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December 17, 2009

TO: Members
Joint Committee on Finance

FROM: Bob Lang, Director

SUBJECT: Administration: Section 13.10 Request to Approve Governor's Proposal to Expend Oil Overcharge Restitution Funds (Stripper XXII) -- Agenda Item III

On September 11, 2009, the Committee received a letter from the Department of Administration (DOA) Secretary Michael Morgan, on behalf of Governor Doyle, containing a proposal to expend $602,907.78 FED (plus certain accrued interest and future interest amounts) of both new and reprogrammed oil overcharge restitution funds. This proposed expenditure plan constitutes the latest allocation of "stripper well" and related funds which first began to be received by the state in December, 1986.

Under provisions of s. 14.065 of the statutes, the proposed oil overcharge expenditure plan was also received by the Senate and Assembly Chief Clerks on September 11, 2009, for referral to the appropriate standing committee in each house with jurisdiction over state energy matters. The Senate Chief Clerk referred the proposal to the Senate Committee on Commerce, Utilities, Energy, and Rail, and the Assembly Chief Clerk referred the proposal to the Assembly Committee on Energy and Utilities on September 15, 2009. Neither of these committees held hearings on the current proposal during the 30-day review period for the purpose of developing written alternative recommendations for submittal to the Joint Committee on Finance. Accordingly, the Co-chairs scheduled the "Stripper XXII" oil overcharge allocation proposal for the consideration at the Committee's current meeting under s. 13.10 of the statutes.

BACKGROUND

Oil overcharge funds have derived from a variety of federal court settlements involving controversies over the validity of applying certain price controls on crude oil during the period from early 1974 until early 1981. During the period in question, the affected oil producers were required to deposit to an escrow fund the difference between the uncontrolled crude oil price at the time and the controlled price, pending a determination of the validity of the federal pricing regulations.

These regulations were ultimately upheld and oil overcharge distributions began flowing to the states in late 1983. A subsequent, highly complex final settlement agreement relating to the distribution of the escrow funds was entered in mid-1986 by the federal court having jurisdiction over these cases. This 1986 settlement agreement was made the mechanism by which all future oil overcharge restitution fund amounts deriving from a variety of sources would be distributed to the states.

Since 1983, the state has received $80.3 million of "stripper well," Exxon, and other oil overcharge restitution funds from a variety of federal court settlements and has earned an additional $31.8 million in interest on these amounts, for a total of $112.1 million through 2008-09. Most of this funding was received by the state during the decade after 1985. It is anticipated that the state will receive relatively modest amounts of oil overcharge funding in the future.

With respect to how oil overcharge funds may be used, the federal court's guidelines have given each state relatively broad discretion in selecting among restitutionary energy-related program. In general, oil overcharge funds may be allocated for the following: (a) weatherization of buildings and dwellings of low-income, handicapped, or disabled persons; (b) implementation of state energy conservation programs; (c) reduction of energy consumption in schools and hospitals; (d) promotion of conservation by small businesses and by individuals; and (e) assistance to low-income individuals with home heating bills. In addition to these general types of programs, any other energy-related project which has previously been approved by a federal court or by the federal Department of Energy (DOE) is also a permitted use for oil overcharge restitution funds.

To date, "stripper well" funds totaling about $38.9 million have been formally approved by the Committee or by the Legislature on 21 previous occasions. The previous "stripper well" allocations are summarized below in Table 1.

TABLE 1

Previous "Stripper Well" Oil Overcharge Allocations

Allocation	Action	Date	Original Amount Allocated (FED)
Stripper I Plan	JFC Modified Plan	December 18, 1986	$12,792,700[a]
Stripper II Plan	JFC Modified Plan	January 27, 1988	2,356,100[a]
Stripper III Plan	JFC Modified Plan	May 2, 1988	100,000
Stripper III Amendment	1987 Wisconsin Act 399	May 17, 1988	300,000
Stripper IV Plan	JFC Modified Plan	December 12, 1988	2,930,507[b]
Stripper V Plan	JFC Modified Plan	March 15, 1989	232,544[c]
Stripper VI Plan	1989 Wisconsin Act 31	August 9, 1989	600,000
Stripper VII Plan	JFC Modified Plan	December 19, 1989	3,108,597[d]
Stripper VIII Plan	JFC Modified Plan	December 18, 1990	2,642,111[e]
Stripper IX Plan	JFC Modified Plan	March 13, 1991	95,000
Stripper X Plan	1991 Wisconsin Act 39	August 15, 1991	998,500
Stripper XI Plan	JFC Modified Plan	February 13, 1992	1,711,819[f]
Stripper XII Plan	JFC Modified Plan	December 15, 1992	3,379,416[g]
Stripper XIII Plan	1993 Wisconsin Act 16	August 12, 1993	1,158,200
Stripper XIV Plan	JFC Modified Plan	February 2, 1994	1,613,398[h]
Stripper XV Plan	JFC Modified Plan	October 25, 1995	539,500[i]
Stripper XVI Plan	JFC Modified Plan	April 16, 1996	700,000[j]
Stripper XVII Plan	JFC Modified Plan	September 26, 1996	1,018,461[k]
Stripper XVIII Plan	JFC Modified Plan	June 23, 1998	745,938[L]
Stripper XIX Plan	JFC Modified Plan	April 21, 1999	513,309[m]
Stripper XX Plan	1999 Wisconsin Act 113	May 23, 1999	0[n]
Stripper XX Plan	JFC Modified Plan	December, 19, 2000	821,498[o]
Stripper XXI Plan	JFC Modified Plan	June 21, 2006	527,300[p]
TOTAL ALLOCATIONS			$38,884,990

[a]Plus all interest accruing [allocated to the institutional conservation (Schools and Hospitals Weatherization Program)]. In addition, $1,000,000 originally allocated for construction of an ethanol plant on January 27, 1988, was subsequently reallocated as part of the December 12, 1988, "Stripper IV" approval.

[b]Plus interest (identified as $82,100 in 1989-90 and $138,200 in 1990-91 in the 1989-91 biennial budget) allocated to the DOA Energy Bureau for oil overcharge management and reporting activities.

[c]Plus interest accruing to December 31, 1988.

[d]Plus accrued and future "Stripper VI and VII" interest.

[e]Plus accrued and future "Stripper VIII" interest.

[f]Plus accrued and future "Stripper XI" interest. An additional $250,000 of "Stripper XI" funds were also allocated for a Sheet Metal Workers Energy Management Program; however, this component was item vetoed by the Governor. The resulting unprogrammed $250,000 subsequently became part of the "Stripper XII" allocation plan.

[g]Plus accrued and future "Stripper XII" interest.

[h]Plus accrued and future "Stripper XIV" interest. Of the amounts originally allocated, $30,000 was placed in unallotted reserve by Joint Finance. On June 22, 1994, the Committee subsequently allocated the amounts in unallotted reserve to fund an auto train feasibility study by the Department of Transportation.

[i]Allocation of available unprogrammed oil overcharge balances to supplement low-income energy assistant program crisis assistance benefits which had most recently been provided under "Stripper XIV" and through reallocations of Exxon oil overcharge residual amounts. Since these earlier approved allocation plans had been submitted for amendment approval at the October 25, 1995, meeting of Joint Finance, the Committee acted to allocate these unprogrammed funds in the context of approving the amendments to the earlier plans.

[j]Plus accrued and future "Stripper XVI" interest. Of the amounts allocated, $100,000 was placed in unallotted reserve for subsequent release after submittal of a detailed expenditure plan for low-income initiatives.

[k]Plus accrued and future unallocated "Stripper XV" interest and all accrued and future "Stripper XVII" interest. On December 16, 1996, the Committee amended the "Stripper I and II" and Exxon allocations to exchange Exxon funds for "Stripper" funds.

[L]Plus accrued and future "Stripper XVIII" interest. An additional $845,182 was reprogrammed from the residual balances of previous "Stripper well" allocations ($345,182) and Exxon allocations ($500,000)

[m]Plus accrued and future "Stripper XIX" interest. The allocation also includes a reallocation of $66,000 of deobligated Exxon funds.

[n]An allocation of what would have been "Stripper XX" funds (all current and future unprogrammed funds) plus all future interest for energy conservation treatments in rental housing with significant lead paint contamination was ultimately disallowed by the federal DOE. The funds that would have been allocated by Act 113 reverted to unprogrammed status and were subsequently distributed under a second "Stripper XX" plan submitted by the Governor.

[o]Includes $474,778.24 of residual, deobligated stripper well funds and overcharges of state programs and $234,622.34 of deobligated Exxon funds.

[p]Plus accrued and future "Stripper XXI" interest.

In addition, the state has received oil overcharge restitution funds from various oil overcharge settlements with oil companies, which includes a total of $40.0 million of payments from Exxon and earned interest of $19.2 million on those funds.

SUMMARY OF THE CURRENT OIL OVERCHARGE ALLOCATION PROPOSAL

The September 11, 2009, oil overcharge allocation plan reallocates previously approved funding, and newly allocates funding from Stripper XXII. The plan components are identified below.

Amendments to Previously Approved Expenditure Plans. The Stripper XXII proposal would amend several previous allocations, totaling $550,008.56 (plus accruing interest), as follows:

- The reallocation of $100,000 that was approved under Stripper XXI for a feedstock crusher facility demonstration project in southern Wisconsin [biodiesel infrastructure].

- The reallocation of $200,000 that was approved under Stripper XXI for a hydrogen demonstration projects. Half of the funding was to be used to build a demonstration plant that would convert biomass products into hydrogen that would in turn produce electricity. The second half would have been used to construct a hydrogen refueling station in Madison.

- Under Stripper XVII, $1.1 million of Exxon oil overcharge funds were reprogrammed for various projects. The current proposal would reprogram $234,622.34 of these Exxon funds, including: (a) $110,603.10 that was most recently approved for a pilot to explore the benefits of low-income energy and housing assistance; (b) $75,272.50 that was most recently awarded for a homeowner shared-savings weatherization pilot; and (c) $48,746.74 that was most recently provided for the Milwaukee Energy Network (energy efficiency upgrades) pilot.

- The reallocation of $8,215.90 of funds that were provided from state restitution funds and previously approved for lighting at the Capital.

- The reallocation of $4,182.14 that was awarded under Stripper VIII for energy rehabilitation for rental units.

- The reallocation of $2,036.68 that was awarded under Stripper XII for an energy education program.

- The allocation of $467.78 in interest from funds awarded under Stripper I.

- The reallocation of $311.47 that was awarded under Stripper XVIII for home energy ratings and energy efficiency financing projects.

- The allocation of $172.25 in interest from funds awarded under Stripper XI.

The Governor's Stripper XXII proposal would utilize funding from the above reallocations and $52,894.22 in new Stripper XXII monies (a total of $602,907.78 plus accrued and future interest amounts) for the following: (a) $300,000 in seed capital for the University of Wisconsin Consortium for Clean Energy Generation, Transportation, and Storage (UW-CEGTS); (b) $287,521.56 for Center for Renewable Energy Systems; and (c) $15,386.22, plus all accruing interest from Stripper XXII for administration.

Consortium for Clean Energy Generation, Transmission, and Storage Systems. The Governor has proposed allocating $300,000 for UW-CEGTS. Funding would be used to form partnerships between industry and UW personnel to work on innovations in clean energy generation, transmission and storage, including batteries, fuel cells, wind and solar power, and smart grid transmission systems.

Research would be conducted at UW-Madison's College of Engineering and UW-Milwaukee's School of Engineering (Wauwatosa Business Park). Office and laboratory space would be provided for researchers from multiple disciplines in order to encourage interaction among various disciplines. Offices would also be made available to industry researchers so that they could exchange ideas with faculty and students. Industries would pay fees for access to this facility. The UW System's draft budget indicates that the $300,000 would be used as seed capital for the first two years of operation and that these funds would be used to leverage $6 million in industry membership fees and $37 million in sponsored research over a ten-year period.

Center for Renewable Energy Systems. The Governor has proposed providing $287,521.56 for the Center for Renewable Energy Systems at UW-Madison to research renewable energy technologies. The Center would consist of faculty, staff, and private industry researchers in the fields of electrical engineering, civil and environmental engineering, chemistry, chemical engineering, materials science, mechanical engineering, and physics. The Center would provide office and laboratory space. Similar to UW-CEGTS, faculty and private industry personnel would have inter-connected office space to exchange ideas. Laboratory space would be used to test energy efficiency models, including the interconnection of new production and storage techniques with current systems.

The major source of revenue for the center would be gifts and project support from sponsoring industries and governmental units. Oil overcharge funds would be used to leverage private sector funding of equipment and instrumentation.

Previously, the Committee has taken the following action relating to authorizing the allocation of oil overcharge monies for University of Wisconsin projects.

Date	Nature of Allocation Action
December 13, 1986	Allocate $1.5 million of "Stripper I" funds to UW-Madison's Transportation Policy Studies Institute for a traffic light synchronism project ($1 million for immediate release and $500,000 placed in escrow for later release).
September 19, 1988	Release of the escrowed funding ($500,000) to UW-Madison for traffic light synchronism.
December 18, 1990	Allocate $390,000 of "Stripper VIII" funds to UW-Madison for traffic light synchronism.
March 4, 1992	Allocate $50,000 of "Stripper XI" to UW-Milwaukee's Alternative Fuel Testing Laboratory to purchase equipment for testing the hydrocarbon emissions.
December 15, 1992	Allocate $250,000 of "Stripper XII" funds to UW-Madison for traffic light synchronism. Allocate $150,000 of "Stripper XII" funds to UW-Stevens Point for a study on the potential of ethanol production from feedstock. Allocate $470,000 of Stripper "XII" funds to UW-Madison's Engine Research Center and UW-Milwaukee's Center for Alternative Fuels to provide information, data, experimental and computerized methods to assist in the fuel efficient and reduced emission engines.
February 2, 1994	Allocate $120,000 of "Stripper XIV" funds to UW-Stevens Point to study the feasibility of converting paper mill sludge into ethanol.
June 23, 1998	Allocate $50,000 of "Stripper XVIII" funds to DOA's Division of Energy for an internship program with UW-Madison's Institute for Environmental Studies.

ANALYSIS

University of Wisconsin Projects. The Office of Energy Independence (OEI), which currently administers the oil overcharge fund, states that funding provided to the UW System, under this proposal, would likely be handled through a memorandum of understanding between UW System and OEI, and that no increased appropriation authority would be needed for the UW System. However, the Legislature would have more ability to review the expenditures made under the proposal if revenues and expenditures were shown in the appropriation schedule under the agency receiving funds. The Committee could, therefore, provide the funding as a one-time award to the UW-System's PR-continuing fund transfers from other state agencies appropriation [s. 20.285(1)(k) of the statutes] in 2009-10.

The UW System and OEI do not currently have a budget for UW-CEGTS. The Office indicates that it will work with the UW in the future to finalize a budget. The Office also does not have information on the type of equipment that would be purchased for the Center for Renewable Energy Systems and the estimated cost of that equipment. The Office indicated that, "this kind of detail information is not available at this time. Should the funds be approved for the purposes proposed, OEI will work with the UW to refine the specific use of funds."

It could be argued that these projects could increase public-private partnership in the development of more energy efficient electric production, transmission and storage, which could attract related industries to the state. Further, it may be noted that neither the Assembly nor the Senate standing committee with jurisdiction over energy matters recommended any modifications to the Governor's funding allocations. Therefore, funding could be approved for the general purposes outlined under the Governor's request for the UW-System and that OEI would be responsible for ensuring that funds are used appropriately as ordered under the federal court proceedings relating to oil overcharge restitution funds.

Alternatively, it could be argued that this request provides little specific information for the Committee to determine how funds would be used. Rather, the plan simply provides a general program heading of grants to the UW-CEGTS and the Center for Renewable Energy Systems. If the Committee believes that additional budgetary details are necessary, it could set the request aside pending a completed budget for UW-CETGS and an indication of the equipment that would be purchased by the Center, which would more closely mirror a budgetary approval process. Under the alternative, oil overcharge funding could be addressed at a future s. 13.10 meeting, when a more detailed budget can be reviewed.

State Administration. The Governor's request would provide $15,296.64 plus all accruing interest from Stripper XXII for energy program management within DOA's Division of Energy Services.

Previously, the Committee has taken the following actions relating to authorizing the allocation of oil overcharge monies for Division of Energy Services administration and management activities:

Date	Nature of Allocation Action
December 12, 1988	Allocate all interest earnings accruing from "Stripper III" and "Stripper IV" to support oil overcharge management activities in DOA.
April 16, 1996	Allocate all interest earnings accruing from the "Stripper XVI" to support oil overcharge management activities in DOA.
September 26, 1996	Allocate all interest earnings accruing from the "Stripper XV and XVII" to support oil overcharge management activities in DOA.
June 23, 1998	Allocate all interest earnings accruing from the "Stripper XVIII" plus small residual amounts remaining from other previous allocations to support oil overcharge management activities in DOA.
April 21, 1999	Allocate all interest earnings accruing from the "Stripper XIX" to support oil overcharge management activities in DOA.
December 19, 2000	Allocate $9,207.70 plus all future interest earnings accruing from the "Stripper XX" to support oil overcharge management activities in DOA.
June 21, 2006	Allocate $2,299.80 plus all future interest earning accruing from the "Stripper XXI" to support oil overcharge management activities in DOA.

Under current federal DOE procedures, up to 5% of a state's stripper well allocations, but none of the Exxon oil overcharge funds, may be used for the general administration and management of programs. Typical administrative and management costs are those relating to developing allocation plans, reporting annually to the federal DOE and to relevant federal courts on the use of previously allocated funds and tracking the expenditures of each program receiving funds. These types of activities are viewed as being distinct from specific administrative efforts directly linked to program delivery. Program delivery costs (such as awarding and administering grants or managing project activities) are typically funded by deductions from the total allocations made to a specific project.

While $15,296.64 would represent the largest amount set aside for administration of the fund, the Office states that, "According to the fact sheet provided by the US DOE [Department of Energy], the language in the Stripper Well settlement (July 1986, by the District Court in Kansas), '…permits States to expend up to five percent of funds received for administrative costs.' OEI interprets this language to apply to all Stripper funds received regardless of programming or allocation status."

If the Committee concurs in the recommended allocation priorities, it could act to approve the Governor's "Stripper XXII" oil overcharge proposal. Alternatively, if the Committee believes that other types of restitution programs should receive a higher funding priority, it could reallocate one or more of the proposed "Stripper XXII" allocation initiatives to another purpose of the Committee's choosing.

ALTERNATIVES

1. Approve the "Stripper XXII" oil overcharge expenditure plan dated September 11, 2009, as proposed by the Governor to allocate the expenditure $602,907.78 FED (plus certain accrued interest and future interest amounts) of both new and reprogrammed oil overcharge restitution funds for the following: (a) $300,000 FED for a Consortium for Clean Energy Generation, Transmission, and Storage Systems; (b) $287,521.56 for the Center for Renewable Energy Systems at UW-Madison to research renewable energy technologies; and (c) $15,296.64 plus all accruing interest from Stripper XXII for energy program management within DOA's Division of Energy Services.

2. Delete the proposed allocation of "Stripper XXII" oil overcharge funds under one or more of the following program elements *[or allocate the funds to another program of the Committee's choosing]:*

Program Element	Governor's Proposal
Consortium for Clean Energy Generation, Transmission, and Storage	$300,000.00
Center for Renewable Energy	287,611.14
Energy Program Management	15,296.64*
Total	$602,907.78

*Plus all future interest accruals from Stripper XXII.

3. Specify that funding for the University of Wisconsin projects be provided under the UW-System's PR-continuing fund transfers from other state agencies appropriation [s. 20.285(1)(k) of the statutes] in 2009-10.

4. Deny the request.

Prepared by: Darin Renner