

WISCONSIN SENATE REPUBLICANS

ISSUE BRIEFS FOR THE 2015-16 LEGISLATIVE SESSION

WISCONSIN AGRICULTURE

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BACKGROUND

“Wisconsin is America’s Dairyland but there is more produced and processed in our state than just milk and cheese. Wisconsin ranks first in the nation for: snap beans for processing, cheese, cranberries, ginseng, mink pelts, dry whey for humans, milk goats and corn for silage.”

Source: Wisconsin Department of Agriculture, Trade and Consumer Protection's (DATCP) website.

WISCONSIN AGRICULTURE IS A BIG ECONOMIC DRIVER CONTRIBUTING \$88.3 BILLION ANNUALLY TO OUR STATE'S ECONOMY.

- Sales from food processing industrial sales total \$67.8 billion.
- Using the industry sales multiplier, every dollar of agricultural activity yields an additional 79 cents of industrial sales elsewhere in Wisconsin's economy.
- The state is home to 68,900 farms on 14.4 million acres. The average farm size in Wisconsin is 209 acres.

WISCONSIN AGRICULTURE PROVIDES JOBS.

- Annually, 413,500 jobs or 11.9% of the state's employment.
- On-farm production contributes 153,900 jobs.
- Processing contributes 259,600 jobs.
- Every job in agriculture supports an additional 1.46 jobs elsewhere in Wisconsin.

WISCONSIN IS SECOND IN THE NATION FOR TOTAL PRODUCTION, ACRES HARVESTED AND VALUE OF PRODUCTION OF THE MAJOR PROCESSING VEGETABLES.

- In 2015, Wisconsin grew 329,530 tons of snap beans, 97,730 tons of carrots for processing, 32,890 tons of cucumbers for pickles and 81,120 tons of green peas.
- The state ranks third in the nation in potato production harvesting potatoes on 62,500 acres in 2015.

THE STATE IS KNOWN FOR ITS FRUIT PRODUCTION, INCLUDING ITS STATE FRUIT – THE CRANBERRY.

- Wisconsin cranberry production for 2014 totaled 5.04 million barrels. Growers harvested 20,400 acres. Wisconsin produces 58 percent of the nation's crop making us the top cranberry producing state in the country.
- The state also produces a large tart cherry crop, producing 12 million pounds in 2014.
- Wisconsin boasts many apple orchards producing 40.7 million pounds of apples in 2014.

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WISCONSIN IS HOME TO MORE THAN 9,000 DAIRY FARMS, MORE THAN ANY OTHER STATE, AND 1.28 MILLION COWS.

- The dairy industry itself contributes \$43.4 billion to Wisconsin's economy each year.
- The dairy industry fuels the state's economy at more than \$82,500 per minute.
- The feed mills, dairy equipment manufacturers and technicians, veterinarians, construction companies, genetics companies, milk haulers, dairy plants, dairy software companies - create a wave of economic impact that rolls across the entire state.

WISCONSIN IS #1 IN CHEESE.

- Our state's nearly 1,200 licensed cheesemakers produce over 600 types, styles and varieties of cheese – nearly double the number of any other state.
- Wisconsin cheese makers make a quarter of the nation's cheese, more than 3.07 billion pounds.
- Wisconsin leads the nation in the production of 722 million pounds of specialty cheeses, including but not limited to asiago, gorgonzola, gruyere, aged cheddar, gouda, and limburger.

WISCONSIN EXPORTED MORE THAN \$3.2 BILLION OF AGRICULTURAL PRODUCTS IN 2015.

- Wisconsin ranks 12th among all states in the nation for the value of agricultural exports.
- The state's top agricultural export markets include Canada, Mexico and China.
- Miscellaneous food ingredients were Wisconsin's most valuable agricultural export category in 2015.
- Wisconsin leads the nation in the export of sausages, bovine semen, prepared and preserved cranberries, ginseng roots, mustard flour and sweet corn."

LEGISLATION

Contained within the state budget, **2015 ACT 55 (SB-21)** is the following:

1. Elimination of the requirement that bulk milk tankers obtain a license to operate in the state, requires a tanker permit in order to transport milk in bulk for sale or distribution as grade A milk or grade A milk products, and allows a permit issued by an equivalent regulatory agency in another state to satisfy the tanker permit requirement.
2. Requirement that DATCP to provide grants to organizations made up of agricultural producers in a watershed to assist other agricultural producers in the watershed in abating nonpoint source water pollution.
3. Authorization of \$7,000,000 in bonding for cost sharing grants under the soil and water resource management program.
4. Establishment of a one-year freeze on fees charged by DHS for restaurants, temporary restaurants, and certificates of food protection practices, the oversight for which is transferred to DATCP under the act.

ACT 186 (AB 676) updates the names of two organizations that are members of the Agricultural Producer Security Council, updates the name of the American Society for Testing and Materials to ASTM International, changes the address to which DATCP may make service of process by registered mail, and removes references to DATCP's inspection and certification of grain received in or shipped from ports other than the port of Superior.

ACT 207 (SB 318) eliminates certain requirements relating to horse racing at local fairs and makes changes to the regulation of local fairs.

ACT 233 (SB 450) provides that an animal may be taken into custody if there is reason to believe it has been involved in a crime against animals or there is evidence of such a crime; establishes a procedure under which the owner of such an animal may apply to the court for the return of the animal; establishes a procedure under which animal's custodian may demand payment from the animal's owner for the cost of custody, care, and

treatment; and provides that, if the animal's owner is convicted of a crime against animals, the animal must be treated as an unclaimed animal.

ACT 242 (SB-512) provides that a licensed food processing plant that processes dairy products into prepared foods that are not dairy products does not need to obtain a dairy plant license if the dairy products used at the plant are produced by a licensed dairy plant and are pasteurized or otherwise treated for safe consumption.

ACT 243 (SB-513) makes various changes to the licensing and inspection program for establishments that slaughter animals or poultry or that process meat products or poultry products.

ACT 244 (SB-514) changes the penalties for violations of certain requirements for manufacturers and distributors of commercial feed and feed products for animals and birds.

ACT 310 (AB-760) expands the type of enforcement actions in which a court may order a defendant to reimburse DATCP for its prosecution costs to include actions relating to future service plans, rental vehicles, self-service storage facilities, time shares, and foreclosure consultants.

IMPLEMENTS OF HUSBANDRY

Large farming equipment that is driven or hauled over roadways (tractors, combines, trailers, etc.) are referred to as "implements of husbandry" (IoH) by the Wisconsin Department of Transportation. While farmers must be allowed to use roads and highways to move equipment, implements with heavy axle weights cause damage to roads that is costly for municipalities to repair. Over the past two legislative sessions, the Wisconsin Farm Bureau, among others, has led the effort to update the laws regarding IoH.

2013 ACT 377 (SB 509) makes numerous changes relating to the operation of agricultural vehicles on highways, including 1) modifying the definition of implement of husbandry (IOH) and recognizing a new type of vehicle called an agricultural commercial motor vehicle (AgCMV); 2) increasing, until January 1, 2020, the statutory weight limits for IOHs and AgCMVs operated without a permit; 3) creating certain weight limit exceptions for IOHs and AgCMVs until January 1, 2020; 4) creating a "no fee" permit system until January 1, 2020, that allows IOHs and AgCMVs to exceed the new statutory weight limits; 5) modifying statutory size limits for IOHs and AgCMVs; 6) creating lighting and marking requirements for wide IOHs; 7) allowing a wide IOH to be operated outside its lane and over the center line of a roadway; 8) exempting AgCMVs from vehicle registration; and 9) requiring farm equipment dealers to disclose vehicle weight when selling equipment operated on a highway.

2015 ACT 15 (AB 113) makes changes relating to the operation of agricultural vehicles on highways, including: 1. Modifies the definitions of implement of husbandry (IOH) and agricultural commercial motor vehicle (AgCMV). 2. Creates weight-limit exceptions for certain AgCMVs and certain two-vehicle combinations transporting IOHs or AgCMVs. 3. Modifies certain width and length limits for IOHs and length and height limits for two-vehicle combinations transporting IOHs. 4. Modifies authorization and procedures related to "no fee" permits for IOHs, AgCMVs, and two-vehicle combinations transporting IOHs or AgCMVs.

HIGH-CAPACITY WELLS

Integral to large-scale farming operations are high capacity wells - wells that have a pump capacity of 70 gallons or more per minute. Concerns over these wells impact on water tables have led to numerous court rulings and legislative attempts to bring clarity to the issue of what the DNR can consider when deciding whether or not to approve a high-capacity well application. A recent Outagamie County Circuit Court ruling, as well as a subsequent Attorney General opinion, provide some insight on where the issue stands...

"BRAD SCHIMEL OPINION NARROWS DNR POWERS OVER HIGH CAPACITY WELLS,"
MILWAUKEE JOURNAL SENTINEL, MAY 11, 2016

In a significant legal development with consequences for Wisconsin waterways, Attorney General Brad Schimel has issued a legal opinion that narrows the powers of the Department of Natural Resources to regulate high-capacity wells.

Schimel, a Republican, said the DNR does not have authority to put conditions on well applications that would take into account their cumulative effects on streams, rivers and lakes in the surrounding area.

The opinion issued Tuesday was a big win for agriculture and business interests, which have charged that the DNR has incorrectly interpreted its authority by clamping on restrictions — and, in some cases, denying — applications for wells.

Paul Zimmerman, executive director of government relations for the Wisconsin Farm Bureau Federation, said the opinion "provides greater certainty and clarity for everyone..."

Environmentalists and others criticized the decision — both on legal grounds and out of fear it will spur a massive round of well construction projects that will harm already-stressed streams and lakes fed by groundwater.

The number of high-capacity wells has grown sharply, primarily for irrigation and large-scale dairying in Wisconsin. High-capacity wells jumped 54% to 10,456 between 2000 and 2015, according to DNR figures.

But because of DNR interpretations of its authority and past court decisions, including a landmark Supreme Court case in 2011 involving Lake Beulah in Walworth County, businesses asking to build a new well now face a one-year wait, according to the DNR.

The court ruled the DNR had the authority to consider the impacts of wells on lake levels in the Lake Beulah case.

The DNR now scrutinizes well applications on an array of factors: groundwater tables, effects of other wells and the hydrology of local waterways.

In a statement, the DNR declined to comment and said attorneys will study the opinion. Lawyers representing environmental interests said they believe the agency, headed by appointees of Republican Gov. Scott Walker, will ease their scrutiny.

In central Wisconsin, the rise in well construction has coincided with dried-up streams and lakes. Agriculture interests have acknowledged that irrigation has played a role in some cases, but they have pointed to other factors, such as drought and urbanization, where hard surfaces impede the flow of rainwater into the ground.

Last month, after years of finger-pointing between agriculture and environmentalists, an independent study using computer modeling found that the Little Plover River — a poster child in the controversy — is closely dependent on groundwater and vulnerable to groundwater pumping. Portions of the river have run dry in some summers.

The \$230,000 study paid for by the DNR was conducted by Wisconsin Geological and Natural History Survey and the U.S. Geological Survey.

Schimel issued the opinion at the request of Assembly Speaker Robin Vos (R-Rochester). As chairman of the Assembly Committee on Organization, Vos asked to clarify the authority of DNR with high-capacity wells.

"The opinion is a victory for the people of Wisconsin as it reinforces that their elected representatives create the laws of our state and not the unelected bureaucrats," Vos said in a statement, adding that lawmakers will try to address the well issues in next session.

But this year, Republican lawmakers who control the Assembly and Senate failed to pass any bills on groundwater regulation. A Republican bill contained some protections, but a Democratic bill with stronger protections never got out of committee.

In his opinion, Schimel said he found that the DNR had no authority to impose conditions for approval of a well not spelled out in state law.

He also found that the state's Public Trust Doctrine does not give the DNR authority to impose such conditions. The doctrine holds that Wisconsin lakes, river and streams are to be protected for the benefit of the public.

Although the DNR's public trust authority has been expanded by past court decisions, Schimel said a 2011 state law, known as Act 21, restricts those powers by removing the DNR's ability to impose a requirement unless it is in state law.

Carl Sinderbrand of Madison, a former assistant attorney general who has challenged large-scale well construction, said the opinion narrowly focused its analysis and ignores that the DNR has the power to protect waters of the state.

"We have significant constitutional issues with this opinion," Sinderbrand said.

Elizabeth Wheeler, an attorney for Clean Wisconsin, said: "It's a huge step backward for protections we have for high-cap wells, especially to remove authority for the DNR to regulate cumulative effects."

Wheeler said the opinion goes too far by saying the DNR can't impose conditions on wells. She said state law now allows the DNR to regulate the location of wells and the rate at which water can be pumped.

NOTE: AB 874, which addressed various high-capacity well regulations, was passed by the state senate in March of 2016, but was not taken up by the Assembly and thus did not become law.