

Representative Vos  
Representative Meyer  
Representative LeMahieu  
Representative Nygren  
Representative Strachota  
Representative Kleefisch

## NATURAL RESOURCES – WATER QUALITY

[LFB Papers #485 through #488]

Motion:

Move to do the following:

1. *Water Resources Account Lapses [LFB Issue Paper # 485].* Adopt Alternative 2 which would proportionally reduce expenditures in the appropriations included in the DNR 2011-12 reduction plan for a total reduction of \$700,000 annually. In general, the motion would reduce continuing appropriations by approximately 10% and select annual and biennial appropriations by approximately 7.5%.

2. *Lake Management Planning Grants. [LFB Issue Paper #486].* Adopt Alternative 2 and 3b. Alternative 2 would adopt the Governor's recommendation to increase the maximum lake planning grant award from \$10,000 to \$25,000 per grant and, in addition, specify that lake planning grants may not exceed \$50,000 per fiscal year for lake planning projects on any one lake. Alternative 3b would specify the state planning grant may not exceed 67% of projects costs.

3. *Repeal and Recreate Nonpoint Source Pollution Standards [LFB Issue Paper #487].* Adopt Alternatives 2a and 2b, which would include the bill provision to require DNR to repeal and recreate NR 151, but with the proposed recreated rule to be submitted to the Legislative Council Rules Clearinghouse no later than January 1, 2012. Additionally, any provision in the recreated NR 151 that specified a date by which a municipality is to achieve a reduction in total suspended solids would not apply to general or individual permit holders, if the municipality determines that compliance with the deadline would have a significant adverse economic impact on the municipality.

4. *Transfer Commercial Construction Site Erosion Control Regulatory Authority to the Department of Safety and Professional Services [LFB Issue Paper #488].* Adopt Alternative 2. This alternative would adopt the Governor's recommendation to transfer erosion control regulation at most commercial building sites to DSPS. In addition, it would require the DNR and the Department of Safety and Professional Services, by October 1, 2011, to enter a memorandum of understanding delineating the administrative responsibilities of each department in administering erosion control activities at construction sites, both during and after construction, and providing a means by which the Department of Safety and Professional Services will adopt administrative rules requiring construction sites of one acre or larger, and involving construction of a public building or

place of employment, to submit to DSPS notices of intent to seek permit coverage consistent with provisions of Chapter 283 and administrative rule NR 216.

5. *Economic Impact Analysis for Phosphorus and Shoreland Zoning Rules.* Require DNR to prepare an economic impact analysis for each of the following two rules: (a) the phosphorus effluent limitation administrative rule changes in NR 102.06 and NR 217, Subchapter III, which went into effect on December 1, 2010; and (b) the shoreland zoning administrative rule changes in NR 115, which went into effect on February 1, 2010.

Direct DNR to include information in the economic impact analysis of each rule, on the economic effect of the rule on specific businesses, business sectors, public utility ratepayers, local governmental units, and the state's economy as a whole. When preparing the analysis, DNR would be required to solicit information and advice from businesses, associations representing businesses, local governmental units, and individuals that may be affected by the rule. DNR would be required to prepare the economic impact analysis in coordination with local governmental units that may be affected by the rule. Authorize DNR to request information that is reasonably necessary for the preparation of an economic impact analysis from businesses, associations, local governmental units, and individuals and from other agencies.

Specify that each economic impact analysis include all of the following:

a. An analysis and quantification of the policy problem that the rule is intended to address, including comparisons with the approaches used by the federal government and by Illinois, Iowa, Michigan, and Minnesota to address that policy problem and, if the approach chosen by the agency to address that policy is different from those approaches, a statement as to why DNR chose a different approach.

b. Analysis and detailed quantification of the economic impact of the rule, including the implementation and compliance costs that are reasonably expected to be incurred by or passed along to the businesses, local governmental units, and individuals that may be affected by the rule.

c. An analysis of the actual and quantifiable benefits of the rule, including an assessment of how effective the rule will be in addressing the policy problem that the rule is intended to address.

d. An analysis of the alternatives to the rule, including the alternative of the rule no longer being in effect.

e. A determination made in consultation with the businesses, local governmental units, and individuals that may be affected by the rule as to whether the rule will adversely affect in a material way the economy, a sector of the economy, productivity, jobs, or the overall economic competitiveness of the state.

Require that DNR submit each economic impact analysis by December 31, 2011, to the Department of Administration, the Governor, and to the chief clerks of the Assembly and Senate for distribution to the chairpersons of the appropriate standing committees of the Legislature and to the

cochairpersons of the Joint Committee for Review of Administrative Rules.

6. *DNR Grant to Southeastern Wisconsin Fox River Commission.* Direct DNR to provide a grant of \$200,000 SEG during the 2011-13 biennium from the recreational boating aids grant program to the Southeastern Wisconsin Fox River Commission to support activities consistent with the organization's implementation plan, including: (a) initiating and coordinating surveys and research projects relating to the Southeastern Wisconsin Fox River Basin; (b) acting as a liaison between federal, state, and local agencies, and other organizations involved in protecting, rehabilitating, and managing water resources; and (c) providing public information relating to the Southeastern Wisconsin Fox River.

7. *Water Use Fees.* Require that, for the annual \$125 water use fee paid by a person who has a water system with the capacity to withdraw an average of 100,000 gallons per day or more in any 30-day period, an owner of eight or more water supply systems not be charged a cumulative annual water use fee greater than \$1,000 for an annual registration made after January 1, 2011, for all of the owner's water supply systems.

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Note:

*Southeastern Wisconsin Fox River Commission.* The Southeastern Wisconsin Fox River Commission was created in 1997 in order to address water resource concerns within the river system. Under the implementation plan, goals of the Commission include the improvement of water quality and the scenic, economic, and environmental value of the waters of the Illinois Fox River basin as well as the protection and enhancement of the recreational use of the basin's navigable waters. This provision would bring to \$1,275,000 the amount provided to the Commission from the water resources account since its creation in 1997. Recreational boating project aids are currently funded at \$400,000 water resources SEG annually; however, DNR is required to provide \$400,000 annually from the recreational boating aids appropriation to the Fox River Navigational System Authority each year from 2005-06 through 2011-12.

*Shoreland Zoning.* NR 115 establishes several minimum standards for county shoreland zoning, including: (a) a general setback of 75 feet between any building and the ordinary high-water mark; (b) a vegetative buffer zone of at least the first 35 feet inland from the ordinary high-water mark; (c) no more than 15% of a lot or parcel in newly impervious or paved surfaces within 300 feet of the ordinary high-water mark, unless the zoning authority issues a permit that requires a mitigation plan, in which case the maximum impervious surface area is 30%; and (d) no newly constructed buildings exceeding 35 feet in height within the 75-foot building setback, beginning with permits issued February 1, 2010. Under the rule, nonconforming buildings and uses are allowed; however, a county ordinance may prohibit uses that are associated with temporary structures or have been discontinued for a period of at least 12 months. Nonconforming principal structures, which are typically residences, are allowed limited expansions away from shore or vertically, provided other requirements of the shoreland ordinance are satisfied.

*Economic Impact Analysis Reports.* The Governor signed January 2011 Special Session

Assembly Bill 8 on May 23, 2011, as 2011 Wisconsin Act 21. The Act includes amendments to s. 227.137, related to requirements for agencies to develop economic impact analyses of proposed rules. The motion would require DNR to prepare an economic impact analysis of the phosphorus effluent limitation rules which went into effect on December 1, 2010, and the shoreland zoning rules which went into effect on February 1, 2010, based on the criteria included in Act 21. DNR would be required to submit the analysis to DOA, the Governor, and Legislature by December 31, 2011.

*Water Use Fees.* Under 2009 Act 28, DNR is required to assess an annual \$125 water use fee to be paid by a person who has a water system with the capacity to withdraw an average of 100,000 gallons per day or more in any 30-day period. DNR is authorized to promulgate a rule specifying a different fee amount.

DNR promulgated administrative code chapter NR 850, effective December 1, 2010, which specifies [in NR 850.04 (1)] that the \$125 annual fee covers all water supply systems on one property, or a single public water supply. NR 850 uses the definition of "one property" found in NR 812.07 (68), which states, "One property means all contiguous land controlled by one owner, lessee, or any other person having a possessory interest. Lands under single ownership bisected by highways or railroad right-of-ways are considered contiguous."

Under the statute and rule, a person who has eight water supply systems subject to the fee would pay \$1,000 ( $\$125 \times 8$ ), and a person who has more than eight systems would pay \$125 for every water supply system. Under the motion, a person who has eight or more water supply systems (nine or more noncontiguous parcels) would pay a cumulative fee of not more than \$1,000 for all of the water supply systems. DNR estimates the provision would affect approximately 24 property owners and the revenue decrease would be approximately \$18,800 per year. The motion would provide a retroactive fee decrease for fees assessed in 2010-11, so the revenue decrease during the 2011-13 biennium would be approximately \$56,400.

The water use fees are deposited in a program revenue appropriation and are used to support water use program activities such as: (a) develop an inventory of water use in the state; (b) document and monitor water use; (c) administer water use registration and reporting requirements; (d) implement the Great Lakes Compact; (e) provide assistance to communities with water supply planning; and (f) develop a statewide water conservation and efficiency program.

DNR is also required to promulgate a rule for a fee assessed on a person who withdraws from the Great Lakes basin more than 50,000,000 gallons per year. The rule established a graduated schedule of fees for Great Lakes basin water withdrawal, ranging from \$1.50 per 1,000,000 gallons for amounts withdrawn in excess of 50,000,000 gallons but not more than 100,000,000 gallons per year, to \$6 per 1,000,000 gallons for amounts withdrawn in excess of 500,000,000 gallons per year. The rule specifies the Great Lakes basin fee will not exceed \$9,500 per year for one property or for a single public water supply, except that the fee per property for a small business may not exceed \$1,000 per year.

[Change to Bill: -\$1,400,000 SEG, -\$56,400 PR-REV]