

86th Legislative Session – 2011

Committee: Joint Appropriations

Friday, January 21, 2011

P - Present
E - Excused
A - Absent

Roll Call

P Sutton
P Haverly
P Heineman
P Novstrup (Al)
P Peters
P Putnam
P Rampelberg
P Dennert
P Wismer
P Juhnke
P Bolin
P Romkema
P Dryden
P White
P Tidemann
P Carson
P Brown, Vice-Chair
P Wink, Chair

OTHERS PRESENT: See Original Minutes

The meeting was called to order by Representative Dean Wink.

Department of Environment & Natural Resources

Steve Pirner, Secretary of the Department of Environment & Natural Resources met with the Committee to discuss the department's budget. Tim Tollefsrud, David Templeton, Rob Green and Bob Townsend were also in attendance. Document No. 1 was distributed.

The Department of Environment & Natural Resources' (DENR) mission is to provide superior customer service to:

- Protect public health,
- Protect the environment, and
- Promote a successful business climate.

Secretary Pirner told the Committee existing tank activities prompted Governor Daugaard's reorganization proposal to transfer the Petroleum Release Compensation Fund (PRC) to the department. The recommended budget for the PRCF involves:

- An increase of 1.0 FTE due to new Federal training requirements
- (\$53,949) reduction in personal services and operating to reflect actual expenditures
- (\$15,000) reduction in travel, mailings and publications, legal consultant assistance, and internal services
- (\$987) reduction in internal services
- \$69,936 total reductions

Senator Peters asked if the state had ever considered privatizing the Petroleum Release Compensation Fund. Secretary Pirner said PRC fund serves two functions, to assist in the cleanup of certain petroleum releases and to serve as insurance for tank owners. The Board is required to meet annually with private insurance companies to review the situation and determine whether or not changes are warranted. Secretary Pirner feels private insurance companies do not want to compete with the PRC.

As a matter of information, Secretary Pirner told the Committee the department regulates 370 waste water treatment plants, 400 large livestock operations, and over 2,000 construction sites to make sure sediment is controlled. In addition the department manages water quantity and administers over 8,000 active water rights for both ground water and surface water sources. The department regulates solid waste, hazardous waste, 15 regional landfills, 245 permitted solid waste disposal sites and 2,000 businesses in the state that generate some form of federally listed hazardous waste.

The department also regulates all kinds of mining, from sand and gravel to gold. The state has 50 large scale mine permits, 2,000 sand/gravel sites, and 250 oil and gas wells, both exploration and development. Representative Wink asked if oil and gas well numbers were staying the same. Secretary Pirner said the numbers were up last year; however, this past year the numbers were going down primarily due to the price of oil.

In order to carry out the department's mission of promoting a successful business climate, the department funds environmental projects for compliance and economic growth. The programs are funded each year through the Governor's Omnibus Water bill. The Board of Water and Natural Resources is proposing funding for 3 major projects in the 2011 bill including the Lake Andes/Wagner irrigation project for \$55,000, the Sioux Falls flood control project for \$3.3 million, and the southern Black Hills water system for \$2 million. There are no General funds involved in these projects.

Current High Priority Issues

Federal Stimulus Funding: The department received over \$41 million in stimulus funds and used the funds to build waste water plants, drinking water plants, leaking underground storage tanks and clean diesel school buses. To date all of the money has been obligated and approximately 70% has been spent.

Underground Fires at Construction Debris Disposal Sites: The department is currently monitoring 2 sites, both of which have had deep fires (75 ft. under ground) which make them difficult to extinguish. In both cases the owners/operators have spent a good deal of resources trying to get to the source. While both fires are under control, they can smolder for a long period of time and air contamination becomes an issue.

Veblen Dairies: This issue involves 2 dairies near Veblen with approximately 14,000 cows. About 2 years ago the dairies had difficulty regarding waste management at their sites and, about the same time, were facing financial difficulties. Both locations have now gone through bankruptcy and are under new management. DENR has been notified the dairies will be sold and no longer in operation. Secretary Pirner said the department spent a considerable amount of time on this project. Representative Wismer asked what the fee for this type of project cost and did the department track the time spent on this project. Secretary Pirner said this permit fee is based on a sliding scale dependent on the number of animals involved. The Veblen Dairies annual permit fee would have been \$250. The department does not track time spent on this type of project; expenses are covered through a variety of either general or federal funds as most of these projects qualify for funding under the EPA.

Hyperion Energy Center near Elk Point: This center proposes to process nearly 400,000 barrels of oil/day with an energy plant that will supply 70% of the refinery's energy needs. Last year, after an extensive process, the department was able to meet Hyperion's schedule for issuing the air permit. However, the permit requires the agency to begin construction within 18 months, and Hyperion was not ready. Secretary Pirner said if the department is forced to do the review again, new EPA regulations will apply. Unfortunately, Hyperion chose not to follow the department's advice and is currently trying to renew or extend the permit. In the meantime, the Iowa DENR has formally objected to the Hyperion proposal, and requested an Environmental Impact Statement. The department is currently reviewing the extension request.

New Oil Field near Bear Butte: An exploratory well has been drilled with an estimated 4,000,000 barrels of oil. The company came to the department asking for a spacing order on the oil field but after the Board issued the order, it learned the field was too close to the Bear Butte National landmark boundary. The department is working to make sure the historical preservation requirements are met.

Wharf Expansion: Wharf, the only active gold mine in South Dakota, was set to close 2 years ago but instead keeps expanding. One of the issues in the new permit process deals with "unique and scenic lands". The department is proposing to join other petitioners in saying the Terry Cemetery,

which is located within the expansion area, is a unique and scenic property. If that petition is accepted Wharf can still mine in that area but the Board can place special restrictions on the permit.

PowerTech (USA) Inc. Proposed Uranium Exploration Area: This company is dealing with both state and federal agencies on this project.

Looping Missouri River Issues: Secretary Pirner said the Corps of Engineers has started an Authorized Purpose Study (5 years, \$25 million). The purpose of the study is to determine if the authorized uses of the Missouri River and the way the dams are being managed, is still appropriate. DENR supports this study. A more immediate concern to the department is that the Corps has also initiated a Surplus Water Study. The Corps wants to contract and charge for the use and storage of water, at a proposed rate of \$20.91 per acre foot. This would have a huge impact on South Dakota.

DENR needs to adjust to constantly changing Federal EPA requirements: A current litany consists of:

- EPA Brohm Superfund site
- New Drinking Water rules
- New more stringent air quality standards
- New numeric nutrient water quality standards
- New regulation of greenhouse gases

Representative Dryden asked about fines assessed to spills and does the state recover any costs. Secretary Pirner said they do assess fines where appropriate and when a penalty is collected it goes into the State Regulatory Response fund to use when the responsible party will not or can not do the clean up. The penalty can include some reimbursement of costs and if money is spent out of the Regulatory Response Fund, there are provisions to seek reimbursement for those costs as well.

Review of DENR's Budget

Secretary Pirner said the department cut \$650,765 in its General Fund budget in FY10. In addition the department utilized 92.5% of its total budget authority and utilized 99.3% of its 176.5 FTE authority. Representative Wink asked if the department used other funds to cover the General fund expenses. Secretary Pirner said yes.

Review of Informational Budgets

Regulated Substance Response Fund: The department utilized \$185,053 to respond to 6 sites. The fund capacity at the end of the year was \$2.93 million.

Environmental Livestock Cleanup Fund: The department utilized \$33,569 for 2 cleanups. The fund capacity at the end of the year was \$1.1 million.

DENR's FY12 Budget Request

- Other fund increase - \$229,365
- Federal fund decrease - \$\$28,891,025
- General Fund decrease - \$582,006 – equal to a second 10% cut.

The Federal Reductions include:

- Federal Stimulus Authority - \$29,074,100
- Secretary's Salary - \$7,355

The General Fund Reductions include:

- Secretary's Salary - \$9,101
- Minerals & Mining Staff - \$86,554
- Eliminate DFTA summer seasonals and interns - \$28,188
- Eliminate regulation of swimming pools and beaches - \$29,469
- Eliminate septic tank regulation - \$73,389
- Cut Water Rights staff - \$73,106
- Eliminate Missouri River Association of States and Tribes dues - \$12,500
- Eliminate DES summer seasonals and interns - \$18,407
- Eliminate ground water reviews of solid waste facilities - \$73,106
- Cut stations from statewide stream flow gauging station network - \$51,700
- Eliminate statewide ground water quality monitoring network - \$109,284

Senator Tidemann asked if the reduction in seasonals and interns would totally eliminate the program; Secretary Pirner said no. Senator Tidemann asked if the intern program was successful in recruiting fulltime employees. Secretary Pirner said the intern program has been very successful and serves as an excellent recruiting tool for the department.

Secretary Pirner said after the department reviewed the proposed reductions they realized the general fund cuts were reducing both staff and some of the basic data gathering activities, both of which impact their ability to get the job done. That review led them to the following proposals to enable them to maintain services for South Dakota citizens:

- Fund programs related to statewide water management from Other funds at a total of \$234,090.
- Fund DFTA summer seasonals and interns from the Environment & Natural Resources Fee Fund - increase Other funds at a total of \$28,188.
- Fund Mining FTE with New Mine Permit Fee and Brohm Superfund Project – increase Other funds \$50,000 and increase Federal funds \$36,554.
- Move Water Rights FTE to federal Brownfields Program – increase Federal funds \$73,106.
- Move Swimming Pool .5 FTE to federal Drinking Water Program – increase Federal funds \$29,469.
- Ask EPA for additional water program grant money to fund septic tank regulation – increase Federal funds \$73,389.

Senator Peters asked if funding the interns and seasonals from the Environment & Natural Resources Fee Fund would be a long term solution. Secretary Pirner said they hope so. The Environment & Natural Resources Fee fund serves as an umbrella for numerous other funds. Representative Dennert asked if the department was looking at raising fees. Secretary Pirner said when the time comes the department can either raise fees or eliminate the program.

Secretary Pirner told the Committee this reduction in General funds brings DENR's general funds down to near the amount of General funds 10 years ago. Senator Haverly asked if the department's gradual slide in general funds is sustainable into the future. Secretary Pirner said the department has not grown over the years and general funds are primarily salary policy. After 2012, if the department receives replacement funding for federal and other funds, they do not anticipate any increase in general funds other than salaries.

Representative Bolin asked how the department would be impacted if the federal government decided to cut funding for DENR's activities. Secretary Pirner said they would have to do a similar review on federal funds as they did with General Funds and prioritize what would be done and what would not. If EPA takes a cut it will hurt DENR. Secretary Pirner said the EPA has two funding sources, one for their own projects and one that is dispersed to the state.

Senator Heineman asked what areas are better served by technology. Secretary Pirner said the department's FTE history has been flat for 10 years while the work load has increased. The reason they are able to meet the increasing work loads with no new FTE is the technology they use.

Senator Tidemann asked about the drop in General Funds usage between FY09 and FY10. Secretary Pirner said the department was able to use replacement funding and the increased fees that the Legislature had approved. The increases in the total budget numbers from FY09, FY10 and FY11 are primarily stimulus funds.

Public Utilities Commission

Mr. Steve Kolbeck, Chair and Commissioner of the Public Utilities Commission (PUC), introduced the staff present at the meeting – **Mr. Chris Nelson**, Commissioner; **Mr. Gary Hanson**, Vice Chair and Commissioner; **Ms. Patricia Van Gerpen**, Executive Director; **Ms. Cindy Kemnitz**, Finance Manager; **Mr. Larry James**, Director of the One Call Board; **Ms. Kara Semmler**, Attorney; **Mr. Jim Mehlhaff**, Director of the Grain Warehouse Division; **Mr. Nathan Solem**, Lead Pipeline Safety Inspector; and **Ms. Deb Gregg**, Director of the Consumer Affairs Division. Distributed was a document outlining the agency's top priorities for each division. (**Document #2**)

For FY2012, the Governor recommends a budget of \$4,112,602, comprised of \$426,779 in general funds, \$379,097 in federal fund expenditure authority, and \$3,270,726 in other fund

expenditure authority, and 33.2 FTEs. This is a total decrease of \$28,932 (0.7%) from the FY2011 budget.

Commissioner Kolbeck noted that the FY2011 budget consisted of only 12.4% general funds. In FY2010, the PUC cut approximately \$40,000 in general funds from the Grain Warehouse Program. Even more cuts are proposed for the FY2012 budget to reduce general funds by \$51,420, which results in general funds comprising 11.2% of the entire PUC budget.

Senator Deb Peters asked which cuts were actual budget cuts and compared to funding swaps. Ms. Kemnitz responded that in FY2010, the \$40,000 in general funds cut from the Grain Warehouse was a funding swap because \$40,000 in other funds collected from fees was used to support the program. The cut proposed for FY2012 is a combination of a true cut and a funding swap. Additional authority in the amount of \$15,420 for administration will be cut and \$36,000 will be a swap. The PUC will use \$36,000 in Gross Receipts Tax Funds instead of general funds.

Commissioner Kolbeck stated that the PUC is not planning to initiate new programs in FY2012 unless mandated. The office will be as fiscally conservative as possible without hindering services to the public.

It was noted that the PUC intended to have the FY2012 budget cut for the Grain Warehouse Division be from Administration personal services. The Bureau of Finance and Management has it listed as a budget cut of \$1,981 in personal services and \$2,594 in operating expenses. The \$4,575 should be included as a decrease in general funds from the Administration personal services budget.

Senator Peters asked about the details for the general fund cut to the Administration personal services budget. Ms. Kemnitz said that the \$51,420 will be removed from the budget. The PUC needs about \$36,000 for a reversion which will be swapped with \$36,000 in Gross Receipts Funds. This funding swap will pay for the commissioner's salaries.

Senator Peters asked if the PUC commissioner will be taking a salary cut in the proposed FY2012 budget. Commissioner Kolbeck said that the offices under the Governor have salary cuts. Like other state employees, the PUC commissioners have not had a pay increase for three years and therefore will not be taking a pay cut for FY2012.

In response to Senator Peters inquiry about the growth and long-term plans for the Gross Receipts Fund, Commission Kolbeck said that there are three reasons for that effect the volatility of the fund:

- natural gas prices were at record highs two years ago and now are at currently at record lows;
- telecommunication companies continue to switch to Voice over Internet Protocol (VoIP) and other forms of communication that are not subject to tax; and

- some companies have switched to different accounting methods that which has significantly lowered the amount due.

The PUC decided to be fiscally conservative and keep the Gross Receipts Fund at 0.15% (the same rate for the past 20 years). The office does not anticipate raising those taxes.

School and Public Lands

Mr. Jarrod Johnson, Commission of the Office of School and Public Lands, and **Mr. Justin Ohleen**, Deputy Commissioner of the Office of School and Public Lands, distributed budget information regarding their proposed budget vs. Governor Daugaard's proposal (**Document #3**).

For FY2012, the Governor has recommended a budget of \$717,343, comprised of \$492,343 in general funds and \$225,000 in other funds, and 7.0 FTEs. This is a decrease of \$54,704 (7.1%) from the FY2011 budget.

Commissioner Johnson stated that the budget for the Office of School and Public Lands (SPL) is funded primarily through state general funds and partially from the pesticide registration fees deposited in the Weed and Pest Control Fund. He said that although some cuts can be made, SPL will not be able to carry out its constitutional duty if the Governor's recommended budget is approved. Most of the SPL duties are included in the State Constitution and in statute, and the SPL could be in violation of state law if the office is not able to carry-out its duties.

Commissioner Johnson commented that the Governor's budget recommendation includes \$36,791 in general funds for contractual services. It was noted that SPL has interoffice billing expenses of \$48,028. Therefore, the office would not be able to meet that obligation with the recommended budget.

Commissioner Johnson stated that the only realistic way for SPL to cut from the general fund budget is to cut from personnel services, which accounts for 78.5% of all general funds appropriated to SPL.

During Commissioner Johnson's four-year tenure, the average base-line budget was \$537,517. During that time, SPL has distributed an average of \$11.25 million annually back to the state's public schools, universities, and endowed institutions.

Page 3 of Document #3 shows the SPL reversions to the general fund. Commissioner Johnson said that during his tenure, the office has averaged a 5% reversion rate. From FY2007 to FY2011, SPL generated between \$6 million to \$9.5 million in revenues (excluding trust fund investment income) with the 7 FTEs.

Commissioner Johnson stated that he recommends the committee approve a budget for the office similar to that approved for the past two fiscal years, but with some cuts. The office recommends cutting:

- travel from \$20,600 to \$12,800;
- contractual services from \$877,524 to \$875,024; and
- supplies from \$17,360 to \$15,350.

The total decreases from the FY2011 base-line budget to the agency FY2012 recommended budget is \$12,310. This accounts for 10.5% of the SPL operating expenses and 2.25% of the total budget.

Commissioner Johnson said that SPL requests an increase for FY2012 above the Governor's recommended budget of \$800,000 in general funds for dam maintenance and repair. He noted that this budget item was included in the original budget recommendation by former Governor Rounds, but removed in the budget recommendation by Governor Daugaard.

Senator Larry Tidemann asked if the commissioner in SPL will be receiving a pay cut similar to the department secretaries under the Governor. Commissioner Johnson responded that the budget recommendation does not include a reduction in pay.

Senator Corey Brown asked if it is the office's intent for the committee to override Governor's Daugaard's recommended budget and restore the \$800,000 for the dam maintenance and repair. Commissioner Johnson agreed.

Senator Tidemann asked if there will be a bill requesting the \$800,000 general fund increase for the dam maintenance and repair. Deputy Commissioner Ohleen stated that SPL hoped the funding would be appropriated in the FY2012 contractual services budget. This would allow SPL to hire the person needed to complete the work. He explained that the dam maintenance and repair funding was part of a five-year plan. Beginning in FY2009, the office was to receive \$800,000 for four years and then \$1 million for the last year to complete dam maintenance and repair.

In response to Senator Tidemann's question, Commissioner Johnson stated that some dam maintenance has been completed in the last five years. The office was appropriated \$125,000 to survey the dam damage and get a full understanding of the need. Deputy Commissioner Ohleen said that if FEMA funds are accepted, there is a 75/25 match that can be split between the state and local government.

Senator Jeffrey Haverly requested the office provide the list showing the anticipated expenses for FY2012 for the requested \$800,000. The list should include the cost and location of each repair.

Representative Jim Bolin asked about the possibility of demolishing dams. Commissioner Johnson said that it costs between \$5,000 and \$10,000 to demolish a dam. His office has not had the ability to determine which dams should be kept and which could be breached.

Senator Tidemann asked why the general funds for personal services has increased from \$412,102 in FY2009 to \$429,563 in the recommended FY2012 budget since there has not been an increase in staff or a salary policy increase for two years. Deputy Commissioner Ohleen stated that the FY2012 recommended budget is the same base-line amount appropriated in FY2010. The office is not asking for an increase from what has been previously appropriated for personnel services. There has been no budgeted increase for FY2010, FY2011, and FY2012.

Senator Haverly asked if the SPL has given any salary increases or bonuses in the last four fiscal years. Commissioner Johnson stated that the office has not given any bonuses, but there have been salary increases that have been done with the funding appropriated.

Senator Peters inquired if the salary increase went to the base salary for the employee. Commissioner Johnson stated that there was an increase in salaries because of the increase in performance. The SPL provided salary increases with the funding appropriated.

Senator Haverly asked how a cut to personal services would be in violation of state law and not allow the office to perform the responsibilities and duty to the citizens. Commissioner Johnson stated that a cut to his salary would not be in violation of state law and would not inhibit his ability to carry out his job or duties.

Senator Brown stated his appreciation for the SPL services and amazing results, but questions the office's understanding of the task the appropriations committee is dealing with this session. It is an insult to the committee to not prioritize and show what a 10% cut would look like in the office. He recommends that the SPL revise the budget and present another budget with the Governor's recommended 10% cuts at another scheduled hearing.

Representative Dean Wink agreed and stated that SPL needs to review the budget and look for efficiencies.

MOTION: ADJOURN

Moved by: Brown
Second by: Carson
Action: Prevailed by voice vote.

Barb Bjorneberg and Lisa Shafer
Committee Secretary

Dean Wink, Chair