



WISCONSIN LEGISLATIVE COUNCIL

2005-06 SESSION IN REVIEW

Agriculture

The Wisconsin Legislature considered many items in the 2005-06 Session relating to agriculture. Because of the large number of proposals, the number summarized in the memorandum is limited. Legislative Council Act Memos provide a more thorough description of the acts described in this memorandum and are available at www.legis.state.wi.us/lc.

The 2005-06 Legislature considered legislation affecting agriculture in three general subject areas: farm economics, livestock, and forestry.

FARM ECONOMICS

Legislation affecting farm economics followed two themes, developing and supporting markets for farm products, and reducing farm taxes.

Market Support and Development: Ethanol and Other Biofuels - Fuels made from crops, crop residues, manure, and other biological material represent a significant new market and revenue stream for farms. The fuel that has received the most attention is ethanol, which in Wisconsin is made from corn, but can be made from other materials. Other biofuels include methane and “biodiesel.”

Assembly Bill 15 proposed to mandate that all gasoline sold in Wisconsin contain approximately 10% ethanol, so-called E-10 fuel. Proponents of the bill argued that the bill would increase demand for ethanol, leading to the construction of more ethanol refineries and creating a significant market for corn. They also noted that greater use of ethanol as a motor vehicle fuel would reduce the state’s dependence on imported, oil-based fuels. Opponents cited studies indicating that increased use of ethanol as a fuel would increase the release of certain air pollutants that lead to the formation of ground-level ozone. They noted that federal regulations require overall reduction of the release of these pollutants in Southeast Wisconsin and argued that industrial sources would bear the burden of additional reductions to make up for new emissions related to E-10, adversely affecting individual businesses and the economy of Southeast Wisconsin as a whole. Additional arguments were made, both for and against. Assembly Bill 15 did not pass.

In the last days of the session, an alternative to Assembly Bill 15 was introduced, Senate Bill 723. This bill proposed incentives, rather than mandates, and focused on fuel containing 85% ethanol, known as E-85. The bill was given a hearing but did not pass.

In addition to the two ethanol bills, the Legislature provided funds for several grant programs in Act 25, the 2005-07 Biennial Budget Act. One program, the Bio-Industry Grant Program, funds various projects related to the production of energy and other products from agricultural products or wastes.

Farm Taxes - The 2005-06 Legislature considered a number of bills relating to farm taxes. The majority of these created or expanded sales and use tax exemptions on such commodities as livestock vitamins, feed supplements, and hormones; electricity used in agricultural biotechnology; and certain farm equipment and supplies. Two bills addressed the Dairy Investment Tax Credit, expanding it to include livestock and clarifying certain of its terms, and a third addressed amortization and depreciation of farm equipment and income tax deductions.

Of these bills, two passed. Under prior law, tractors and machines, including accessories, attachments, and parts; certain agricultural supplies, such as plants, livestock, feed, fertilizer, and pesticides; and fuel and energy, when used in farming, were exempt from the sales and use taxes. 2005 Wisconsin Act 366 extends these exemptions to lubricants, non-power equipment, and other tangible personal property. It provides that products that lose their identity in the business of farming, in addition to those *used* in farming, receive the exemption, and adds silviculture to the definition of “the business of farming.” Act 362 ensures that Wisconsin taxpayers who are actively engaged in farming may receive the benefit of certain “bonus depreciation” and “expensing” income tax deductions provided under federal law.

LIVESTOCK

The agriculture committees gave particular attention during the 2005-06 Session to the review of two major rule packages affecting livestock operations. The Department of Agriculture, Trade, and Consumer Protection (DATCP) proposed Clearinghouse Rule 05-014 to create guidelines for the siting and expansion of livestock facilities, under s. 93.90, Stats. Although the development of the statute and of the rules had been facilitated by an advisory committee of stakeholders, the program remained controversial, especially with regard to the control of odors and the calculation of animal units. (“Animal unit” is a relative measure of the number of animals on a farm, which is significant in determining which regulations apply to which farms. One animal unit is approximately equivalent to an adult steer or cow.) After public hearings, the committees requested that the DATCP revise the rules with regard to these and other matters. The DATCP responded with an extensive list of revisions to the rules, responding primarily to concerns raised by agricultural interests. The standing committees allowed the DATCP to promulgate the rules, as modified.

The second rule package, Clearinghouse Rule 05-075, was proposed by the Department of Natural Resources (DNR) to address the permitting of waste water discharges from “concentrated animal feeding operations” (CAFOs). These rules implement new regulations of the U.S. Environmental Protection Agency and are particularly controversial in the agricultural community. Again, calculation of animal units is central to the rules, and to the agricultural community’s concerns about the rules. Other concerns relate to the cost of compliance and lack of cost-sharing restrictions on winter spreading of manure, and the potential regulation of small- and medium-sized operations based solely on a past violation. As of this writing, the agriculture committees have received the rules for review and scheduled hearings on them.

The 2005-06 Legislature also considered a number of bills relating to livestock, a sampling of which are described below.

Several bills in the 2005-06 Session addressed deer farms, including the fencing of deer farms and the hunting of farm-raised deer, of which only one passed. Act 409 addresses the fencing of deer farms that cross a state line. The DNR interpreted prior law as requiring that the entire area of a deer farm *in this state* be enclosed in a fence, with the result that a deer farm straddling the state line would be bisected by a fence along the state line. Act 409 provides that the entire area of the deer farm may be enclosed within a single fence if the fence complies with the standards of the state with the more stringent fencing standards and the farm complies with the disease prevention requirements of the state with the more stringent disease prevention requirements.

Act 25, the Biennial Budget Act, expands indemnity payments for animals destroyed to prevent the spread of diseases. In general, indemnity payments are limited to the lesser of two-thirds of the appraised value of the animal or \$1,500. Act 25 provides that indemnity payments for animals destroyed on suspicion of having a transmissible spongiform encephalopathy, such as mad-cow disease, chronic wasting disease, or scrapie, will include the cost of the slaughter and disposal of the animal, even if this brings the payment over \$1,500. It also expands the sources of funds available for paying indemnities for deer destroyed in surveillance testing for chronic wasting disease.

FORESTRY

The Legislature passed several bills related to forestry, including bills regarding forestry operations, forest products, and the Managed Forest Law (MFL) program.

Local Regulation of Forestry Operations - Act 79 provides that a political subdivision may not enact a zoning ordinance that prohibits forestry operations that are in accordance with generally accepted forestry management practices, which are defined as practices that promote sound management of a forest, as determined by DNR administrative rule. The Act further provides that a forestry operation that conforms to generally accepted forestry management practices may not be declared a nuisance as a result of a change in ownership or size of a forest, the cessation or interruption of forestry operations, enrollment of all or part of the forest in governmental forestry or conservations programs, or adoption of new forestry technology.

DNR Management of State Forested Land - Act 166 requires DNR to undertake and maintain an inventory of state forest lands and, if DNR prohibits timber harvesting on any of those lands, to prepare a report containing a projection of long term forest health effects, economic effects, and public benefits resulting from the prohibition. DNR is also required to establish annual allowable timber harvests for all state-owned forested property under DNR jurisdiction from which timber is harvested, and establish a program to allow private cooperating foresters to assist the state with the harvest and sale of timber from state forest lands. The Act authorizes the chief state forester to declare, and requires the chief state forester to manage, emergencies that threaten state forest lands. Finally, the Act requires DNR to consult with the chief state forester on the development, review, or implementation of a master plan or management plan for any forested land under DNR jurisdiction.

County Forest Plans - Act 48 specifies that a county forest plan be for a 15-year period. If a county does not adopt a revised plan before the expiration of the existing plan, the existing plan will

remain in effect until the county adopts a revised plan. The Act requires counties to prepare an initial 15-year plan by December 31, 2005. DNR is authorized to withhold grant funding from a county that is more than one year delinquent in adopting a revised plan.

Council of Forestry Membership - Act 168 adds an employee of the federal Department of Agriculture, Forest Service, to the Council on Forestry as a nonvoting member.

Managed Forest Law - Act 25 removes the requirement that DNR prepare a management plan if asked to do so by private forest landowners who intend to enroll property in the MFL program. Instead, the Act allows DNR to decline to prepare such plans. If DNR agrees to prepare a plan, it may either have DNR staff prepare the plan or contract with certified plan writers to prepare the plan. The Act directs the DNR to certify plan writers and to create administrative rules specifying the qualifications a person must satisfy to become a certified plan writer. The Act also reduces the MFL program application fee from \$300 to \$20.

Act 299 provides that the 10 contiguous acres required for enrollment in the MFL program may be located in more than one municipality (city, town, or village).

Act 64 changes the MFL program application process and the calculation of yield tax and withdrawal taxes. Current law provides that managed forest land that was entered in the program on or after April 28, 2004 is exempt from the yield tax for the first five years of enrollment. The Act provides two mechanisms by which lands that were either managed forest land or forest cropland prior to April 28, 2004 and are renewed as or converted to managed forest land can come under a new managed forest land order issued after that date, and excludes those lands from the yield tax exemption. The Act also specifies that the tax on land withdrawn from an expanded order (a landowner may withdraw land from an MFL order and petition DNR to issue a new "expanded" order covering the land under the original order plus additional lands) is based on a new formula which provides a separate calculation for the original and added land under the expanded order to account for the difference in the amount of time each parcel was enrolled and the difference in the amount of acreage share payments required before and after April 28, 2004.

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