



State of Wisconsin
2009 - 2010 LEGISLATURE

LRB-0202/P1

RCT:wj:rs

In 1/9

Start

YMY

DOA:.....Miner, BB0078 - Purchase of agricultural conservation easements
FOR 2009-11 BUDGET -- NOT READY FOR INTRODUCTION

Note

Do Not Gen

1 AN ACT ...; relating to: an agricultural conservation easement purchase
2 program, granting bonding authority, and making appropriations.

Analysis by the Legislative Reference Bureau

This is a preliminary draft. An analysis will be provided in a later version.

Analysis insert

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

3 SECTION 1. 20.115 (7) (br) of the statutes is created to read:
4 20.115 (7) (br) *Principal repayment and interest; agricultural conservation*
5 *easements.* A sum sufficient to reimburse s. 20.866 (1) (u) for the principal and
6 interest costs incurred in purchasing agricultural conservation easements under s.
7 93.73, to make the payments determined by the building commission under s. 13.488
8 (1) (m) that are attributable to the proceeds of obligations incurred to purchase those
9 easements, and to make payments under an agreement or ancillary arrangement
10 entered into under s. 18.06 (8) (a).

****NOTE: This SECTION involves a change in an appropriation that must be reflected in the revised schedule in s. 20.005, stats.

1 **SECTION 2.** 20.115 (7) (i) of the statutes is created to read:

2 20.115 (7) (i) *Agricultural conservation easements; gifts, grants, and*

3 *repayments.* All moneys received from gifts and grants for the purchase of

4 agricultural conservation easements under s. 93.73 and all moneys received by the

5 department under s. 93.73 ^{(7)(dm)2e} ~~(10) (b) 4~~, to be used for the program under s. 93.73.

****NOTE: This SECTION involves a change in an appropriation that must be reflected in the revised schedule in s. 20.005, stats.

6 **SECTION 3.** 20.115 (8) (g) of the statutes is amended to read:

7 20.115 (8) (g) *Gifts and grants.* Except as provided in par. (ge) and sub. (7) (i),

8 all moneys received from gifts and grants to carry out the purposes for which made.

9 **SECTION 4.** 20.866 (1) (u) of the statutes is amended to read:

10 20.866 (1) (u) *Principal repayment and interest.* A sum sufficient from moneys

11 appropriated under sub. (2) (zp) and ss. 20.115 (2) (d) and (7) (b), (br), (f), and (s),

12 20.190 (1) (c), (d), (i), and (j), 20.225 (1) (c) and (i), 20.245 (1) (e) and (j), 20.250 (1) (c)

13 and (e), 20.255 (1) (d), 20.285 (1) (d), (db), (im), (in), (je), (jq), (kd), (km), and (ko) and

14 (5) (i), 20.320 (1) (c) and (t) and (2) (c), 20.370 (7) (aa), (ac), (ag), (aq), (ar), (at), (au),

15 (bq), (br), (ca), (cb), (cc), (cd), (ce), (cf), (cg), (ea), (eq), and (er), 20.395 (6) (af), (aq), (ar),

16 and (au), 20.410 (1) (e), (ec), and (ko) and (3) (e), 20.435 (2) (ee) and (6) (e), 20.465 (1)

17 (d), 20.485 (1) (f) and (go), (3) (t) and (4) (qm), 20.505 (4) (es), (et), (ha), and (hb) and

18 (5) (c), (g), (kc), and (kd), 20.855 (8) (a), and 20.867 (1) (a) and (b) and (3) (a), (b), (bm),

19 (bn), (bp), (bq), (br), (bu), (bv), (g), (h), (i), and (q) for the payment of principal,

20 interest, premium due, if any, and payment due, if any, under an agreement or

21 ancillary arrangement entered into under s. 18.06 (8) (a) relating to any public debt

22 contracted under subchs. I and IV of ch. 18.

1 **SECTION 5.** 20.866 (2) (wg) of the statutes is created to read:

2 20.866 (2) (wg) *Agricultural conservation easements.* From the capital
3 improvement fund, a sum sufficient for the department of agriculture, trade and
4 consumer protection to purchase agricultural conservation easements under s.
5 93.73. The state may contract public debt in an amount not to exceed \$12,000,000
6 for this purpose.

7 **SECTION 6.** 93.73 of the statutes is created to read:

8 **93.73 Purchase of agricultural conservation easements.**

9 **(1) LEGISLATIVE FINDINGS.** The legislature finds all of the following:

10 (a) That the preservation of farmland is important for current and future
11 agricultural production in this state, including the production of food and other
12 products needed to sustain the life, health, and welfare of the people of this state.

13 (b) That the preservation of farmland is important for the current and future
14 state economy and for the current and future environment of this state.

15 (c) That purchases of agricultural conservation easements, as provided in this
16 section, serve important public purposes of statewide significance.

17 **(1m) DEFINITIONS.** In this section:

18 (a) "Agricultural conservation easement" means a conservation easement, as
19 defined in s. 700.40 (1) (a), the purpose of which is to assure the availability of land
20 for agricultural use.

21 (b) "Agricultural use" means any of the following:

22 1. Any of the following activities conducted for the purpose of producing an
23 income or livelihood:

24 a. Crop or forage production.

25 b. Keeping livestock.

- 1 c. Beekeeping.
- 2 d. Nursery, sod, or Christmas tree production.
- 3 e. Floriculture.
- 4 f. Aquaculture.
- 5 g. Fur farming.
- 6 h. Forest management.
- 7 i. Enrollment of land in a federal agricultural commodity payment program or
- 8 a federal or state agricultural land conservation payment program.

9 2. Any other use that the department, by rule, identifies as an agricultural use.

10 (c) "Cooperating entity" means a political subdivision or nonprofit conservation
11 organization.

12 (d) "Fair market value" means value as determined by a professional appraisal
13 that is approved by the department.

Insert
4-13

14 (e) "Nonprofit conservation organization" means a nonstock corporation,
15 charitable trust, or other entity whose purposes include the acquisition of property
16 for conservation or agricultural preservation purposes and that is described in
17 section 501 (c) (3) of the Internal Revenue Code and is exempt from federal income
18 tax under section 501 (a) of the Internal Revenue Code. *Insert 4-18*

that

19 (f) "Political subdivision" means a city, village, town, or county.

20 (g) "Professional appraisal" means an appraisal conducted by a certified
21 general appraiser, as defined in s. 458.01 (8).

****NOTE: Chapter 458 refers to licensed appraisers and certified appraisers as two different groups (although certified appraisers appear to be automatically licensed as well). I think that certification is the important qualification.

22 (h) "Purchase cost" means the amount paid to a landowner to acquire an
23 agricultural conservation easement from the landowner.

1 (i) "Transaction costs" means out-of-pocket expenses incurred in connection
2 with the acquisition, processing, recording, and documentation of an agricultural
3 conservation easement, including out-of-pocket expenses for land surveys, land
4 descriptions, real estate appraisals, title verification, preparation of legal
5 documents, reconciliation of conflicting property interests, documentation of
6 existing land uses, and closing. "Transaction costs" does not include costs incurred
7 by a cooperating entity for staffing, overhead, or operations.

8 (2) PROGRAM. (a) The department shall administer a program under which it,
9 together with cooperating entities, purchases agricultural conservation easements
10 from willing landowners. The department may pay as its share of the cost to
11 purchase an agricultural conservation easement under this section an amount that
12 does not exceed the sum of the following:

13 1. Fifty percent of the fair market value of the agricultural conservation
14 easement.

15 2. The reasonable transaction costs related to the purchase of the agricultural
16 conservation easement.

5-16 Insert →
17 (b) The department, after consultation with the council under sub. (13), shall
18 solicit applications under sub. (3) at least annually. The department shall issue each
19 solicitation in writing and shall publish a notice announcing the solicitation. In
20 soliciting applications, the department may specify the total amount of funds
21 available, application deadlines, application requirements and procedures,
22 preliminary criteria for evaluating applications, and other relevant information.

23 (3) APPLICATION. A cooperating entity may apply to participate in the program
24 under this section by submitting an application that complies with requirements

1 contained in the department's solicitation under sub. (2) (b) and that contains all of
2 the following:

3 (a) Identifying information for the cooperating entity, including information
4 showing that the cooperating entity is a political subdivision or nonprofit
5 conservation organization.

6 (b) A description of the land that would be subject to the proposed agricultural
7 conservation easement, including location, acreage, and current use.

8 (c) The name and address of each owner of land that would be subject to the
9 proposed agricultural conservation easement.

10 (d) Evidence that all of the owners under par. (c) are willing to convey the
11 proposed agricultural conservation easement.

12 *Insert 6-12*
13 (e) The cooperating entity's agreement to pay the full purchase cost and the
14 transaction costs related to the purchase of the proposed agricultural conservation
15 easement, subject to reimbursement under sub. (9) of the department's agreed upon
16 share of the costs.

17 (f) The purpose of and rationale for the proposed agricultural conservation
18 easement.

19 (g) Information needed to evaluate *the application using* compliance with the criteria in sub. (4) and
20 in the department's solicitation under sub. (2) (b).

21 (4) APPLICATION EVALUATION CRITERIA. The department may not approve an
22 application under sub. (3) unless the department determines that purchase of the
23 proposed agricultural conservation easement will serve a public purpose. In making
24 this determination, the department shall consider all of the following criteria:

25 (a) The value of the proposed agricultural conservation easement in preserving
or enhancing agricultural production capacity in this state.

1 (b) The importance of the proposed agricultural conservation easement in
2 protecting or enhancing the waters of the state or in protecting or enhancing other
3 public assets.

4 (c) The extent to which the proposed agricultural conservation easement would
5 conserve important or unique agricultural resources, such as soil that the federal
6 department of agricultural has classified in soil capability classes I to IV.

Insert 7-5

7 (d) The extent to which the proposed agricultural conservation easement would
8 be consistent with local land use plans and zoning ordinances, including any certified
9 farmland preservation plans and zoning ordinances under ch. 91.

10 (e) The extent to which the proposed agricultural conservation easement would
11 enhance an agricultural enterprise area designated under s. 91.84.

****NOTE: This paragraph depends on combining the farmland preservation
(09-0203) draft with this one. If the drafts are not combined, this paragraph must be
deleted.

12 (f) The availability, practicality, and effectiveness of other methods to preserve
13 the land that would be subject to the proposed agricultural conservation easement.

14 (g) The likely amount of the purchase cost and transaction costs that the
15 department would pay for the proposed agricultural conservation easement and the
16 percentage of the total costs that payment would represent.

17 (h) The proximity of the land that would be subject to the proposed agricultural
18 conservation easement to other land that is protected for agricultural use or
19 conservation use and the extent to which the proposed agricultural conservation
20 easement would enhance that protection.

21 (i) The likely cost-effectiveness of the proposed agricultural conservation
22 easement in preserving land for agricultural use.

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Pars.
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and
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1 (j) The likelihood that the land that would be subject to the proposed
2 agricultural conservation easement would be converted to nonagricultural use if the
3 land is not protected by the proposed agricultural conservation easement.

4 (k) The apparent willingness of each landowner to convey the proposed
5 agricultural conservation easement.

6 (5) APPROVAL OF APPLICATIONS. The department may ^{give preliminary approval to} approve an application
7 under sub. (3) after evaluating the application under sub. (4) and consulting with the
8 council under sub. (13). The department shall ^{give a preliminary} provide its approval of an application

9 in writing. In an approval, the department shall specify the name of the cooperating
10 entity, the amount of purchase costs approved for payment by the department, the
11 location and acreage of the land that would be subject to the proposed agricultural
12 conservation easement, the rationale for approving the application, and any
13 conditions that apply to the approval. The approval of an application is contingent
14 on the signing of a contract under sub. (6m) and on other conditions specified in the
15 approval.

****NOTE: Should the approval say anything about the amount of transaction costs that the department will reimburse?

16 (6) INFORMATION RELATED TO ^{(c) proposed easement} APPROVED APPLICATION. A cooperating entity that
17 receives an ^{↓ a preliminary ↓} approval under sub. (5) shall submit all of the following to the
18 department:

19 (a) A copy of the proposed instrument for conveying the agricultural
20 conservation easement.

21 (b) A professional appraisal of the proposed agricultural conservation
22 easement.

23 (c) A statement of the purchase cost of the agricultural conservation easement.

1 (d) An ^{estimate} ~~itemized statement~~ of the transaction costs that the cooperating entity
2 will incur in connection with the purchase of the proposed agricultural conservation
3 easement.

4 (e) The record of a complete search of title records that verifies ownership of
5 the land that would be subject to the proposed agricultural conservation easement
6 and identifies any potentially conflicting property interests, including any liens,
7 mortgages, easements, or reservations of mineral rights.

8 (f) Documentation showing to the satisfaction of the department that any
9 material title defects will be eliminated and any materially conflicting property
10 interests will be subordinated to the proposed agricultural conservation easement
11 or eliminated.

12 **(6m) CONTRACT WITH COOPERATING ENTITY.** After a cooperating entity complies
13 with sub. (6) and the department determines that the proposed instrument of
14 conveyance complies with sub. (7), the department and the cooperating entity may
15 enter into a written contract that specifies the terms and conditions of the
16 department's participation in the purchase of the proposed agricultural conservation
17 easement ^o and that provides that ~~the cooperating entity will~~ ^{o shall agree to} pay the full purchase
18 cost and the transaction costs related to the purchase of the proposed agricultural
19 conservation easement, subject to reimbursement under sub. (9) of the department's
20 agreed upon share of the costs.

21 **(7) PURCHASE OF EASEMENT.** After a cooperating entity has entered into a
22 contract under sub. (6m), the cooperating entity may, in accordance with the
23 contract, purchase the agricultural conservation easement on behalf of the
24 cooperating entity and the department if the agricultural conservation easement
25 does all of the following:

1 (a) Prohibits the land subject to the agricultural conservation easement from
2 being developed for a use that is not an agricultural use.

Insert 10-21

page (dm)

3 (b) Continues in perpetuity, except as provided in sub. (10) (b)

4 (c) Provides that the cooperating entity and the department, on behalf of this
5 state, are both holders of the agricultural conservation easement.

6 (d) Prohibits any holder of the agricultural conservation easement other than
7 the department from transferring or relinquishing the holder's interest without
8 permission from the department.

60 days prior notice to

Insert 10-8

9 (e) Complies with any other conditions specified in the contract under sub.

10 (6m). *(5) Acceptance and*

11 (8) RECORDING OF EASEMENT. A cooperating entity that purchases an
12 agricultural conservation easement under sub. (7) shall promptly record the

Insert 10-12

and acceptance

13 agricultural conservation easement with the register of deeds of the county in which
14 the land subject to the agricultural conservation easement is located and shall
15 provide to the department a copy of the recorded instrument conveying the
16 agricultural conservation easement, certified by the register of deeds under s. 59.43

17 (1) (i).

18 (9) PAYMENT. The department shall reimburse a cooperating entity for the
19 department's agreed upon portion of the purchase cost and transaction costs related
20 to the purchase of an agricultural conservation easement after the cooperating entity
21 does all of the following:

22 (a) Complies with sub. (8).

23 (b) Submits documentation showing that any material title defects have been
24 eliminated and any materially conflicting property interests have been eliminated

1 or subordinated to the agricultural conservation easement, as required by the
2 contract under sub. (6m).

3 (c) Submits proof of the amount of the purchase cost and transaction costs that
4 the cooperating entity has paid, consistent with the contract under sub. (6m).

5 (10) ^{CS holder's interest} TRANSFER OR RELINQUISHMENT OF EASEMENT (a) The department, on behalf
6 of this state, may authorize another holder of an agricultural conservation easement
7 purchased under this section to transfer or relinquish the holder's interest in the
8 agricultural conservation easement. The transfer or relinquishment of another
9 holder's interest does not affect the department's interest in ^{an} the agricultural
10 conservation easement.

11 (b) The department, on behalf of this state, may relinquish an agricultural
12 conservation easement purchased under this section if all of the following apply:

13 1. The agricultural conservation easement was purchased at least 60 years
14 before the date on which it is relinquished.

15 2. The department determines that the land subject to the agricultural
16 conservation easement is no longer suitable for any agricultural use and that the
17 state no longer has an interest in holding the agricultural conservation easement.

18 3. All other holders agree to relinquish the agricultural conservation easement.

19 4. One or more owners of the land subject to the agricultural conservation
20 easement pay to the department an amount equal to the product obtained by
21 multiplying all of the following by 4:

22 a. The fair market value of the agricultural conservation easement on the date
23 on which it is relinquished.

1 b. The fraction of the purchase cost plus the transaction costs related to the
 2 purchase of the agricultural conservation easement that was paid by the department
 3 under this section.

****NOTE: As I understand this calculation, if an easement was worth \$50,000 when
 relinquished and DATCP had paid one-half of the costs, the payment would be: 4 times
 \$50,000 times 0.5 = \$100,000. The actual amount paid for the easement would be
 irrelevant. Please let me know if that is not what was intended.

4 **(11) ENFORCEMENT OF EASEMENT.** The department or any other holder of an
 5 agricultural conservation easement purchased under this section may enforce and
 6 defend the agricultural conservation easement.

7 **(12) RECORD OF EASEMENTS.** The department shall maintain a record of all
 8 agricultural conservation easements purchased under this section.

9 **(13) COUNCIL.** The department shall appoint a council under s. 15.04 (1) (c) to
 10 advise the department on the administration of this section.

11

(END)

Insert 12-10

Note

1

Analysis insert

√ AGRICULTURE

This bill creates a program for the purchase of agricultural conservation easements, from willing landowners, by DATCP in conjunction with political subdivisions and nonprofit conservation organizations (cooperating entities). An agricultural conservation easement (easement) is an interest in land that preserves the land for agricultural use. The ownership of the land itself remains with the landowner. Under the bill, DATCP may reimburse a cooperating entity for the transaction costs (such as the costs of land surveys and appraisals) for obtaining an easement plus not more than 50 percent of the fair market value of the easement, as indicated by a professional appraisal.

Under the program, a cooperating entity that wishes to participate submits an application that includes a description of the land that would be subject to the easement and the purpose and rationale for obtaining the easement, as well as other information. DATCP may not approve an application unless it determines that the purchase of the easement would serve a public purpose, considering such criteria as the value of the easement in preserving or enhancing agricultural production capacity, water quality, and other public assets; the quality of the land that would be preserved; the consistency of the proposed easement with local land use plans; and the likelihood that the land would be converted to nonagricultural use if it is not protected by an easement.

When DATCP preliminarily approves an application, the cooperating entity must provide DATCP with a copy of the proposed instrument for conveying the easement, an appraisal of the proposed easement, an estimate of the transaction costs for obtaining the easement, the record of a title search for the land that would be subject to the easement, and documentation showing that any material title defects will be eliminated and that any conflicting property interests will be subordinated to the easement. The instrument of conveyance must prohibit the land from being developed for a use that would make the land unavailable or unsuitable for agricultural use and must provide that the cooperating entity and DATCP may enforce the restrictions in the easement.

Once a cooperating entity complies with these requirements and DATCP approves the proposed instrument of conveyance, DATCP and the cooperating entity may enter into a written contract specifying the terms and conditions of DATCP's participation in the purchase of the easement, including the share of the costs that DATCP will pay. After the cooperating entity purchases the easement and records it with the register of deeds, DATCP provides the reimbursement called for in the contract to the cooperating entity. An easement purchased under the program continues indefinitely, except that a court may terminate an easement if it finds that it is no longer possible for the easement to achieve its original purpose.

The bill authorizes \$12,000,000 in general fund supported borrowing for the purchase of agricultural conservation easements.

For further information see the *state and local* fiscal estimate, which will be printed as an appendix to this bill.

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Insert 4-13

(dm) "Livestock" means bovine animals, equine animals, goats, poultry, sheep, swine, farm-raised deer, farm-raised game birds, camelids, ratites, and farm-raised fish.

Insert 4-18

^{SA} (No ff) and that is a qualified organization under section 170 (h) (3) of the Internal Revenue code

Insert 5-16

(am) The willingness of a landowner to convey an agricultural conservation easement for less than full market value does not reduce the amount that the department may pay as its share of the cost to purchase the agricultural conservation easement.

Insert 6-12

(No ff) An indication that the cooperating entity is willing to arrange the purchase of the proposed ^{agricultural} conservation easement in accordance with this section and share in the purchase cost

Insert 7-5

(No ff) prime soils and soil resources that are of state ^{wide} importance or are unique

Insert 10-2

(No ff) would make the land unavailable or unsuitable for

1 **Insert 10-8**

2 (dm) Provides that a court may do all of the following if, at any time, the court
3 finds that due to unforeseen circumstances it is no longer possible for the agricultural
4 conservation easement to serve its original purpose:

- 5 1. Terminate the agricultural conservation easement.
- 6 2. Order the property owner to pay compensation to the holders of the
- 7 agricultural conservation easement, including this state, under the terms the court
- 8 determines to be appropriate.

9 **Insert 10-10** 12

10 **NoFF** submit the agricultural conservation easement to the department for its
11 acceptance. Upon acceptance by the department, the cooperating entity shall

12 **Insert 12-10**

13 **SECTION** ~~11~~ 165.25 (4) (ar) of the statutes is amended to read:

14 165.25 (4) (ar) The department of justice shall furnish all legal services
15 required by the department of agriculture, trade and consumer protection relating
16 to the enforcement of ss. 93.73, 100.171, 100.173, 100.174, 100.175, 100.177, 100.18,
17 100.182, 100.195, 100.20, 100.205, 100.207, 100.209, 100.21, 100.28, 100.37, 100.42,
18 100.50, and 100.51, ~~and~~ 100.55, and chs. 126, 136, 344, 704, 707, and 779, together
19 with any other services as are necessarily connected to the legal services.

NOTE: NOTE: Par. (ar) is shown as affected by 2 acts of the 2007 Wisconsin legislature and as merged by the legislative reference bureau under s. 13.92 (2) (i). The bracketed "and" is inserted for correct grammar. Corrective legislation is pending. NOTE:

History: 1971 c. 125 s. 522 (1); 1971 c. 215; 1973 c. 333; 1975 c. 81, 199; 1977 c. 29 s. 1656 (27); 1977 c. 187, 260, 273, 344; 1981 c. 20, 62, 96; 1983 a. 27; 1983 a. 36 s. 96 (2), (3), (4); 1983 a. 192; 1985 a. 29, 66; 1987 a. 416; 1989 a. 31, 115, 187, 206, 359; 1991 a. 25, 39, 269; 1993 a. 27, 28, 365; 1995 a. 27 ss. 4453 to 4454m, 9126 (19); 1995 a. 201; 1997 a. 27, 111; 2001 a. 16; 2003 a. 111, 235; 2005 a. 96, 458; 2007 a. 1; 2007 a. 20 ss. 2904, 9121 (6) (a); 2007 a. 76, 79, 96, 130, 225; s. 13.92 (2) (i).

DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-0202/1dn

RCT./.....

WJ

Date

Andrew Miner:

This is a redraft of the proposal for purchase of agricultural conservation easements.

I do not see any reference to "qualified conservation entity" (used in DATCP's suggested
* change for page 4, lines 14-18, of the /P1 version) in section 170 (c) of the Internal
Revenue Code. This draft instead refers to section 170 (h) (3) which describes a
"qualified organization" for the purposes of determining whether a contribution is a
"qualified conservation contribution."

Please let me know if you have any questions or want any additional changes.

Rebecca C. Tradewell
Managing Attorney
Phone: (608) 266-7290
E-mail: becky.tradewell@legis.wisconsin.gov

DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-0202/1dn
RCT:wlj:md

January 13, 2009

Andrew Miner:

This is a redraft of the proposal for purchase of agricultural conservation easements.

I do not see any reference to "qualified conservation entity" (used in DATCP's suggested change for page 4, lines 14-18, of the /P1 version) in section 170 (c) of the Internal Revenue Code. This draft instead refers to section 170 (h) (3) which describes a "qualified organization" for the purposes of determining whether a contribution is a "qualified conservation contribution."

Please let me know if you have any questions or want any additional changes.

Rebecca C. Tradewell
Managing Attorney
Phone: (608) 266-7290
E-mail: becky.tradewell@legis.wisconsin.gov

Tradewell, Becky

From: Miner, Andrew - DOA [Andrew.Miner@Wisconsin.gov]
Sent: Monday, January 19, 2009 2:05 PM
To: Tradewell, Becky
Subject: change to PACE draft 203

Becky,

Please make the following addition to the PACE draft: Reduce the bonding authority for the conservation reserve enhancement program under 20.866 (2)(wf) by \$12,000,000. (The intent is to have a corresponding decrease in bonding to make up for the \$12 million authorized for PACE). Please let me know if you have any questions. Thanks,

Andrew

*Andrew Miner
Agriculture, Environment and Justice
Wisconsin State Budget Office
(608) 266-1103*



State of Wisconsin
2009 - 2010 LEGISLATURE

LRB-0202/2

RCT:wlj:rs

In 119

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DOA:.....Miner, BB0078 - Purchase of agricultural conservation easements
FOR 2009-11 BUDGET -- NOT READY FOR INTRODUCTION

Do Not Gen

- 1 AN ACT ...; relating to: an agricultural conservation easement purchase
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Analysis by the Legislative Reference Bureau

AGRICULTURE

This bill creates a program for the purchase of agricultural conservation easements, from willing landowners, by DATCP in conjunction with political subdivisions and nonprofit conservation organizations (cooperating entities). An agricultural conservation easement (easement) is an interest in land that preserves the land for agricultural use. The ownership of the land itself remains with the landowner. Under the bill, DATCP may reimburse a cooperating entity for the transaction costs (such as the costs of land surveys and appraisals) for obtaining an easement plus not more than 50 percent of the fair market value of the easement, as indicated by a professional appraisal.

Under the program, a cooperating entity that wishes to participate submits an application that includes a description of the land that would be subject to the easement and the purpose and rationale for obtaining the easement, as well as other information. DATCP may not approve an application unless it determines that the purchase of the easement would serve a public purpose, considering such criteria as the value of the easement in preserving or enhancing agricultural production capacity, water quality, and other public assets; the quality of the land that would be preserved; the consistency of the proposed easement with local land use plans; and

the likelihood that the land would be converted to nonagricultural use if it is not protected by an easement.

When DATCP preliminarily approves an application, the cooperating entity must provide DATCP with a copy of the proposed instrument for conveying the easement, an appraisal of the proposed easement, an estimate of the transaction costs for obtaining the easement, the record of a title search for the land that would be subject to the easement, and documentation showing that any material title defects will be eliminated and that any conflicting property interests will be subordinated to the easement. The instrument of conveyance must prohibit the land from being developed for a use that would make the land unavailable or unsuitable for agricultural use and must provide that the cooperating entity and DATCP may enforce the restrictions in the easement.

Once a cooperating entity complies with these requirements and DATCP approves the proposed instrument of conveyance, DATCP and the cooperating entity may enter into a written contract specifying the terms and conditions of DATCP's participation in the purchase of the easement, including the share of the costs that DATCP will pay. After the cooperating entity purchases the easement and records it with the register of deeds, DATCP provides the reimbursement called for in the contract to the cooperating entity. An easement purchased under the program continues indefinitely, except that a court may terminate an easement if it finds that it is no longer possible for the easement to achieve its original purpose.

The bill authorizes \$12,000,000 in general fund supported borrowing for the purchase of easements.

For further information see the *state and local* fiscal estimate, which will be printed as an appendix to this bill.

Analysis
insert

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

1 **SECTION 1.** 20.115 (7) (br) of the statutes is created to read:
2 20.115 (7) (br) *Principal repayment and interest; agricultural conservation*
3 *easements.* A sum sufficient to reimburse s. 20.866 (1) (u) for the principal and
4 interest costs incurred in purchasing agricultural conservation easements under s.
5 93.73, to make the payments determined by the building commission under s. 13.488
6 (1) (m) that are attributable to the proceeds of obligations incurred to purchase those
7 easements, and to make payments under an agreement or ancillary arrangement
8 entered into under s. 18.06 (8) (a).

***NOTE: This SECTION involves a change in an appropriation that must be reflected in the revised schedule in s. 20.005, stats.

1 **SECTION 2.** 20.115 (7) (i) of the statutes is created to read:

2 20.115 (7) (i) *Agricultural conservation easements; gifts, grants, and*
3 *repayments.* All moneys received from gifts and grants for the purchase of
4 agricultural conservation easements under s. 93.73 and all moneys received under
5 s. 93.73 (7) (dm) 2., to be used for the program under s. 93.73.

***NOTE: This SECTION involves a change in an appropriation that must be reflected in the revised schedule in s. 20.005, stats.

6 **SECTION 3.** 20.115 (8) (g) of the statutes is amended to read:

7 20.115 (8) (g) *Gifts and grants.* Except as provided in par. (ge) and sub. (7) (i),
8 all moneys received from gifts and grants to carry out the purposes for which made.

9 **SECTION 4.** 20.866 (1) (u) of the statutes is amended to read:

10 20.866 (1) (u) *Principal repayment and interest.* A sum sufficient from moneys
11 appropriated under sub. (2) (zp) and ss. 20.115 (2) (d) and (7) (b), (br), (f), and (s),
12 20.190 (1) (c), (d), (i), and (j), 20.225 (1) (c) and (i), 20.245 (1) (e) and (j), 20.250 (1) (c)
13 and (e), 20.255 (1) (d), 20.285 (1) (d), (db), (im), (in), (je), (jq), (kd), (km), and (ko) and
14 (5) (i), 20.320 (1) (c) and (t) and (2) (c), 20.370 (7) (aa), (ac), (ag), (aq), (ar), (at), (au),
15 (bq), (br), (ca), (cb), (cc), (cd), (ce), (cf), (cg), (ea), (eq), and (er), 20.395 (6) (af), (aq), (ar),
16 and (au), 20.410 (1) (e), (ec), and (ko) and (3) (e), 20.435 (2) (ee) and (6) (e), 20.465 (1)
17 (d), 20.485 (1) (f) and (go), (3) (t) and (4) (qm), 20.505 (4) (es), (et), (ha), and (hb) and
18 (5) (c), (g), (kc), and (kd), 20.855 (8) (a), and 20.867 (1) (a) and (b) and (3) (a), (b), (bm),
19 (bn), (bp), (bq), (br), (bu), (bv), (g), (h), (i), and (q) for the payment of principal,
20 interest, premium due, if any, and payment due, if any, under an agreement or
21 ancillary arrangement entered into under s. 18.06 (8) (a) relating to any public debt
22 contracted under subchs. I and IV of ch. 18.

Insert ↓
→ 3-22

1 **SECTION 5.** 20.866 (2) (wg) of the statutes is created to read:

2 20.866 (2) (wg) *Agricultural conservation easements.* From the capital
3 improvement fund, a sum sufficient for the department of agriculture, trade and
4 consumer protection to purchase agricultural conservation easements under s.
5 93.73. The state may contract public debt in an amount not to exceed \$12,000,000
6 for this purpose.

7 **SECTION 6.** 93.73 of the statutes is created to read:

8 **93.73 Purchase of agricultural conservation easements.**

9 **(1) LEGISLATIVE FINDINGS.** The legislature finds all of the following:

10 (a) That the preservation of farmland is important for current and future
11 agricultural production in this state, including the production of food and other
12 products needed to sustain the life, health, and welfare of the people of this state.

13 (b) That the preservation of farmland is important for the current and future
14 state economy and for the current and future environment of this state.

15 (c) That purchases of agricultural conservation easements, as provided in this
16 section, serve important public purposes of statewide significance.

17 **(1m) DEFINITIONS.** In this section:

18 (a) "Agricultural conservation easement" means a conservation easement, as
19 defined in s. 700.40 (1) (a), the purpose of which is to assure the availability of land
20 for agricultural use.

21 (b) "Agricultural use" means any of the following:

22 1. Any of the following activities conducted for the purpose of producing an
23 income or livelihood:

24 a. Crop or forage production.

25 b. Keeping livestock.

- 1 c. Beekeeping.
- 2 d. Nursery, sod, or Christmas tree production.
- 3 e. Floriculture.
- 4 f. Aquaculture.
- 5 g. Fur farming.
- 6 h. Forest management.
- 7 i. Enrollment of land in a federal agricultural commodity payment program or
- 8 a federal or state agricultural land conservation payment program.
- 9 2. Any other use that the department, by rule, identifies as an agricultural use.
- 10 (c) "Cooperating entity" means a political subdivision or nonprofit conservation
- 11 organization.
- 12 (d) "Fair market value" means value as determined by a professional appraisal
- 13 that is approved by the department.
- 14 (dm) "Livestock" means bovine animals, equine animals, goats, poultry, sheep,
- 15 swine, farm-raised deer, farm-raised game birds, camelids, ratites, and farm-raised
- 16 fish.
- 17 (e) "Nonprofit conservation organization" means a nonstock corporation,
- 18 charitable trust, or other entity whose purposes include the acquisition of property
- 19 for conservation or agricultural preservation purposes, that is described in section
- 20 501 (c) (3) of the Internal Revenue Code, that is exempt from federal income tax
- 21 under section 501 (a) of the Internal Revenue Code, and that is a qualified
- 22 organization under section 170 (h) (3) of the Internal Revenue Code.
- 23 (f) "Political subdivision" means a city, village, town, or county.
- 24 (g) "Professional appraisal" means an appraisal conducted by a certified
- 25 general appraiser, as defined in s. 458.01 (8).

1 (h) "Purchase cost" means the amount paid to a landowner to acquire an
2 agricultural conservation easement from the landowner.

3 (i) "Transaction costs" means out-of-pocket expenses incurred in connection
4 with the acquisition, processing, recording, and documentation of an agricultural
5 conservation easement, including out-of-pocket expenses for land surveys, land
6 descriptions, real estate appraisals, title verification, preparation of legal
7 documents, reconciliation of conflicting property interests, documentation of
8 existing land uses, and closing. "Transaction costs" does not include costs incurred
9 by a cooperating entity for staffing, overhead, or operations.

10 (2) PROGRAM. (a) The department shall administer a program under which it,
11 together with cooperating entities, purchases agricultural conservation easements
12 from willing landowners. The department may pay as its share of the cost to
13 purchase an agricultural conservation easement under this section an amount that
14 does not exceed the sum of the following:

15 1. Fifty percent of the fair market value of the agricultural conservation
16 easement.

17 2. The reasonable transaction costs related to the purchase of the agricultural
18 conservation easement.

19 (am) The willingness of a landowner to convey an agricultural conservation
20 easement for less than full market value does not reduce the amount that the
21 department may pay as its share of the cost to purchase the agricultural conservation
22 easement.

23 (b) The department, after consultation with the council under sub. (13), shall
24 solicit applications under sub. (3) at least annually. The department shall issue each
25 solicitation in writing and shall publish a notice announcing the solicitation. In

1 soliciting applications, the department may specify the total amount of funds
2 available, application deadlines, application requirements and procedures,
3 preliminary criteria for evaluating applications, and other relevant information.

4 (3) APPLICATION. A cooperating entity may apply to participate in the program
5 under this section by submitting an application that complies with requirements
6 contained in the department's solicitation under sub. (2) (b) and that contains all of
7 the following:

8 (a) Identifying information for the cooperating entity, including information
9 showing that the cooperating entity is a political subdivision or nonprofit
10 conservation organization.

11 (b) A description of the land that would be subject to the proposed agricultural
12 conservation easement, including location, acreage, and current use.

13 (c) The name and address of each owner of land that would be subject to the
14 proposed agricultural conservation easement.

15 (d) Evidence that all of the owners under par. (c) are willing to convey the
16 proposed agricultural conservation easement.

17 (e) An indication that the cooperating entity is willing to arrange the purchase
18 of the proposed agricultural conservation easement in accordance with this section
19 and share in the purchase cost, subject to reimbursement under sub. (9) of the
20 department's agreed upon share of the costs.

21 (f) The purpose of and rationale for the proposed agricultural conservation
22 easement.

23 (g) Information needed to evaluate the application using the criteria in sub. (4)
24 and in the department's solicitation under sub. (2) (b).

1 (4) APPLICATION EVALUATION CRITERIA. The department may not approve an
2 application under sub. (3) unless the department determines that purchase of the
3 proposed agricultural conservation easement will serve a public purpose. In making
4 this determination, the department shall consider all of the following criteria:

5 (a) The value of the proposed agricultural conservation easement in preserving
6 or enhancing agricultural production capacity in this state.

7 (b) The importance of the proposed agricultural conservation easement in
8 protecting or enhancing the waters of the state or in protecting or enhancing other
9 public assets.

10 (c) The extent to which the proposed agricultural conservation easement would
11 conserve important or unique agricultural resources, such as prime soils and soil
12 resources that are of statewide importance or are unique.

13 (d) The extent to which the proposed agricultural conservation easement would
14 be consistent with local land use plans and zoning ordinances, including any certified
15 farmland preservation plans and zoning ordinances under ch. 91.

16 (e) The extent to which the proposed agricultural conservation easement would
17 enhance an agricultural enterprise area designated under s. 91.84.

 ****NOTE: This paragraph depends on combining the farmland preservation
(09-0203) draft with this one. If the drafts are not combined, this paragraph must be
deleted.

18 (f) The availability, practicality, and effectiveness of other methods to preserve
19 the land that would be subject to the proposed agricultural conservation easement.

20 (h) The proximity of the land that would be subject to the proposed agricultural
21 conservation easement to other land that is protected for agricultural use or
22 conservation use and the extent to which the proposed agricultural conservation
23 easement would enhance that protection.

1 (i) The likely cost-effectiveness of the proposed agricultural conservation
2 easement in preserving land for agricultural use.

3 (j) The likelihood that the land that would be subject to the proposed
4 agricultural conservation easement would be converted to nonagricultural use if the
5 land is not protected by the proposed agricultural conservation easement.

6 (k) The apparent willingness of each landowner to convey the proposed
7 agricultural conservation easement.

8 **(5) PRELIMINARY APPROVAL OF APPLICATIONS.** The department may give
9 preliminary approval to an application under sub. (3) after evaluating the
10 application under sub. (4) and consulting with the council under sub. (13). The
11 department shall give its preliminary approval in writing. Approval of an
12 application is contingent on the signing of a contract under sub. (6m).

13 **(6) INFORMATION RELATED TO PROPOSED EASEMENT.** A cooperating entity that
14 receives a preliminary approval under sub. (5) shall submit all of the following to the
15 department:

16 (a) A copy of the proposed instrument for conveying the agricultural
17 conservation easement.

18 (b) A professional appraisal of the proposed agricultural conservation
19 easement.

20 (c) A statement of the purchase cost of the agricultural conservation easement.

21 (d) An estimate of the transaction costs that the cooperating entity will incur
22 in connection with the purchase of the proposed agricultural conservation easement.

23 (e) The record of a complete search of title records that verifies ownership of
24 the land that would be subject to the proposed agricultural conservation easement

1 and identifies any potentially conflicting property interests, including any liens,
2 mortgages, easements, or reservations of mineral rights.

3 (f) Documentation showing to the satisfaction of the department that any
4 material title defects will be eliminated and any materially conflicting property
5 interests will be subordinated to the proposed agricultural conservation easement
6 or eliminated.

7 **(6m) CONTRACT WITH COOPERATING ENTITY.** After a cooperating entity complies
8 with sub. (6) and the department determines that the proposed instrument of
9 conveyance complies with sub. (7), the department and the cooperating entity may
10 enter into a written contract that specifies the terms and conditions of the
11 department's participation in the purchase of the proposed agricultural conservation
12 easement. The cooperating entity shall agree to pay the full purchase cost and the
13 transaction costs related to the purchase of the proposed agricultural conservation
14 easement, subject to reimbursement under sub. (9) of the department's agreed upon
15 share of the costs.

16 **(7) PURCHASE OF EASEMENT.** After a cooperating entity has entered into a
17 contract under sub. (6m), the cooperating entity may, in accordance with the
18 contract, purchase the agricultural conservation easement on behalf of the
19 cooperating entity and the department if the agricultural conservation easement
20 does all of the following:

21 (a) Prohibits the land subject to the agricultural conservation easement from
22 being developed for a use that would make the land unavailable or unsuitable for
23 agricultural use.

24 (b) Continues in perpetuity, except as provided in par. (dm).

1 (c) Provides that the cooperating entity and the department, on behalf of this
2 state, are both holders of the agricultural conservation easement.

3 (d) Prohibits any holder of the agricultural conservation easement other than
4 the department from transferring or relinquishing the holder's interest without 60
5 days' prior notice to the department.

6 (dm) Provides that a court may do all of the following if, at any time, the court
7 finds that due to unforeseen circumstances it is no longer possible for the agricultural
8 conservation easement to serve its original purpose:

9 1. Terminate the agricultural conservation easement.

10 2. Order the property owner to pay compensation to the holders of the
11 agricultural conservation easement, including this state, under the terms the court
12 determines to be appropriate.

13 (e) Complies with any other conditions specified in the contract under sub.
14 (6m).

15 **(8) ACCEPTANCE AND RECORDING OF EASEMENT.** A cooperating entity that
16 purchases an agricultural conservation easement under sub. (7) shall submit the
17 agricultural conservation easement to the department for its acceptance. Upon
18 acceptance by the department, the cooperating entity shall promptly record the
19 agricultural conservation easement and acceptance with the register of deeds of the
20 county in which the land subject to the agricultural conservation easement is located
21 and shall provide to the department a copy of the recorded instrument conveying the
22 agricultural conservation easement, certified by the register of deeds under s. 59.43
23 (1) (i).

24 **(9) PAYMENT.** The department shall reimburse a cooperating entity for the
25 department's agreed upon portion of the purchase cost and transaction costs related

1 to the purchase of an agricultural conservation easement after the cooperating entity
2 does all of the following:

3 (a) Complies with sub. (8).

4 (b) Submits documentation showing that any material title defects have been
5 eliminated and any materially conflicting property interests have been eliminated
6 or subordinated to the agricultural conservation easement, as required by the
7 contract under sub. (6m).

8 (c) Submits proof of the amount of the purchase cost and transaction costs that
9 the cooperating entity has paid, consistent with the contract under sub. (6m).

10 (10) TRANSFER OR RELINQUISHMENT OF HOLDER'S INTEREST. The transfer or
11 relinquishment of another holder's interest does not affect the department's interest
12 in an agricultural conservation easement.

13 (11) ENFORCEMENT OF EASEMENT. The department or any other holder of an
14 agricultural conservation easement purchased under this section may enforce and
15 defend the agricultural conservation easement.

16 (12) RECORD OF EASEMENTS. The department shall maintain a record of all
17 agricultural conservation easements purchased under this section.

18 (13) COUNCIL. The department shall appoint a council under s. 15.04 (1) (c) to
19 advise the department on the administration of this section.

20 SECTION 7. 165.25 (4) (ar) of the statutes is amended to read:

21 165.25 (4) (ar) The department of justice shall furnish all legal services
22 required by the department of agriculture, trade and consumer protection relating
23 to the enforcement of ss. 93.73, 100.171, 100.173, 100.174, 100.175, 100.177, 100.18,
24 100.182, 100.195, 100.20, 100.205, 100.207, 100.209, 100.21, 100.28, 100.37, 100.42,

1 100.50, and 100.51, and 100.55, and chs. 126, 136, 344, 704, 707, and 779, together
2 with any other services as are necessarily connected to the legal services.

3 (END)

2009-2010 DRAFTING INSERT
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-0202/2ins
RCT.....

1 **Analysis insert**

Current law authorizes DATCP to participate in the federal Conservation Reserve Enhancement Program (CREP) under which payments are made to landowners for measures to improve water quality, erosion control, and wildlife habitat. Current law authorizes \$40,000,000 in general fund supported borrowing for participation in CREP. This bill reduces that borrowing authority by \$12,000,000.

2 **Insert 3-22**

3 ~~SECTION 11~~ 20.866 (2) (wf) of the statutes is amended to read:

4 20.866 (2) (wf) *Agriculture; conservation reserve enhancement.* From the
5 capital improvement fund, a sum sufficient for the department of agriculture, trade
6 and consumer protection to fund the conservation reserve enhancement program
7 under s. 93.70. The state may contract public debt in an amount not to exceed
8 \$40,000,000 \$28,000,000 for this purpose.

History: 1971 c. 42; 1971 c. 100 s. 23; 1971 c. 125, 211, 215, 236, 307, 330, 336; 1973 c. 90 ss. 148 to 149m, 555m (2); 1973 c. 333; 1975 c. 26, 39, 40, 41, 200, 224, 422; 1977 c. 4, 6; 1977 c. 29 ss. 385 to 387, 1650m (4), 1656 (43); 1977 c. 418; 1979 c. 4; 1979 c. 34 ss. 675a to 677v, 2102 (6) (a), (39) (a), (52) (a); 1979 c. 107, 221; 1981 c. 1 ss. 17, 18, 47; 1981 c. 20, 108, 317, 336; 1983 a. 27; 1983 a. 36 s. 96 (4); 1983 a. 97, 192, 195, 212; 1983 a. 410 s. 2202 (2); 1985 a. 6; 1985 a. 8 ss. 4, 12; 1985 a. 29 ss. 589m to 598, 3202 (23) (c), (26) (a), (53) (a); 1985 a. 77, 120, 332; 1987 a. 27, 295, 298, 399, 403, 409; 1989 a. 31, 46, 107, 122, 219, 336, 359, 366; 1991 a. 39, 51, 269, 309, 324; 1993 a. 2, 16, 98, 115, 213, 343, 377, 413, 437, 453, 485; 1995 a. 27 ss. 1159 to 1168s, 9126 (19), 9145 (1); 1995 a. 40, 57, 60, 113; 1995 a. 216, s. 30m and 9127; 1995 a. 227, 246, 372, 388, 416, 452; 1997 a. 27, 35, 61, 164, 237, 252; 1999 a. 4, 9, 146; 1999 a. 150 s. 672; 1999 a. 184; 2001 a. 12, 16, 103, 109; 2003 a. 33, 64, 91, 129; 2005 a. 1, 22, 25, 102, 300; 2007 a. 5; 2007 a. 20 ss. 582 to 597s, 9121 (6) (a); 2007 a. 226.