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41st ASSEMBLY DISTRICT

Assembly Bill 762: Creating a fee schedule for certain laboratories
Committee on Environment
Testimony of Representative Joan Ballweg
January 30, 2020

Thank you, Chairman Kitchens and members of the Committee on Environment, for holding this hearing on Assembly Bill 762. This bill is a fix for an issue found during the Joint Committee for Review of Administrative Rules' (JCRAR) review period of Clearinghouse Rule 17-046. Legislative Council identified a statutory authority issue within the Clearinghouse Report to the Agency. With this issue identified, we as JCRAR Co-Chairs asked for a meeting with the Department of Natural Resources (DNR) to address the concern.

AB 762 is the result of that meeting. This bill makes tweaks to the language in s. 299.11 (9) to allow the department to promulgate a rule for creating a method to devise an annual fee schedule to recoup administration costs for laboratory inspections. Currently, the department may only promulgate the fee schedule itself and not the method or formula to arrive at those fee amounts.

This bill is a simple fix to the current statutory language and will allow the department to use its rulemaking authority more effectively for this particular fee schedule. The DNR representatives should be able to provide more clarity regarding the current rule provisions and how this change would allow them to keep the rules and legislative intent of the fee schedule in line with one another. Thank you for considering this bill and I am happy to answer any questions you may have.



AB 762 Modification to the Method for Setting the Fee Schedule for Certified and Registered Laboratories

Testimony of Senator Steve Nass
Assembly Committee on Environment
January 30, 2020 • 417 North, State Capitol

Thank you chairman Kitchens and committee members for holding a public hearing and allowing me to provide written testimony in support of AB 762. This bill was introduced at the request of the Department of Natural Resources (DNR). It modifies state statute to correct an issue that was discovered as part of the JCRAR Administrative Rule review process.

Current law requires the DNR to promulgate by rule a schedule of fees for certified and registered laboratories that perform environmental testing. The fee amount is allowed to recover the costs of administering the program only. It cannot run a surplus or deficit. Because of this, the fees need to be updated annually. The Department proposed in CR 17-046 to have a set formula by which the fee is equitably determined each year, instead of promulgating a new rule each year with the specific fees.

During the Legislative review process of CR 17-046, relating to laboratory accreditation, Legislative Council raised the concern that the method by which the DNR proposed to set these fees, while desirable from a policy standpoint, did not comply with the statute as written. AB 762 modifies the statute to allow the Department to promulgate by rule a formula for producing a schedule of fees for these laboratories.

After meeting with the JCRAR co-chairs (myself and Rep. Joan Ballweg) on this issue, the Department agreed to temporarily withdraw CR 17-046 and seek an update to the statute from the Legislature. Once AB 762 is passed, CR 17-046 will be resubmitted and be able to proceed through the review process.

Thank you for the opportunity to provide testimony in support of AB 762. DNR officials will provide additional technical information on the laboratory accreditation fee formula and the need for this minor modification.

“In God We Trust”

11th Senate District

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Assembly Committee on Environment

2019 Assembly Bill 762 *Creating a fee schedule for laboratories* *January 30, 2020*

Good morning Chairman Kitchens and members of the Committee. My name is Greg Pils, and I am the Director of the Bureau of Environmental Analysis and Sustainability with the Wisconsin Department of Natural Resources. Thank you for the opportunity to testify in support of Assembly Bill 762 (AB 762), relating to creating a fee schedule for certain laboratories.

AB 762 will provide explicit statutory authorization for the annual laboratory certification and registration fee schedule calculation method currently promulgated under Chapter NR 149 of the Wisconsin Administrative Code. AB 762 will ensure that the Department is able to annually adjust its fee schedule to allow for recovery of fiscal year operating costs without collecting surplus revenues or surpassing our Chapter 20 annual expenditure authority, as the number of fee-paying certified and registered laboratories changes from year-to-year. This is a true zero-based budgeting approach to funding state program operations that has enjoyed strong support from the regulated community for over 20 years.

The Department would like to express our appreciation to Representative Ballweg and Senator Nass for their leadership in developing this legislation, as well as to Representative Hebl and Senator Larson for their co-sponsorship of the bill.

On behalf of the Bureau for Environmental Analysis and Sustainability, I would like to thank you for your time today. I would be happy to answer any questions you may have.

Assembly Committee on Environment

Thursday, January 30, 2020

RE: Testimony in support of Assembly Bill 762 relating to creating a fee schedule for certain laboratories

Good afternoon Mr. Chairman and Committee Members,

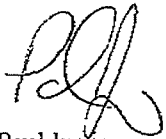
My name is Paul Junio. I am the Regional Account Manager for Northern Lake Service, an environmental laboratory with locations in Crandon and Waukesha. We perform drinking water analysis directly or through subcontracting agreements with other laboratories for over half of the municipalities in the state annually. I also serve on the DNR's Laboratory Certification Review Council – an advisory Council appointed to help direct the Laboratory Certification Program.

I'm here today to express support for the passage of Senate Bill 700 relating to creating a fee schedule for the continued operation of the Laboratory Certification Program.

This bill amendment continues to allow the DNR's Laboratory Certification Program to set its fees on an annual basis in order to meet the needs of the laboratories that are certified by the Program. This program is self-funded and its participants can and do change on an annual basis. As the program also has a cyclical audit schedule, the fees required to run the program will change from year to year. The program presents its budget to a diverse, appointed group of interested parties, such as me, annually for approval.

As a member of the regulated community, it is important that this rule pass as written in order to continue the ability of the Laboratory Certification Program to serve both the regulated laboratories and the public health and welfare.

Thank you for considering these comments.



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Assembly Committee on Environment

Thursday, January 30, 2020

RE: Testimony in support of Assembly Bill 762 relating to creating a fee schedule for certain laboratories

Mr. Chairman and Committee Members,

My name is Sharon Mertens. I'm the Director of Water Quality Protection for the Milwaukee Metropolitan Sewerage District. MMSD is a regional government which provides wastewater and flood management services to 28 communities in southeastern Wisconsin and about 1.1 million people. We also operate a state certified laboratory which tests a variety of samples for multiple purposes. Besides making sure the reclamation facilities are operating properly, we also sample and test Lake Michigan and our rivers and streams.

I'm submitting this to express our support for the passage of Assembly Bill 762 relating to creating a fee schedule for certain laboratories.

This bill amendment is required to allow the adoption of the proposed version of NR 149 that was approved by DNR's Laboratory Certification Standards Review Council last year. In particular, this is to help address any concerns that there might be regarding Section "NR 149.21 – Fees" and related requirements within the rule pertaining to program administration and funding.

Section NR 149.21 establishes the right of the department to set fees based on a specific methodology. This approach is preferable to including fixed fees by rule for the following reasons:

- Laboratory certification is a very dynamic program that changes frequently as technology develops. For example, the technology that is currently used for the analysis of PFAS ("forever chemicals") in non-potable waters and other types of environmental samples was not commercially available when the current NR 149 was created in 2008 and very few would have even envisioned the need for this then.
- Not only does technology change, but the analytes and/or classes that are covered by the department to meet the needs of the programs change as we deal with emerging contaminants of concern and new regulations. Again, PFAS is a good example, but there are many others, including certain classes of hydrocarbons, ultra-low mercury, pharmaceuticals and other new organic compounds. The list will expand in coming years and the need to get more sensitivity and specificity in our testing only grows as we come to better understand health and environmental impacts of these compounds.
- The number of DNR certified laboratories has changed significantly over the last 10 years and the number of parameters accredited has also changed significantly for many labs. As a municipality, our testing requirements change frequently with new Federal pretreatment requirements and our Wisconsin discharge permit.

Since this is a self-funded program, the number of participants and the numbers of RVUs ("relative value units") will factor directly into the amount of revenue available for the program. If fees cannot fluctuate with changes in the program, there will not be adequate funding to meet the needs of the program. To ensure data of known and documented quality that meets the needs of the programs, the State needs a fully functional laboratory certification program. Likewise, laboratories providing testing services for Wisconsin need the certification and services that the program provides to retain their competence and

remain competitive. On the other hand, fees need to be fair for those who pay them and a system that allows for adjustments based on actual costs and changes in requirements is far preferable to fixed rates that can only be changed every 5-10 years when rules can be updated.

The process of establishing fees is defined in the rule. As required in the rule, the department reviews the factors that go into fee changes and a summary of proposed changes with the certification standards review council annually. Any causes for concern are reviewed and resolved so the department is not acting without oversight and is responsive to constituent concerns. This is a fair and flexible process that can respond to changing situations and needs.

Addition of fixed fees to this rule would be too inflexible to meet the needs of the lab cert program, the programs that it serves and the lab community.

Thanks for the opportunity to comment.

Sharon Mertens
Director of Water Quality Protection
Milwaukee Metropolitan Sewerage District