Positions	Funding	Positions
GPR	\$0	0.00	\$229,200	2.00
SEG-EIF	<u>0</u>	<u>0.00</u>	<u>- 229,200</u>	<u>- 2.00</u>
Total	\$0	0.00	\$0	0.00

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