

WISCONSIN LEGISLATOR BRIEFING BOOK 2015-16

CHAPTER 9 - AGRICULTURE

Generating an estimated \$60 billion in annual economic activity in the state, agriculture is a vital industry in Wisconsin. Key programs, tax policies, and laws support growth in the agricultural sector and the preservation of agricultural land. Various state regulations also ensure food safety and prevent the spread of disease. The Wisconsin Department of Agriculture, Trade, and Consumer Protection is the agency with primary responsibility for administering state agricultural programs.

Anna Henning, Staff Attorney
Wisconsin Legislative Council

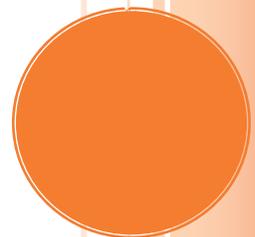


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INTRODUCTION

Wisconsin ranks among the top states in the production of agricultural commodities such as carrots, cheese, corn for silage, cranberries, snap beans, milk, milk goats, oats, and potatoes. In recent years, prices of several agricultural products produced in Wisconsin have risen, resulting in relatively high net income for Wisconsin farmers since 2011, including \$3.75 billion in net income in 2013.

Financial success for Wisconsin farmers depends in part on national and international market forces. For example, the volume of agricultural exports typically increases when the U.S. dollar is weak. Nationally, the cost of agricultural inputs such as fuel and fertilizer, together with the market prices for agricultural products, plays a role.

Government at all levels also plays a role in agriculture, both in support of the industry and in its regulation. On the federal level, the U.S. Department of Agriculture (USDA) provides crop insurance to farmers, offers assistance to beginning farmers, and administers various programs relating to conservation, energy, and the development of agricultural markets. The 2014 Farm Bill (also known as the Agricultural Act of 2014) discontinued a program of direct payments to farmers based on crop yield but continued many other programs created under previous federal farm bills.

STATE PROGRAMS

The Wisconsin Department of Agriculture, Trade, and Consumer Protection (DATCP) is the state agency with primary responsibility for administering agricultural programs. Other state entities, such as the University of Wisconsin (UW)-Extension and the Wisconsin Housing and Economic Development Authority (WHEDA), also provide significant assistance to farmers.

Technical and Legal Assistance

Wisconsin Farm Center

The Wisconsin Farm Center, housed within DATCP, provides information on the introduction of new agricultural technologies; offers financial counseling for farm

Wisconsin Farm Center's toll-free line: 1-800-942-2472.

businesses; coordinates a mediation program; assists with rewiring farms to update antiquated electrical wiring and minimize stray voltage; and answers general legal questions relating to issues such as taxation, estate planning, leases, and credit-debtor law. The center has a toll-free number, which farmers and small agribusiness owners may call with questions.

UW-Extension Programs

The website for the UW-Extension Cooperative Extension is
www.uwex.edu/ces

The UW-Extension has significant resources available to farmers and others who work in the agricultural sector. Many of the resources focus on agricultural practices. For example, the Extension provides tips on farm budgeting and energy use. Following the 2008 economic downturn, it also developed a series of tips and recommendations focused on farming during difficult financial times. In addition, the UW-Extension conducts research on pest management, sustainable agriculture, general business management, and farm safety.

Marketing Assistance

DATCP Agriculture Development Division

Through its Agriculture Development Division, DATCP provides assistance with product development, identifying new markets, developing product identities, and exporting products to other states and countries. The division has an International AgriBusiness Center, which facilitates connections between overseas buyers and Wisconsin agricultural suppliers and looks for export opportunities for Wisconsin agricultural products.

Collective Marketing

Some of Wisconsin's agricultural producers market products collectively. One of the ways collective marketing is accomplished is through a system of agricultural marketing orders. Marketing orders are typically requested by producers of a specific commodity in a petition to DATCP. The marketing order levies a "check-off," which is an assessment on each producer that generates revenues for the program. A marketing order is issued by the DATCP Secretary following a referendum in which the marketing order is approved by a majority of the producers, and thereafter is legally binding on all producers. Revenues from the check-off are used for research and development, public education, and marketing efforts. There are currently seven active marketing boards in the state, including marketing boards for cherries, cranberries, corn, milk, soybeans, ginseng, and potatoes.

Some agricultural producers market products collectively, through state marketing boards.

The Wisconsin Milk Marketing Board's website includes links to cheese recipes, maps, and more:
<http://www.eatwisconsincheese.com>

Conflict Avoidance and Resolution

Through its farm mediation and arbitration program, DATCP assists in the resolution of a wide variety of farm-related disputes, such as creditor/debtor issues. These services are provided by volunteer mediators and arbitrators.

“Something Special from Wisconsin” Branding Campaign

DATCP authorizes specified products produced or manufactured in Wisconsin to be included in the state’s “Something Special from Wisconsin” branding campaign. Approved products may bear the trademarked “Something Special from Wisconsin” logo. To be eligible, 50% of a product’s value must be attributable to Wisconsin ingredients, production, or processing activities.

Financial Assistance

WHEDA Loan Guarantees

WHEDA administers the Credit Relief Outreach Program (CROP), which provides guarantees on agricultural production loans, and the Farm Asset Reinvestment Management (FARM) program, which provides loan guarantees for starting, expanding, or modernizing agricultural operations. The loan guarantees are available to Wisconsin farmers who are unable to obtain conventional financing at reasonable terms but have a positive projected cash flow and meet specified other criteria.

Agricultural Producer Security Fund Program

DATCP administers an agricultural producer security fund program under ch. 126, Stats. The program is intended to protect agricultural producers from financial default by those purchasing the producer’s products. These programs, which affect dairy plant operators, vegetable processing plants, public warehouses, and grain dealers, provide a thorough review of the financial status of these purchasing entities and require them to provide financial assurances to protect the producers if payments are not made.

DAIRY-SPECIFIC PROGRAMS

After the state’s dairy production decreased throughout the 1990s, Wisconsin’s dairy industry revived and expanded over the last decade. Various factors contributed to the revival, including the emergence of new markets for specialty cheese, changes in feed prices, and various state initiatives. Today, Wisconsin leads the nation in cheese production and is second only to California for milk production.

Various state programs and initiatives provide support to the dairy industry. In addition to the programs discussed below, DATCP provides cost sharing and assistance to organic dairy farms, assists with diagnosing problems with herd health, and offers support to dairy farmers interested in incorporating grazing on their farms.

Dairy 30x20 Initiative

The Dairy 30x20 initiative, also called the “Grow Wisconsin Dairy” initiative, aims to help Wisconsin dairy farms to produce 30 billion pounds of milk annually by 2020. The goal is prompted by a reality that demand by milk processors exceeds the amount of milk produced in the state each year. As part of the initiative, milk producers may apply to access cost-

sharing grants, loans, and technical assistance. Interested farmers may contact the program through a toll-free number, 855-WIDAIRY.

Wisconsin Center for Dairy Research

The Wisconsin Center for Dairy Research is located on the UW-Madison campus. It is one of the premier dairy research centers in the country. The center researches topics such as cheese making, dairy protein processing and separation, and product safety technologies.

LAND USE AND ENVIRONMENT

With its integral connection to land, agriculture must comply with laws regulating natural resources, land use, and the environment. Which laws apply to a given agricultural use depend on the nature of the agricultural practice and the characteristics of a given site. In addition to the laws described below, a particular agricultural operation may be subject to state or federal laws governing water use, waste management, or other environmental impacts.

Some of the regulatory programs, such as soil and water conservation requirements, animal waste regulations, and fertilizer and nutrient requirements, are imposed through a long-term management strategy rather than a traditional regulatory program. Some program requirements are imposed only when public funds are available to assist farmers in complying with the regulations.

Livestock Facility Siting

The livestock facility siting law, s. 93.90, Stats., establishes state water quality and odor management standards to regulate new and expanding livestock facilities. The law applies to livestock facilities with 500 or more animal units.¹

The livestock siting law applies to livestock facilities with 500 or more animal units.

The siting law requires local government regulations relating to new or expanded livestock facilities to adhere to these standards within the local permitting process. The purpose of this law is to establish uniform standards statewide for livestock facility siting and expansion. The Livestock Facility Siting Review Board oversees challenges to local siting decisions.

Nonpoint Source Performance Standards

Nonpoint source pollution, or runoff pollution, is water pollution that is diffuse in nature, having no single, well-defined point of origin. Wisconsin law regulates nonpoint source pollution from farming activities, primarily with respect to manure storage activities and runoff from farm fields and pastures.

¹ “Animal units” are calculated according to formulas set forth in s. NR 243.05, Wis. Adm. Code.

Wisconsin law requires the Department of Natural Resources (DNR) to establish nonpoint source performance standards, and DATCP must write rules identifying practices that farmers should use to meet those standards. Specific performance standards include requirements related to nutrient management², erosion, tillage setbacks, phosphorus management, and manure storage and management. Cost sharing may be available to pay for the implementation of practices designed to meet these standards and, in some situations, must be provided before a farmer can be compelled to comply.

Pesticides

Pesticides are subject to comprehensive regulation by DATCP in a state-run program based on federal mandates. Pesticide regulation is intended to protect public health, including the health of agricultural workers and nearby residents, and to protect the environment, particularly groundwater. The regulations focus on application methods and rates and disposal of pesticide containers. Licensing and certification is required for most pesticide applicators. In certain cases, state law exceeds federal requirements. For example, Wisconsin has exceeded minimum federal regulations for atrazine, a herbicide that has been found in Wisconsin's groundwater.

FARMLAND PRESERVATION

Relatively high prices for farm commodities in recent years have slowed a general trend toward selling agricultural land for non-agricultural purposes. However, market pressures have made the sale of agricultural land for non-agricultural uses attractive in some parts of the state. For example, increased activity in frac sand mining has created pressures for the sale of agricultural land in the Western part of the state.

County Farmland Preservation Planning

Counties may adopt agricultural preservation plans, which must be certified by DATCP. Other municipalities may also adopt farmland preservation ordinances, but they must be consistent with the county's certified plan.

Counties and other municipalities may adopt agricultural preservation plans.

Purchase of Agricultural Conservation Easements

Through the Purchase of Agricultural Conservation Easements (PACE) program under s. 93.73, Stats., the state may purchase and facilitate the purchase of conservation easements to preserve land for agricultural use. The PACE program provides up to 50% of the cost of

² "Nutrient management" is a method whereby farmers adopt a plan for all sources of nutrients (nitrogen and phosphorous) that are applied to the land. The plan covers fertilizer, legumes, and manure spreading. Nutrient management often reduces the costs of fertilizer application for farmers and reduces the amount of nutrients that can be washed away from the fields during rainfall and carried into surface waters and groundwater.

purchasing agricultural conservation easements from willing landowners. Land for which an agricultural conservation easement has been sold cannot be developed for any purpose that would prevent its use for agriculture. The seller of the agricultural conservation easement retains ownership of the land and may continue to farm the land. Agricultural conservation easements enable farmers to collect a significant portion of the market value of their land while continuing to farm the land. However, no funding was appropriated for the program in the 2013-15 Biennial Budget Act, and DATCP is not accepting applications for the program as of the writing of this chapter.

Farmland Preservation Tax Credit

Through the Farmland Preservation Tax Credit, the state provides an income and franchise tax credit to owners of land subject to agricultural use restrictions. The credits vary from \$5 to \$10 per acre. To be eligible, the land must be under a farmland preservation agreement and either in an area certified for farmland preservation zoning or in a designated agricultural enterprise area.

TAXATION

The state supports agricultural producers through its tax policies. These include a use-value assessment of agricultural land and an income tax credit that will be phased in over the next several years.

Property Taxation

In Wisconsin, for purposes of determining property taxes, agricultural land is assessed at its value for use as agricultural land, rather than at its market value. Market value may reflect other considerations, such as the capacity to develop the property for nonfarm uses. This approach, commonly referred to as the “use-value assessment,” has resulted in a major reduction in the amount of property taxes paid by Wisconsin farmers. The state policy in use-value taxation is to reduce the property tax burden on farmers and thus help a farmer to maintain the land in agricultural use, rather than to sell the property to a person who plans to use it for some other purpose.

Use-value taxation reduces farmers' property tax burden.

Agricultural forest land is likewise assessed below market value under Wisconsin law for purposes of property taxes. Specifically, “agricultural forest land,” defined as land that either is producing or is capable of producing commercial forest products and that meets one of several conditions, is assessed at 50% of its fair market value.

Income Tax Credit for Agricultural Production Activities

The 2011-13 Biennial Budget Act created a tax credit for qualified manufacturing and agricultural production activities for tax years beginning in 2013. Eligible activities are

qualified domestic production activities that are derived from property located in Wisconsin and assessed as manufacturing or agricultural property.

The amount of the credit will be phased in, from 3.75% for tax years beginning in 2014, to 5.526% for tax years beginning in 2015, and 7.5% for tax years beginning in 2016 or subsequent years. Once fully phased in, the credit will effectively eliminate state income tax liability arising from business operations for many agricultural producers.

FOOD SAFETY AND DISEASE PREVENTION

Agriculture is subject to a wide variety of state and federal regulations intended to protect public health and safety. In general, food safety regulations apply to agriculture in the same manner as to any other industry.

Food Safety

DATCP and the Department of Health Services (DHS) share responsibility for the regulation of food safety, although DATCP has the primary responsibility for ensuring the safety of agricultural product production and processing.

Movement of Animals

DATCP administers a regulatory program that requires documentation of the movement of certain animals in Wisconsin, primarily to prevent the spread of disease. Imported livestock must be properly identified, and DATCP rules specify identification standards for each species. Animals entering Wisconsin require a certificate of veterinary inspection, and some may require a permit. Some livestock moved within the state must also be tested, and reporting requirements apply to certain animal diseases when discovered.

Animals entering the state must have a certificate of veterinary inspection.

Livestock Premises Registration

Each location where livestock are kept (such as farms, feedlots, livestock dealers and haulers, and even backyard poultry flocks) must be registered with DATCP. The registration program provides a database of information that is used to track the source and spread of animal diseases. Information provided by a premises owner is confidential, unless release of the information is necessary to control disease. Premises registration is not the same as individual animal identification.

Deer Farm Registration

In general, every person who keeps farm-raised deer in Wisconsin must register with DATCP. Keepers of farm-raised deer also must comply with requirements governing disease testing.

Raw Milk

The sale of unpasteurized (i.e., “raw”) milk is generally prohibited in Wisconsin. However, raw milk produced on a dairy farm may be distributed directly to a raw milk producer or a family member or nonpaying household guest at the dairy farm. In addition, farms may make incidental sales of raw milk, provided that the milk is delivered directly to the consumer on the farm where the milk is produced; is consumed by the consumer or the consumer’s family or nonpaying guests; and the farm does not advertise the sale of milk or sell the milk in the regular course of business.

RIGHT TO FARM

Wisconsin’s “right to farm” law is set forth in s. 823.08, Stats. Despite its name, the law does not explicitly create a “right” to farm. Instead, the law directs courts to favor agricultural uses in certain legal disputes.

The law applies to civil suits in which a plaintiff alleges that a nuisance has occurred. A common law action for nuisance alleges that a given activity or property use substantially and unreasonably harms the plaintiff’s interests in the use and enjoyment of his or her land. The right to farm law provides certain protections for agricultural land uses and practices in such suits. For example, in the absence of a substantial threat to public health or safety, the law limits the extent to which a nuisance suit may result in a restriction on a given agricultural use or practice.

FENCE LAW

Wisconsin’s fence law is set forth in ch. 90, Stats.

When one or both of two neighboring properties is used for farming or grazing, both neighbors are equally responsible for maintaining a fence along the boundaries between the properties. Unless the neighbors agree to an alternate arrangement, the general rule is that each owner is responsible for the half of the fence that he or she views on the right when looking toward the property line from his or her property.

If one of the property owners refuses to construct or maintain the portion of the fence for which the owner is responsible, “fence viewers” may be called upon to observe the situation and determine whether repairs are necessary. Town supervisors (or village board or city council members) typically serve as fence viewers.

Neighbors share the responsibility for maintaining fences along agricultural land.

ADDITIONAL REFERENCES

1. USDA, National Agricultural Statistics Service, 2013 Wisconsin Agricultural Statistics Bulletin,

www.nass.usda.gov/statistics_by_state/Wisconsin/publications/annual_statistics_bulletin/.

2. Wisconsin Farm Center, *Legal Guide for Wisconsin Farmers*, http://www.datcp.wi.gov/Farms/Wisconsin_Farm_Center/Legal_Guide/index.aspx
3. Legislative Audit Bureau audit reports at <http://www.legis.wisconsin.gov/lab:>
 - Letter Report, *Use Value Assessment of Agricultural Land* (July 2010).
 - Audit Report 08-6, *Food and Dairy Safety Program*.
4. UW-Extension:
 - *Farming Through Difficult Times*, <http://fyi.uwex.edu/farmfinances>
 - *Fact Sheet No. 13, Fences in Agricultural Areas*, <http://lgc.uwex.edu/program/pdf/fact13.pdf>
 - *Status of Wisconsin Agriculture 2014*, <http://www.aae.wisc.edu/pubs/status/docs/status2014.pdf>
 - Deller, Steven C. and Williams, David, *Wisconsin and the Agricultural Economy* (July 2009), http://www.uwex.edu/ces/ag/wisag/documents/Ag_Impacts_2007_FINAL_7%2031%2009.pdf

GLOSSARY

Conservation easements: Property rights requiring land to be used only for specified purposes. They are a tool for preserving land for agricultural use in the state.

Farming: Defined broadly, to mean not only planting and harvesting crops and raising livestock or other animals, but also activities such as processing, drying, packing, packaging, freezing, grading, or storing agricultural products.

Nonpoint source pollution: Water pollution that does not have a single, well-defined point of origin. Runoff from agricultural land is a common source of nonpoint source pollution.

Use-value taxation: For property tax purposes, land in agricultural use in Wisconsin is assessed based on its value for agricultural production rather than its market value.

Value-added agriculture: Processing of an agricultural commodity beyond the basic production of the commodity.

Wisconsin Legislative Council

One East Main Street, Suite 401
Madison, WI 53703-3382
Phone: (608) 266-1304