



State of Wisconsin

LEGISLATIVE REFERENCE BUREAU

RESEARCH APPENDIX - **PLEASE DO NOT REMOVE FROM DRAFTING FILE**

Date Transfer Requested: 03/19/2009 (Per: RCT)



 Appendix A ... Part 02 of 06

 The 2007 drafting file for LRB-0447

has been transferred to the drafting file for

2009 LRB-0203

☛ This cover sheet, the final request sheet, and the final version of the 2007 draft were copied on yellow paper, and returned to the original 2005 drafting file.

☛ The attached 2007 draft was incorporated into the new 2009 draft listed above. For research purposes, this cover sheet and the complete drafting file were transferred, as a separate appendix, to the 2009 drafting file. If introduced this section will be scanned and added, as a separate appendix, to the electronic drafting file folder.



State of Wisconsin
2007 - 2008 LEGISLATURE

LRB-0447/P1
RCT&MES:...

Wanted Fri: 12/14 if possible

kyf

PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION

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1 AN ACT ...; relating to: farmland preservation, the farmland preservation tax
2 credit, the farmland tax relief credit, and granting rule-making authority.

Analysis by the Legislative Reference Bureau

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

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

3 SECTION 1. 23.094 (2) (c) 3. of the statutes is repealed.

***NOTE: Is this the appropriate treatment of s. 23.094 (2) (c) 3.?

4 SECTION 2. 66.0721 (1) (b) of the statutes is amended to read:

5 66.0721 (1) (b) "Eligible farmland" means a parcel of 35 or more acres of
6 contiguous land which is devoted exclusively to agricultural use which during the
7 year preceding the year in which the land is subject to a special assessment under
8 this section produced gross farm profits, as defined in s. 71.58 (4), of not less than
9 \$6,000 or which, during the 3 years preceding the year in which the land is subject

SECTION 2

1 to a special assessment under this section, produced gross farm profits, as defined
2 in s. 71.58 (4), of not less than \$18,000.

****NOTE: Do you want to keep the reference to s. 71.58 (4), or do you want the new
definition for gross farm profits under s. 71.613 (1)?

History: 1999 a. 150 ss. 208, 530; Stats. 1999 s. 66.0721.

3 **SECTION 3.** 71.07 (2fd) (a) of the statutes is amended to read:

4 71.07 (2fd) (a) *Credit.* Except as provided in par. (b), if the director of the
5 agriculture stabilization and conservation service certifies on or before October 1,
6 1988, that at least 40% of the crops in this state have been lost, for taxable year 1988
7 any claimant may credit against taxes otherwise due under this chapter an amount
8 equal to 10% of the property taxes exclusive of special assessments, delinquent
9 interest and charges for service, up to \$10,000, on that claimant's farm for the year
10 for which the claim under this subsection is made. In this subsection, "farm" means
11 35 or more acres of real property in this state owned by the claimant or any member
12 of the claimant's household during the taxable year for which a credit under this
13 subsection is claimed if the farm, during that year, produced not less than \$6,000 in
14 gross farm profits resulting from the farm's agricultural use, as defined in s. 91.01
15 (1), 2005 stats., or if the farm, during that year and the 2 years immediately
16 preceding that year, produced not less than \$18,000 in such profits. In deciding who
17 is a claimant under this subsection, the department of revenue shall be guided by s.
18 71.58 (1) (a) to (g).

****NOTE: Do you want to keep the reference to s. 71.58 (1) (a) to (g) or do you want
the new definition for claimant under s. 71.613 (1)?

History: 1987 a. 312; 1987 a. 411 ss. 63, 79 to 82, 85, 86; 1987 a. 419, 422; 1989 a. 31, 44, 56, 100, 359; 1991 a. 39, 269, 292; 1993 a. 16, 112, 204, 471,
491; 1995 a. 27 ss. 3377m to 3393m, 9116 (5); 1995 a. 209, 227, 400, 453; 1997 a. 27, 41, 237, 299; 1999 a. 5, 9, 10, 32; 1999 a. 150 s. 672; 1999 a. 198; 2001
a. 16, 109; 2003 a. 72, 99, 135, 183, 255, 267, 326; 2005 a. 25, 49, 72, 74, 97, 177, 254, 361, 387, 479, 483, 487.

19 **SECTION 4.** 71.07 (3m) (a) 3. of the statutes is amended to read:

20 71.07 (3m) (a) 3. "Farmland" means 35 or more acres of real property, exclusive
21 of improvements, in this state, in agricultural use, as defined in s. 91.01 (1), 2005

1 stats., and owned by the claimant or any member of the claimant's household during
2 the taxable year for which a credit under this subsection is claimed if the farm of
3 which the farmland is a part, during that year, produced not less than \$6,000 in gross
4 farm profits resulting from agricultural use, as defined in s. 91.01 (1), or if the farm
5 of which the farmland is a part, during that year and the 2 years immediately
6 preceding that year, produced not less than \$18,000 in such profits, or if at least 35
7 acres of the farmland, during all or part of that year, was enrolled in the conservation
8 reserve program under 16 USC 3831 to 3836.

History: 1987 a. 312; 1987 a. 411 ss. 63, 79 to 82, 85, 86; 1987 a. 419, 422; 1989 a. 31, 44, 56, 100, 359; 1991 a. 39, 269, 292; 1993 a. 16, 112, 204, 471, 491; 1995 a. 27
ss. 3377m to 3393m, 9116 (5); 1995 a. 209, 227, 400, 453; 1997 a. 27, 41, 237, 299; 1999 a. 5, 9, 10, 32; 1999 a. 150 s. 672; 1999 a. 198; 2001 a. 16, 109; 2003 a. 72, 99, 135,
183, 255, 267, 326; 2005 a. 25, 49, 72, 74, 97, 177, 254, 361, 387, 479, 483, 487; 2007 a. 11.

9 **SECTION 5.** 71.07 (3m) (a) 4. of the statutes is amended to read:

10 71.07 (3m) (a) 4. "Gross farm profits" means gross receipts, excluding rent,
11 from agricultural use, as defined in s. 91.01 (1), 2005 stats., including the fair market
12 value at the time of disposition of payments in kind for placing land in federal
13 programs or payments from the federal dairy termination program under 7 USC
14 1446 (d), less the cost or other basis of livestock or other items purchased for resale
15 which are sold or otherwise disposed of during the taxable year.

History: 1987 a. 312; 1987 a. 411 ss. 63, 79 to 82, 85, 86; 1987 a. 419, 422; 1989 a. 31, 44, 56, 100, 359; 1991 a. 39, 269, 292; 1993 a. 16, 112, 204, 471, 491; 1995 a. 27
ss. 3377m to 3393m, 9116 (5); 1995 a. 209, 227, 400, 453; 1997 a. 27, 41, 237, 299; 1999 a. 5, 9, 10, 32; 1999 a. 150 s. 672; 1999 a. 198; 2001 a. 16, 109; 2003 a. 72, 99, 135,
183, 255, 267, 326; 2005 a. 25, 49, 72, 74, 97, 177, 254, 361, 387, 479, 483, 487; 2007 a. 11.

16 **SECTION 6.** 71.07 (3m) (e) of the statutes is created to read:

17 71.07 (3m) (e) *Sunset*. No new claim may be filed under this subsection for a
18 taxable year that begins after December 31, 2008.

19 **SECTION 7.** 71.08 (1) (intro.) of the statutes, as affected by 2007 Wisconsin Act
20 20, is amended to read:

21 71.08 (1) IMPOSITION. (intro.) If the tax imposed on a natural person, married
22 couple filing jointly, trust, or estate under s. 71.02, not considering the credits under
23 ss. 71.07 (1), (2dd), (2de), (2di), (2dj), (2dL), (2dr), (2ds), (2dx), (2fd), (3m), (3n), (3p),

SECTION 7

1 (3s), (3t), (3w), (5b), (5d), (5e), (5f), (6), (6e), and (9e), 71.28 (1dd), (1de), (1di), (1dj),
 2 (1dL), (1ds), (1dx), (1fd), (2m), (3), (3n), (3t), and (3w), and 71.47 (1dd), (1de), (1di),
 3 (1dj), (1dL), (1ds), (1dx), (1fd), (2m), (3), (3n), (3t), and (3w), and subchs. ~~subch.~~ VIII
 4 and IX ss. 71.57 to 71.61 and payments to other states under s. 71.07 (7), is less than
 5 the tax under this section, there is imposed on that natural person, married couple
 6 filing jointly, trust or estate, instead of the tax under s. 71.02, an alternative
 7 minimum tax computed as follows:

History: 2007 a. 20.

8 SECTION 8. 71.10 (4) (de) of the statutes is created to read:

9 71.10 (4) (de) The farmland preservation credit under s. 71.613.

10 SECTION 9. 71.10 (4) (i) of the statutes, as affected by 2007 Wisconsin Act, is
 11 amended to read:

12 71.10 (4) (i) The total of claim of right credit under s. 71.07 (1), farmland
 13 preservation credit under subch. IX 71.57 to 71.61, homestead credit under subch.
 14 VIII, farmland tax relief credit under s. 71.07 (3m), farmers' drought property tax
 15 credit under s. 71.07 (2fd), dairy manufacturing facility investment credit under s.
 16 71.07 (3p), film production services credit under s. 71.07 (5f) (b) 2., veterans and
 17 surviving spouses property tax credit under s. 71.07 (6e), enterprise zone jobs credit
 18 under s. 71.07 (3w), earned income tax credit under s. 71.07 (9e), estimated tax
 19 payments under s. 71.09, and taxes withheld under subch. X.

History: 2007 a. 20.

20 SECTION 10. 71.28 (1fd) (a) of the statutes is amended to read:

21 71.28 (1fd) (a) *Credit.* Except as provided in par. (b), if the director of the
 22 agriculture stabilization and conservation service certifies on or before October 1,
 23 1988, that at least 40% of the crops in this state have been lost, for taxable year 1988

1 any claimant may credit against taxes otherwise due under this chapter an amount
2 equal to 10% of the property taxes exclusive of special assessments, delinquent
3 interest and charges for service, up to \$10,000, on that claimant's farm for the year
4 for which the claim under this subsection is made. In this subsection, "farm" means
5 35 or more acres of real property in this state owned by the claimant or any member
6 of the claimant's household during the taxable year for which a credit under this
7 subsection is claimed if the farm, during that year, produced not less than \$6,000 in
8 gross farm profits resulting from the farm's agricultural use, as defined in s. 91.01
9 (1), 2005 stats., or if the farm, during that year and the 2 years immediately
10 preceding that year, produced not less than \$18,000 in such profits. In deciding who
11 is a claimant under this subsection, the department of revenue shall be guided by s.
12 71.58 (1) (a) to (g).

***NOTE: Do you want to keep the reference to s. 71.58 (1) (a) to (g) or do you want
the new definition for claimant under s. 71.613 (1)?

History: 1987 a. 312; 1987 a. 411 ss. 88, 130 to 139; 1987 a. 422; 1989 a. 31, 44, 56, 100, 336, 359; 1991 a. 39, 292; 1993 a. 16, 112, 232, 491; 1995 a. 2;
1995 a. 27 ss. 3399r to 3404c, 9116 (5); 1995 a. 209, 227; 1997 a. 27, 41, 237, 299; 1999 a. 5, 9; 2001 a. 16; 2003 a. 72, 99, 135, 255, 267, 326; 2005 a. 25, 74,
97, 361, 387, 452, 479, 483, 487; s. 13.93 (2) (c).

13 **SECTION 11.** 71.28 (2m) (a) 3. of the statutes is amended to read:

14 71.28 (2m) (a) 3. "Farmland" means 35 or more acres of real property, exclusive
15 of improvements, in this state, in agricultural use, as defined in s. 91.01 (1), 2005
16 stats., and owned by the claimant or any member of the claimant's household during
17 the taxable year for which a credit under this subsection is claimed if the farm of
18 which the farmland is a part, during that year, produced not less than \$6,000 in gross
19 farm profits resulting from agricultural use, as defined in s. 91.01 (1), or if the farm
20 of which the farmland is a part, during that year and the 2 years immediately
21 preceding that year, produced not less than \$18,000 in such profits, or if at least 35

1 acres of the farmland, during all or part of that year, was enrolled in the conservation
2 reserve program under 16 USC 3831 to 3836.

History: 1987 a. 312; 1987 a. 411 ss. 88, 130 to 139; 1987 a. 422; 1989 a. 31, 44, 56, 100, 336, 359; 1991 a. 39, 292; 1993 a. 16, 112, 232, 491; 1995 a. 2; 1995 a. 27 ss. 3399r to 3404c, 9116 (5); 1995 a. 209, 227; 1997 a. 27, 41, 237, 299; 1999 a. 5, 9; 2001 a. 16; 2003 a. 72, 99, 135, 255, 267, 326; 2005 a. 25, 74, 97, 361, 387, 452, 479, 483, 487; s. 13.93 (2) (c).

3 **SECTION 12.** 71.28 (2m) (a) 4. of the statutes is amended to read:

4 71.28 (2m) (a) 4. "Gross farm profits" means gross receipts, excluding rent,
5 from agricultural use, as defined in s. 91.01 (1), 2005 stats., including the fair market
6 value at the time of disposition of payments in kind for placing land in federal
7 programs or payments from the federal dairy termination program under 7 USC
8 1446 (d), less the cost or other basis of livestock or other items purchased for resale
9 which are sold or otherwise disposed of during the taxable year.

History: 1987 a. 312; 1987 a. 411 ss. 88, 130 to 139; 1987 a. 422; 1989 a. 31, 44, 56, 100, 336, 359; 1991 a. 39, 292; 1993 a. 16, 112, 232, 491; 1995 a. 2; 1995 a. 27 ss. 3399r to 3404c, 9116 (5); 1995 a. 209, 227; 1997 a. 27, 41, 237, 299; 1999 a. 5, 9; 2001 a. 16; 2003 a. 72, 99, 135, 255, 267, 326; 2005 a. 25, 74, 97, 361, 387, 452, 479, 483, 487; s. 13.93 (2) (c).

10 **SECTION 13.** 71.28 (2m) (e) of the statutes is created to read:

11 71.28 (2m) (e) *Sunset.* No new claim may be filed under this subsection for a
12 taxable year that begins after December 31, 2008.

13 **SECTION 14.** 71.47 (1fd) (a) of the statutes is amended to read:

14 71.47 (1fd) (a) *Credit.* Except as provided in par. (b), if the director of the
15 agriculture stabilization and conservation service certifies on or before October 1,
16 1988, that at least 40% of the crops in this state have been lost, for taxable year 1988
17 any claimant may credit against taxes otherwise due under this chapter an amount
18 equal to 10% of the property taxes exclusive of special assessments, delinquent
19 interest and charges for service, up to \$10,000, on that claimant's farm for the year
20 for which the claim under this subsection is made. In this subsection, "farm" means
21 35 or more acres of real property in this state owned by the claimant or any member
22 of the claimant's household during the taxable year for which a credit under this
23 subsection is claimed if the farm, during that year, produced not less than \$6,000 in

1 gross farm profits resulting from the farm's agricultural use, as defined in s. 91.01
2 (1), 2005 stats., or if the farm, during that year and the 2 years immediately
3 preceding that year, produced not less than \$18,000 in such profits. In deciding who
4 is a claimant under this subsection, the department of revenue shall be guided by s.
5 71.58 (1) (a) to (g).

****NOTE: Do you want to keep the reference to s. 71.58 (1) (a) to (g) or do you want
the new definition for claimant under s. 71.613 (1)?

History: 1987 a. 312, 411, 422; 1989 a. 31, 44, 56, 100, 336, 359; 1991 a. 39, 292, 315; 1993 a. 16, 112; 1995 a. 27 ss. 3407m to 3412m, 9116 (5); 1995 a. 209, 227, 417; 1997 a. 27, 41, 237, 299; 1999 a. 5, 9; 2001 a. 16; 2003 a. 72, 99, 135, 255, 267, 326; 2005 a. 25, 74, 97, 361, 387, 452, 479, 483, 487; s. 13.93 (2) (c).

6 **SECTION 15.** 71.47 (2m) (a) 3. of the statutes is amended to read:

7 71.47 (2m) (a) 3. "Farmland" means 35 or more acres of real property, exclusive
8 of improvements, in this state, in agricultural use, as defined in s. 91.01 (1), 2005
9 stats., and owned by the claimant or any member of the claimant's household during
10 the taxable year for which a credit under this subsection is claimed if the farm of
11 which the farmland is a part, during that year, produced not less than \$6,000 in gross
12 farm profits resulting from agricultural use, as defined in s. 91.01 (1), or if the farm
13 of which the farmland is a part, during that year and the 2 years immediately
14 preceding that year, produced not less than \$18,000 in such profits, or if at least 35
15 acres of the farmland, during all or part of that year, was enrolled in the conservation
16 reserve program under 16 USC 3831 to 3836.

History: 1987 a. 312, 411, 422; 1989 a. 31, 44, 56, 100, 336, 359; 1991 a. 39, 292, 315; 1993 a. 16, 112; 1995 a. 27 ss. 3407m to 3412m, 9116 (5); 1995 a. 209, 227, 417; 1997 a. 27, 41, 237, 299; 1999 a. 5, 9; 2001 a. 16; 2003 a. 72, 99, 135, 255, 267, 326; 2005 a. 25, 74, 97, 361, 387, 452, 479, 483, 487; s. 13.93 (2) (c).

17 **SECTION 16.** 71.47 (2m) (a) 4. of the statutes is amended to read:

18 71.47 (2m) (a) 4. "Gross farm profits" means gross receipts, excluding rent,
19 from agricultural use, as defined in s. 91.01 (1), 2005 stats., including the fair market
20 value at the time of disposition of payments in kind for placing land in federal
21 programs or payments from the federal dairy termination program under 7 USC

1 1446 (d), less the cost or other basis of livestock or other items purchased for resale
2 which are sold or otherwise disposed of during the taxable year.

History: 1987 a. 312, 411, 422; 1989 a. 31, 44, 56, 100, 336, 359; 1991 a. 39, 292, 315; 1993 a. 16, 112; 1995 a. 27 ss. 3407m to 3412m, 9116 (5); 1995 a. 209, 227, 417; 1997 a. 27, 41, 237, 299; 1999 a. 5, 9; 2001 a. 16; 2003 a. 72, 99, 135, 255, 267, 326; 2005 a. 25, 74, 97, 361, 387, 452, 479, 483, 487; s. 13.93 (2) (c).

3 **SECTION 17.** 71.47 (2m) (d) of the statutes is amended to read:

4 71.47 (2m) (d) *General provisions.* Section 71.61 (1) to (4) as it applies to the
5 credit under subch. IX applies to the credit under this subsection.

History: 1987 a. 312, 411, 422; 1989 a. 31, 44, 56, 100, 336, 359; 1991 a. 39, 292, 315; 1993 a. 16, 112; 1995 a. 27 ss. 3407m to 3412m, 9116 (5); 1995 a. 209, 227, 417; 1997 a. 27, 41, 237, 299; 1999 a. 5, 9; 2001 a. 16; 2003 a. 72, 99, 135, 255, 267, 326; 2005 a. 25, 74, 97, 361, 387, 452, 479, 483, 487; s. 13.93 (2) (c).

6 **SECTION 18.** 71.47 (2m) (e) of the statutes is created to read:

7 71.47 (2m) (e) *Sunset.* No new claim may be filed under this subsection for a
8 taxable year that begins after December 31, 2007.

9 **SECTION 19.** 71.57 of the statutes is amended to read:

10 **71.57 Purpose.** The purpose of this subchapter ss. 71.58 to 71.61 is to provide
11 credit to owners of farmland which is subject to agricultural use restrictions, through
12 a system of income or franchise tax credits and refunds and appropriations from the
13 general fund.

History: 1987 a. 312; 1991 a. 39.

14 **SECTION 20.** 71.58 (intro.) of the statutes is amended to read:

15 **71.58 Definitions.** (intro.) In this subchapter ss. 71.57 to 71.61:

History: 1987 a. 312, 411; 1989 a. 31; 1993 a. 112; 2005 a. 25, 387.

16 **SECTION 21.** 71.58 (1) (intro.) of the statutes is amended to read:

17 71.58 (1) (intro.) "Claimant" means an owner of farmland, as defined in s. 91.01
18 (9), 2005 stats., domiciled in this state during the entire year for which a credit under
19 this subchapter ss. 71.57 to 71.61 is claimed, except as follows:

History: 1987 a. 312, 411; 1989 a. 31; 1993 a. 112; 2005 a. 25, 387.

20 **SECTION 22.** 71.58 (1) (b) of the statutes is amended to read:

21 71.58 (1) (b) If any person in a household has claimed or will claim credit under
22 subch. VIII, all persons from that household are ineligible to claim any credit under

~~NOTE~~ NOTE: Does the reference need to be changed?

1 ~~this subchapter ss. 71.57 to 71.61~~ for the year to which the credit under subch. VIII
2 pertained.

***NOTE: Do you want to apply this limitation to the credit under s. 71.613?

History: 1987 a. 312, 411; 1989 a. 31; 1993 a. 112; 2005 a. 25, 387.

3 **SECTION 23.** 71.58 (1) (d) of the statutes is amended to read:

4 71.58 (1) (d) For purposes of filing a claim under ~~this subchapter ss. 71.57 to~~
5 71.61, the personal representative of an estate and the trustee of a trust shall be
6 deemed owners of farmland. "Claimant" does not include the estate of a person who
7 is a nonresident of this state on the person's date of death, a trust created by a
8 nonresident person, a trust which receives Wisconsin real property from a
9 nonresident person or a trust in which a nonresident settlor retains a beneficial
10 interest.

History: 1987 a. 312, 411; 1989 a. 31; 1993 a. 112; 2005 a. 25, 387.

11 **SECTION 24.** 71.58 (1) (e) of the statutes is amended to read:

12 71.58 (1) (e) For purposes of filing a claim under ~~this subchapter ss. 71.57 to~~
13 71.61, when land is subject to a land contract, the claimant shall be the vendee under
14 the contract.

History: 1987 a. 312, 411; 1989 a. 31; 1993 a. 112; 2005 a. 25, 387.

15 **SECTION 25.** 71.58 (1) (f) of the statutes is amended to read:

16 71.58 (1) (f) For purposes of filing a claim under ~~this subchapter ss. 71.57 to~~
17 71.61, when a guardian has been appointed in this state for a ward who owns the
18 farmland, the claimant shall be the guardian on behalf of the ward.

History: 1987 a. 312, 411; 1989 a. 31; 1993 a. 112; 2005 a. 25, 387.

19 **SECTION 26.** 71.58 (3) of the statutes is amended to read:

20 71.58 (3) "Farmland" means 35 or more acres of real property in this state
21 owned by the claimant or any member of the claimant's household during the taxable
22 year for which a credit under ~~this subchapter ss. 71.57 to 71.61~~ is claimed if the
23 farmland, during that year, produced not less than \$6,000 in gross farm profits

1 resulting from the farmland's agricultural use, as defined in s. 91.01 (1), 2005 stats.,
2 or if the farmland, during that year and the 2 years immediately preceding that year,
3 produced not less than \$18,000 in such profits, or if at least 35 acres of the farmland,
4 during all or part of that year, was enrolled in the conservation reserve program
5 under 16 USC 3831 to 3836.

History: 1987 a. 312, 411; 1989 a. 31; 1993 a. 112; 2005 a. 25, 387.

6 **SECTION 27.** 71.58 (8) of the statutes is amended to read:

7 71.58 (8) "Property taxes accrued" means property taxes, exclusive of special
8 assessments, delinquent interest and charges for service, levied on the farmland and
9 improvements owned by the claimant or any member of the claimant's household in
10 any calendar year under ch. 70, less the tax credit, if any, afforded in respect of the
11 property by s. 79.10. "Property taxes accrued" shall not exceed \$6,000. If farmland
12 is owned by a tax-option corporation, a limited liability company or by 2 or more
13 persons or entities as joint tenants, tenants in common or partners or is marital
14 property or survivorship marital property and one or more such persons, entities or
15 owners is not a member of the claimant's household, "property taxes accrued" is that
16 part of property taxes levied on the farmland, reduced by the tax credit under s.
17 79.10, that reflects the ownership percentage of the claimant and the claimant's
18 household. For purposes of ~~this subsection~~ ss. 71.57 to 71.61, property taxes are
19 "levied" when the tax roll is delivered to the local treasurer for collection. If farmland
20 is sold during the calendar year of the levy the "property taxes accrued" for the seller
21 is the amount of the tax levy, reduced by the tax credit under s. 79.10, prorated to each
22 in the closing agreement pertaining to the sale of the farmland, except that if the
23 seller does not reimburse the buyer for any part of those property taxes there are no
24 "property taxes accrued" for the seller, and the "property taxes accrued" for the buyer

1 is the property taxes levied on the farmland, reduced by the tax credit under s. 79.10,
2 minus, if the seller reimburses the buyer for part of the property taxes, the amount
3 prorated to the seller in the closing agreement. With the claim for credit under this
4 subchapter ss. 71.57 to 71.61, the seller shall submit a copy of the closing agreement
5 and the buyer shall submit a copy of the closing agreement and a copy of the property
6 tax bill.

7 **History:** 1987 a. 312, 411; 1989 a. 31; 1993 a. 112; 2005 a. 25, 387.

7 **SECTION 28.** 71.59 (1) (a) of the statutes is amended to read:

8 71.59 (1) (a) Subject to the limitations provided in ~~this subchapter~~ ss. 71.57 to
9 71.61 and s. 71.80 (3) and (3m), a claimant may claim as a credit against Wisconsin
10 income or franchise taxes otherwise due, the amount derived under s. 71.60. If the
11 allowable amount of claim exceeds the income or franchise taxes otherwise due on
12 or measured by the claimant's income or if there are no Wisconsin income or franchise
13 taxes due on or measured by the claimant's income, the amount of the claim not used
14 as an offset against income or franchise taxes shall be certified to the department of
15 administration for payment to the claimant by check, share draft or other draft
16 drawn on the general fund.

17 **History:** 1987 a. 312, 411; 1989 a. 31, 359; 1991 a. 39, 309; 1995 a. 201; 1997 a. 137.

17 **SECTION 29.** 71.59 (1) (b) (intro.) of the statutes is amended to read:

18 71.59 (1) (b) (intro.) Every claimant under ~~this subchapter~~ ss. 71.57 to 71.61
19 shall supply, at the request of the department, in support of the claim, all of the
20 following:

21 **History:** 1987 a. 312, 411; 1989 a. 31, 359; 1991 a. 39, 309; 1995 a. 201; 1997 a. 137.

21 **SECTION 30.** 71.59 (1) (b) 4. of the statutes is amended to read:

1 71.59 (1) (b) 4. Certification by the claimant that each county land conservation
2 committee with jurisdiction over the farmland has been notified that the claimant
3 intends to submit a claim under ~~this subchapter~~ ss. 71.57 to 71.61.

4 **History:** 1987 a. 312, 411; 1989 a. 31, 359; 1991 a. 39, 309; 1995 a. 201; 1997 a. 137.

4 **SECTION 31.** 71.59 (2) (intro.) of the statutes is amended to read:

5 71.59 (2) INELIGIBLE CLAIMS. (intro.) No credit shall be allowed under this
6 subchapter ss. 71.57 to 71.61:

7 **History:** 1987 a. 312, 411; 1989 a. 31, 359; 1991 a. 39, 309; 1995 a. 201; 1997 a. 137.

7 **SECTION 32.** 71.59 (2) (d) of the statutes is amended to read:

8 71.59 (2) (d) For property taxes accrued on farmland zoned for exclusive
9 agricultural use under an ordinance certified under subch. V of ch. 91, 2005 stats.,
10 which is granted a special exception or conditional use permit for a use which is not
11 an agricultural use, as defined in s. 91.01 (1), 2005 stats.

12 **History:** 1987 a. 312, 411; 1989 a. 31, 359; 1991 a. 39, 309; 1995 a. 201; 1997 a. 137.

12 **SECTION 33.** 71.59 (2) (e) of the statutes is amended to read:

13 71.59 (2) (e) If the department determines that ownership of the farmland has
14 been transferred to the claimant primarily for the purpose of maximizing benefits
15 under ~~this subchapter~~ ss. 71.57 to 71.61.

16 **History:** 1987 a. 312, 411; 1989 a. 31, 359; 1991 a. 39, 309; 1995 a. 201; 1997 a. 137.

16 **SECTION 34.** 71.60 (1) (b) of the statutes is amended to read:

17 71.60 (1) (b) The credit allowed under ~~this subchapter~~ ss. 71.57 to 71.61 shall
18 be limited to 90% of the first \$2,000 of excessive property taxes plus 70% of the 2nd
19 \$2,000 of excessive property taxes plus 50% of the 3rd \$2,000 of excessive property
20 taxes. The maximum credit shall not exceed \$4,200 for any claimant. The credit for
21 any claimant shall be the greater of either the credit as calculated under ~~this~~
22 subchapter ss. 71.57 to 71.61 as it exists at the end of the year for which the claim
23 is filed or as it existed on the date on which the farmland became subject to a current

1 agreement under subch. II or III of ch. 91, 2005 stats., using for such calculations
2 household income and property taxes accrued of the year for which the claim is filed.

3 **History:** 1987 a. 312, 411; 1989 a. 31; 1991 a. 39; 1993 a. 246, 420.

3 **SECTION 35.** 71.61 of the statutes is amended to read:

4 **71.61 General provisions. (1) DEPARTMENT MAY APPLY CREDIT AGAINST ANY TAX**
5 **LIABILITY.** The amount of any claim otherwise payable under ~~this subchapter~~ ss. 71.57
6 to 71.60 may be applied by the department against any amount certified to the
7 department under s. 71.93 or 71.935 or may be credited under s. 71.80 (3) or (3m).

8 **(2) CREDITS ARE INCOME.** All amounts allowed as credits under ~~this subchapter~~
9 ss. 71.57 to 71.60 constitute income for income and franchise tax purposes and are
10 reportable as such in the year of receipt.

11 **(3) INTEREST NOT ALLOWED.** No interest may be allowed on any payment made
12 to a claimant under this subchapter ss. 71.57 to 71.60.

13 **(3m) ADMINISTRATION.** The income tax provisions in this chapter relating to
14 assessments, refunds, appeals and collection apply to the credit under ~~this~~
15 ~~subchapter~~ ss. 71.57 to 71.60.

16 **(4) PENALTIES.** Unless specifically provided in ~~this subchapter~~ ss. 71.57 to
17 71.60, the penalties under subch. XIII apply for failure to comply with ~~this~~
18 ~~subchapter~~ ss. 71.57 to 71.60 unless the context requires otherwise.

19 **(5) TABLE PREPARED BY DEPARTMENT.** The department shall prepare a table under
20 which claims under ~~this subchapter~~ ss. 71.57 to 71.60 shall be determined.

21 **History:** 1987 a. 312; 1989 a. 31; 1991 a. 39; 1995 a. 27.

21 **SECTION 36.** 71.61 (6) of the statutes is created to read:

22 **71.61 (6) PROHIBITION OF NEW CLAIMS.** For taxable years beginning after
23 December 31, 2008, no new claims for a credit may be filed under ss. 71.57 to 71.61,
24 but if an otherwise eligible claimant is subject to a farmland preservation agreement,

SECTION 36

1

as defined in s. 91.01 (7), 2005-2006 stats., that is in effect on January 1, 2009, the claimant may continue to file a claim for the credit under ss. 71.57 to 71.61 until the farmland preservation agreement expires.

4

SECTION 37. 71.613 of the statutes is created to read:

5

71.613 Farmland preservation credit, 2009 and beyond. (1) DEFINITIONS.

6

In this section:

7

(a) "Agricultural use" has the meaning given in s. 91.01 (2).

8

(b) "Claimant" means a person who owns farmland in this state, or who owned

9

farmland in this state during the taxable year to which the claim under this section

10

relates, and who files a claim under this section.

11

(c) "Department" means the department of revenue.

12

(d) "Farm" means a farm, as defined in s. 91.01 (13), that has produced at least

13

\$6,000 in gross farm profits during the taxable year to which the claim relates or, in

14

the taxable year to which the claim relates and the 2 immediately preceding taxable

15

years, at least \$18,000 in gross farm profits.

16

(e) "Farmland preservation agreement" has the meaning given in s. 91.01 (15).

17

(f) "Farmland preservation zoning district" has the meaning given in s. 91.01

18

(18).

19

(g) "Gross farm profits" means gross receipts from agricultural use of a farm,

20

less the cost or other basis of livestock or other agricultural items purchased for

21

resale which are sold or otherwise disposed of during the taxable year.

22

(h) "Qualifying acres" means the number of acres of a farm that correlate to a

23

claimant's percentage of ownership interest in a farm to which one of the following

24

applies:

1 1. The farm is wholly or partially covered by a farmland preservation
2 agreement.

3 2. The farm is located in a farmland preservation zoning district at the end of
4 the taxable year to which the claim relates.

5 3. If the claimant transferred the claimant's ownership interest in the farm
6 during the taxable year to which the claim relates, the farm was wholly or partially
7 covered by a farmland preservation agreement, or the farm was located in a farmland
8 preservation zoning district, on the date on which the claimant transferred the
9 ownership interest. For the purposes of this subdivision, a land contract is a transfer
10 of ownership interest. CS NO B

11 **(2) Filing claims.** Subject to the limitations and conditions provided in sub.
12 (3), a claimant may claim as a credit against the tax imposed under s. 71.02, 71.23,
13 or 71.43, up to the amount of those taxes, an amount calculated by multiplying the
14 claimant's qualifying acres by \$7.50. CS NO B

15 **(3) Limitations and conditions.** (a) No credit may be allowed under this
16 section unless all of the following apply:

17 1. The claimant has paid, or is legally responsible for paying, the property taxes
18 levied against the qualifying acres to which the claim relates.

19 2. At the end of the taxable year to which the claim relates or, on the date on
20 which the person transferred the person's ownership interest in the farm if the
21 transfer occurs during the taxable year to which the claim relates, there was no
22 outstanding notice of noncompliance issued against the farm under s. 91.82 (2).

23 (b) If a farm is jointly owned by 2 or more persons who file separate income or
24 franchise tax returns, each person may claim a credit under this section based on the
25 person's ownership interest in the farm.

1 (c) If a person acquires or transfers ownership of a farm during a taxable year
 2 for which a claim may be filed under this section, each person may file a claim under
 3 this section based on the person's liability for the property taxes levied on the
 4 person's qualifying acres for the taxable year to which the claim relates.

5 (d) A claimant shall claim the credit under this section on a form prepared by
 6 the department and shall submit any documentation required by the department.

7 (e) No credit may be allowed under this section unless it is claimed within the
 8 time period under s. 71.75 (2)

9 (4) **Administration.** The department may enforce the credit under this
 10 section and may take any action, conduct any proceeding, and proceed as it is
 11 authorized in respect to taxes under this chapter. The income tax provisions in this
 12 chapter relating to assessments, refunds, appeals, collection, interest, and penalties
 13 apply to the credit under this section.

14 **SECTION 38.** Chapter 91 of the statutes is repealed and recreated to read:

15 **CHAPTER 91**

16 **FARMLAND PRESERVATION**

17 **SUBCHAPTER I**

18 **DEFINITIONS AND GENERAL PROVISIONS**

19 **91.01 Definitions.** In this chapter:

20 (1) "Accessory use" means any of the following land uses:

21 (a) A building, structure, or improvement that is an integral part of, or is
 22 incidental to, an agricultural use.

23 (b) An activity or business operation that is an integral part of, or incidental
 24 to, an agricultural use.

25 (c) A farm residence.

Editor
check
x-ref
again
next
time

1 (d) A business, activity, or enterprise, whether or not associated with an
2 agricultural use, that is conducted by the owner or operator of a farm, that requires
3 no buildings, structures, or improvements other than those described in par. (a) or
4 (c), that employs no more than 4 full-time employees annually, and that does not
5 impair or limit the current or future agricultural use of the farm or of other protected
6 farmland.

7 (e) Any other use that the department, by rule, identifies as an accessory use.

8 (2) "Agricultural use" means any of the following:

9 (a) Any of the following activities conducted for the purpose of producing an
10 income or livelihood:

11 1. Crop, fiber, or forage production.

****NOTE: Fiber can be produced synthetically. Is there any kind of natural fiber
production that isn't either from a crop or from livestock? If not, "fiber" could be omitted.
Otherwise this should be changed in another way to exclude production of synthetic fiber.

12 2. Keeping livestock, including dairy cattle, poultry, horses, farm-raised deer,
13 and farm-raised game birds.

****NOTE: Should livestock be defined? Would "farm animals" be better? See s.
951.01 (3). Should this include cross-references to definitions of any of the included
terms (like farm-raised deer)?

14 3. Beekeeping.

15 4. Nursery, sod, or Christmas tree production.

16 5. Aquaculture.

17 6. Fur farming.

18 7. Forest management.

19 8. Enrolling land in a federal agricultural commodity payment program or a
20 federal or state agricultural land conservation payment program.

****NOTE: The proposed language included state agricultural commodity
programs. I am unaware of any state programs that fit this description. I am concerned
that this description is not sufficiently clear to specify the programs in which

participation qualifies as an agricultural use. Do all of the programs that are intended to be covered involve "enrolling" land?

1 (b) Any other use that the department, by rule, identifies as an agricultural use.

****NOTE: Does the definition of agricultural use cover raising flowers to sell as cut flowers? Should it? The proposed definition included "undeveloped natural resource and open space use." I omitted that because several places in the body of the chapter repeat those "uses" as well as referring to agricultural uses, making their inclusion in this definition redundant, and because the draft sometimes treats undeveloped areas differently than areas in agricultural use.

2 (3) "Agriculture-related use" means any of the following:

3 (a) An agricultural equipment dealership, facility providing agricultural
4 supplies, facility for storing or processing agricultural products, or facility for
5 processing agricultural wastes.

****NOTE: It seems that this would include ethanol and biodiesel plants. Is it intended to? Is it clear enough what agricultural supplies are? The catch all was so unclear, it should be reserved to the rule-making authorized in next paragraph.

6 (b) Any other use that the department, by rule, identifies as an
7 agriculture-related use.

8 (4) "Authorized use" means a use that is allowed without a conditional use
9 permit, special exception, or other special zoning permission.

****NOTE: The proposed draft uses the term "permitted use," but it is confusing to say that a permitted use is one for which a permit is not required. An alternative might be to use the term "unconditional use."

10 (5) "Base farm tract" means one of the following:

11 (a) All land, whether one parcel or two² or more contiguous parcels, that is in
12 a farmland preservation zoning district and that is part of a single farm when the
13 department under s. 91.36 (1) first certifies the farmland preservation zoning
14 ordinance covering the land, regardless of any subsequent changes in the size of the
15 farm.

****NOTE: There will be a long delay before all of the zoning ordinances are certified. See proposed s. 91.46 (2). What happens to proposals for nonfarm residences in the meantime?

16 (b) Any other tract that the department by rule defines as a base farm tract.

1 (6) "Certified farmland preservation plan" means a farmland preservation
2 plan that is certified as determined under s. 91.12.

3 (7) "Certified farmland preservation zoning ordinance" means a farmland
4 preservation zoning ordinance that is certified as determined under s. 91.32.

5 (8) "Chief elected official" means the mayor of a city or, if the city is organized
6 under subch. I of ch. 64, the president of the council of that city, the village president
7 of a village, the town board chairperson of a town, or the county executive of a county,
8 or, if the county does not have a county executive, the chairperson of the county board
9 of supervisors.

10 (9) "Comprehensive plan" has the meaning given in s. 66.1001 (1) (a).

11 (10) "Conditional use" means a use allowed under a conditional use permit,
12 special exception, or other special zoning permission issued by a political
13 subdivision.

14 (11) "County land conservation committee" means a committee created under
15 s. 92.06 (1).

16 (12) "Department" means the department of agriculture, trade and consumer
17 protection.

18 (13) "Farm" means all land under common ownership that is primarily devoted
19 to agricultural use.

X *****NOTE: The proposed definition included the phrase "and is part of a single economic unit for purposes of income tax filing." I have discussed that phrase with the tax drafters and we do not know what it is intended to mean or what effect it is intended to have. We are unsure that the concept of a single unit for income tax purposes works given Wisconsin income tax law. You may wish to get the Department of Revenue's viewpoint on this, especially since the definition is used by cross-reference in ch. 71. DOR may also have concerns about the use of "primarily devoted to" in this definition. Section 70.32 (2) (c) 1g. provides that DOR defines that term by rule.

20 (14) "Farm acreage" means size of a farm in acres.

1 (15) "Farmland preservation agreement" means any of the following
2 agreements between an owner of land and the department under which the owner
3 agrees to restrict the use of land in return for tax credits:

4 (a) A farmland preservation agreement or transition area agreement entered
5 into under s. 91.13, 2005 stats., or s. 91.14, 2005 stats.

6 (b) An agreement entered into under s. 91.60 (1).

7 (16) "Farmland preservation plan," when not preceded by "certified," means
8 a plan for the preservation of farmland in a county, including an agricultural
9 preservation plan under subch. IV of ch. 91, 2005 stats.

10 (17) "Farmland preservation area" means an area that is planned primarily
11 for agricultural use or agriculture-related use, or both, and that is one of the
12 following:

13 (a) Identified as an agricultural preservation area or transition area in a
14 farmland preservation plan described in s. 91.12 (1).

15 (b) Identified under s. 91.10 (1) (d) in a farmland preservation plan described
16 in s. 91.12 (2).

17 (18) "Farmland preservation zoning district" means any of the following:

18 (a) An area zoned for exclusive agricultural use under an ordinance described
19 in s. 91.32 (1).

20 (b) A farmland preservation zoning district designated under s. 91.31 (1) (d) in
21 an ordinance described in s. 91.36 (2).

***NOTE: I do not believe that a definition of "farmland preservation zoning ordinance" is necessary. If that is incorrect, the proposed definition will need to be changed because it relies on a cross-reference to s. 91.30, resulting in s. 91.30 having no substantive content. It must be possible to replace a defined term with its definition. If you put the relevant part of the proposed definition into proposed s. 91.30, s. 91.30 would read, in its entirety: A political subdivision may adopt an ordinance under this section after the effective date of this section.

1 (19) "Farm residence" means any of the following structures that is located on
2 a farm:

3 (a) A single-family or duplex residence that is the only residential structure
4 on the farm or is occupied by any of the following:

5 1. An owner or operator of the farm.

6 2. A parent or child of an owner or operator of the farm.

7 3. An individual who earns more than 50 percent of his or her gross income from
8 the farm.

9 (b) A migrant labor camp that is certified under s. 103.92.

10 (20) "Gross farm profits" has the meaning given in s. 71.613 (1) (g).

11 (21) "Nonfarm residence" means a residence other than a farm residence.

12 (22) "Nonfarm residential acreage" means the total number of acres of all
13 parcels on which nonfarm residences are located.

14 (23) "Owner" means a person who has an ownership interest in land.

15 (24) "Political subdivision" means a city, village, town, or county.

16 (25) "Prime farmland" means any of the following:

17 (a) An area with a class I or class II land capability classification as identified
18 on a map published by the natural resource conservation service of the federal
19 department of agriculture.

 ****NOTE: I have done some research on NRCS Web sites to try to ensure that this provision is technically correct. It appears to me that the language in the proposed draft is intended to refer to what is called "land capability classification" or "soil capability classification." (The former appears to be more widely used.) I have not seen an NRCS map that shows the land capability classification directly on the map. If such maps do not exist, we will need to change the definition.

20 (b) Land, other than land described in par. (a), that is identified as prime
21 farmland in a certified farmland preservation plan.

1 (26) "Prior nonconforming use" means a land use that does not conform with
2 a farmland preservation zoning ordinance, but that existed lawfully before the
3 farmland preservation zoning ordinance was enacted.

 ***NOTE: The proposed language included "isolated." That made the definition
unclear. If the intent is to limit the scope of nonconforming uses in some way, that should
be done in s. 91.42 (3).

4 (27) "Protected farmland" means land that is located in a farmland
5 preservation zoning district, is covered by a farmland preservation agreement, or is
6 otherwise legally protected from nonagricultural development.

7 (28) "Taxable year" has the meaning given in s. 71.01 (12).

8 (29) "Working lands enterprise area" means an area designated in accordance
9 with the rules under s. 91.60 (2) (c).

10 **91.02 Rule making.** (1) The department shall promulgate rules that set forth
11 technical specifications for farmland preservation zoning maps under s. 91.38 (1) (d).

12 (2) The department may promulgate rules for the administration of this
13 chapter, including rules that do any of the following:

14 (a) Identify accessory uses under s. 91.01 (1) (e).

15 (b) Identify agricultural uses under s. 91.01 (2) (b).

16 (c) Identify agriculture-related uses under s. 91.01 (3) (b).

17 (d) Identify base farm tracts under s. 91.01 (5) (b).

18 (e) Specify standards for certification under s. 91.18 (1) (b).

19 (f) Require information in an application for certification of a farmland
20 preservation plan under s. 91.20 (4).

21 (g) Specify types of ordinance amendments for which certification is required
22 under s. 91.36 (8) (b) 3.

1 (h) Specify exceptions to the requirement that land in a farmland preservation
2 zoning district be included in a farmland preservation plan area under s. 91.38 (1)
3 (g).

4 (i) Specify requirements for certification of a farmland preservation zoning
5 ordinance under s. 91.38 (1) (i).

6 (j) Require information in an application for certification of a farmland
7 preservation zoning ordinance under s. 91.40 (5).

8 (k) Authorize additional uses in a farmland preservation zoning district under
9 s. 91.42 (4).

10 (L) Authorize additional uses as authorized uses in a farmland preservation
11 zoning district under s. 91.44 (7).

12 (m) Authorize additional uses as conditional uses in a farmland preservation
13 zoning district under s. 91.46 (1) (j).

14 (n) Specify conversion fees under s. 91.48 (2).

15 (o) Specify criteria for designating working lands enterprise areas under s.
16 91.60 (2) (c).

17 (p) Require information in an application for a farmland preservation
18 agreement under s. 91.64 (2) (h).

19 (q) Specify conversion fees under s. 91.66 (1) (c).

20 (r) Prescribe procedures for compliance monitoring under s. 91.82 (3).

21 **91.03 Intergovernmental cooperation.** State agencies shall cooperate with
22 the department in the administration of this chapter and in other matters related
23 to the preservation of farmland in this state. State agencies shall, to the extent
24 feasible, cooperate in sharing and standardizing relevant information, identifying

1 and mapping significant agricultural resources, and planning and evaluating the
2 impact of state actions on agriculture.

3 SUBCHAPTER II

4 FARMLAND PRESERVATION PLANNING

5 **91.10 County plan required.** (1) A county shall adopt a farmland ✓
6 preservation plan that does all of the following:

7 (a) States the county's policy related to farmland preservation and agricultural
8 development.

9 (b) If the county has a comprehensive plan, includes the information under the
10 comprehensive plan that is relevant to farmland preservation. The county may
11 incorporate by reference relevant information contained in other parts of the
12 comprehensive plan.

****NOTE: I am uncertain what the proposed language was intended to mean. If,
instead of the interpretation I have used, it was intended to mean that the plan must
include the kinds of information that would be required under s. 59.69 (3) or 66.1001 (2)
that is relevant to a farmland preservation plan, the draft should specifically describe
what kinds of information that means.

13 (c) Identifies, describes, and documents all of the following:

14 1. Agricultural uses of land in the county at the time that the farmland
15 preservation plan is adopted, including key agricultural specialities, if any.

16 2. Key agricultural resources, including available land, soil, and water
17 resources.

18 3. Key infrastructure for agriculture, including key processing, storage,
19 transportation, and supply facilities.

20 4. Significant trends in the county related to agricultural land use, agricultural
21 production, and the conversion of agricultural lands to other uses.

1 5. Actions that the county will take to preserve agricultural lands and to
2 promote agricultural development.

 ****NOTE: I am not certain what the proposed language was intended to mean by referring to "plans." Was it intended to refer to plans that were in place before the planning process under this section began?

3 6. Key land use issues related to preserving agricultural lands and to
4 agricultural development and plans for addressing those issues.

5 (d) 1. Clearly identifies areas that the county plans to preserve for agricultural
6 use and agriculture-related uses, which may include undeveloped natural resource
7 and open space areas but may not include any area that is planned for
8 nonagricultural development within 15 years after the date on which the plan is
9 adopted.

10 2. Includes maps that clearly delineate all areas identified under ^{subd.} par. 1., so that
11 a reader can easily determine whether a parcel is within an identified area.

12 3. Clearly correlates the maps under subd. 2. with text that describes the types
13 of land uses planned for each area on a map.

14 (e) Identifies programs and other actions that the county and local
15 governmental units within the county may use to preserve the areas identified under
16 par. (d) for agricultural use and agriculture-related uses.

17 (2) If the county has a comprehensive plan, the county may only adopt a
18 farmland preservation plan that is consistent with the comprehensive plan and the
19 county shall include the farmland preservation plan in its comprehensive plan.

20 (3) A county shall comply with all of the following before adopting its farmland
21 preservation plan under sub. (1):

 ****NOTE: The proposed language required a county to develop and adopt its plan "according to procedures under ss. 59.69 (3) and 66.1001 (4) that are relevant to a farmland preservation plan." It is often difficult to know how to apply procedures designed for one purpose to another purpose and I could not tell which procedures were

meant to be required here. The draft needs to be clear about this. The language of sub. (3) in this draft is modeled on s. 66.1001 (4). Please let me know how it should be changed to carry out DATCP's intent. Also please let me know what aspects of s. 59.69 (3) should be incorporated into this provision.

1 (a) The county board shall adopt written procedures that are designed to foster
2 public participation, including open discussion, communication programs,
3 information services, and public meetings for which advance notice has been
4 provided, in every stage of the preparation of the farmland preservation plan. The
5 written procedures shall provide for wide distribution of proposed, alternative, or
6 amended elements of a farmland preservation plan and shall provide an opportunity
7 for written comments on the farmland preservation plan to be submitted by members
8 of the public to the county board and for the county board to respond to any written
9 comments. The written procedures shall describe the methods that the county board
10 will use to distribute proposed, alternative, or amended elements of the farmland
11 preservation plan to owners of property, or to persons who have a leasehold interest
12 in property under which the persons may extract nonmetallic mineral resources in
13 or on property, in which the allowable use or intensity of use of the property is
14 changed by the farmland preservation plan.

15 (b) The county body that is authorized to prepare or amend a farmland
16 preservation plan may recommend the adoption or amendment of a farmland
17 preservation plan only by adopting a resolution by a majority vote of the entire body.
18 The vote shall be recorded in the official minutes of the body. The resolution shall
19 refer to maps and other descriptive materials that relate to one or more elements of
20 the farmland preservation plan. The body shall send one copy of an adopted
21 farmland preservation plan, or of an amendment to the farmland preservation plan,
22 to each of the following:

1 1. Every governmental body that is located in whole or in part within the
2 boundaries of the county.

3 2. The clerk of every local governmental unit that is adjacent to the county.

4 3. The department of administration.

5 4. The regional planning commission in which the county is located.

6 5. A public library that serves the county.

7 (c) No farmland preservation plan that is recommended for adoption or
8 amendment under par. (b) may take effect until the county enacts an ordinance that
9 adopts the farmland preservation plan or amendment. The county may not enact an
10 ordinance under this paragraph unless the farmland preservation plan contains all
11 of the elements specified in sub. (1). An ordinance may be enacted under this
12 paragraph only by a majority vote of the members-elect, as defined in s. 59.001 (2m),
13 of the county board. The county shall file an ordinance that is enacted under this
14 paragraph, and the farmland preservation plan to which it relates, with at least all
15 of the entities specified in par. (b).

16 (d) No county may enact an ordinance under par. (c) unless the county holds
17 at least one public hearing at which the proposed ordinance is discussed. The county
18 shall publish a class 1 notice under ch. 985 at least 30 days before the hearing is held.
19 The county may also provide notice of the hearing by any other means it considers
20 appropriate. The county shall include at least the following information in the
21 notice:

22 1. The date, time, and place of the hearing.

23 2. A summary, which may include a map, of the proposed farmland
24 preservation plan or amendment to a farmland preservation plan.

1 3. The name of an individual employed by the county who may provide
2 additional information regarding the proposed farmland preservation plan or
3 amendment.

4 4. Information relating to where and when the proposed farmland preservation
5 plan or amendment may be inspected before the hearing, and how a copy of the
6 farmland preservation plan or amendment may be obtained.

7 (e) At least 30 days before the hearing described in par. (d) is held, a county shall
8 provide written notice to all of the following:

9 1. An operator who has obtained, or made application for, a permit that is
10 described in s. 295.12 (3) (d).

11 2. A person who has registered a marketable nonmetallic mineral deposit
12 under s. 295.20.

13 3. Any other owner or leaseholder who has an interest in property under which
14 the person may extract nonmetallic mineral resources, if the owner or leaseholder
15 requests in writing that the county provide the owner or leaseholder notice of the
16 hearing described in par. (d).

17 (f) A county shall maintain a list of persons who submit a written request to
18 receive notice of any proposed ordinance, described in par. (c), that affects the
19 allowable use of the property owned by the person. At least 30 days before the
20 hearing described in par. (d) is held a political subdivision shall provide written
21 notice, including a copy of the proposed ordinance, to all of those persons. The notice
22 shall be by mail or in any reasonable form that is agreed to by the person and the
23 political subdivision. The political subdivision may charge each person on the list
24 who receives a notice a fee that does not exceed the approximate cost of providing the
25 notice to the person.

1 (4) The department may provide information and assistance to a county in
2 developing a farmland preservation plan under sub. (1).

3 (5) A county shall notify the department before the county holds a public
4 hearing on a proposed farmland preservation plan under sub. (1) or on any
5 amendment to a farmland preservation plan. The county shall include a copy of the
6 proposed farmland preservation plan or amendment in the notice. The department
7 may review and comment on the plan or amendment.

8 (6) A county with a farmland preservation plan that was certified under s.
9 91.06, 2005 stats., is not required to adopt a new farmland preservation plan to
10 comply with subs. (1) to (3) until the 90th day before the expiration date provided in
11 the certification or, if there is no expiration date in the certification, until the 90th
12 day before the applicable date in s. 91.14 (1) (a) to (f). A county that does not have
13 a farmland preservation plan that was certified under s. 91.06, 2005 stats., shall
14 adopt a farmland preservation plan in compliance with subs. (1) to (3) no later than
15 XXXX.

***NOTE: I did not see anything in the proposed language that clearly dealt with
the issue of when plans must be revised or adopted to comply with the new requirements.
Please let me know if this captures the intent with respect to counties with existing plans
and let me know when the counties without plans should be required to adopt them.

16 **91.12 Certified plan.** The following county farmland preservation plans are
17 certified, for the purposes of this chapter and s. 71.613:

18 (1) An agricultural preservation plan that was certified under s. 91.06, 2005
19 stats., and the certification has not expired.

20 (2) A farmland preservation plan that was certified under s. 91.16 and the
21 certification has not expired or been withdrawn.

22 **91.14 Expiration of plan certification.** (1) The certification of a county
23 farmland preservation plan that was certified under s. 91.06, 2005 stats., expires on

1 the date provided in the certification or, if the certification does not provide an
2 expiration date, on the following date:

3 (a) January 1, 2010, for a county with a population of 216 or more persons per
4 square mile.

5 (b) January 1, 2011, for a county with a population of 76 to 215 persons per
6 square mile.

7 (c) January 1, 2012, for a county with a population of 46 to 75 persons per
8 square mile.

9 (d) January 1, 2013, for a county with a population of 30 to 45 persons per
10 square mile.

11 (e) January 1, 2014, for a county with a population of 20 to 29 persons per
12 square mile.

13 (f) January 1, 2015, for a county with a population of 1 to 19 persons per square
14 mile.

15 (2) The certification of a county farmland preservation plan that the
16 department certifies under s. 91.16 expires on the date specified under s. 91.16 (2).

****NOTE: Is there a possibility that a county's population might grow so that it moves from one category to another during the relevant period (from 19 persons per square mile to 20 persons per square mile during 2013, say)? Should the draft specify a date as of which the population is determined (for example, the effective date of the draft)?

17 **91.16 Certification of plan by the department.** (1) GENERAL. The
18 department may certify a county farmland preservation plan or an amendment to
19 a county farmland preservation plan as provided in this section.

20 (2) CERTIFICATION PERIOD. (a) The department may certify a county farmland
21 preservation plan for a period that does not exceed 10 years. The department shall
22 specify the expiration date of the certification of the farmland preservation plan in
23 the certification.

1 (b) The certification of an amendment to a certified farmland preservation plan
2 expires on the date that the certification of the farmland preservation plan expires,
3 except that the department may treat a comprehensive revision of a certified
4 farmland preservation plan as a new farmland preservation plan and shall specify
5 an expiration date for the certification of the revised farmland preservation plan as
6 provided in par. (a).

7 (3) SCOPE OF DEPARTMENT REVIEW. (a) The department may certify a county's
8 farmland preservation plan or an amendment to the farmland preservation plan
9 based on the county's certification under s. 91.20 (3), without conducting any
10 additional review or audit.

11 (b) The department may do any of the following before it certifies a county's
12 farmland preservation plan or amendment:

13 1. Review the farmland preservation plan or amendment for compliance with
14 s. 91.18.

15 2. Review and audit the application for certification, including the statement
16 under s. 91.20 (3).

****NOTE: I am unsure what "audit" adds in terms of action on a plan. The dictionary definition (other than of a financial audit) is "a methodical examination and review." Could "audit" be eliminated or replaced with more specific language?

17 (4) DENIAL OF CERTIFICATION. The department shall deny a county's application
18 for certification of a farmland preservation plan or amendment if the department
19 finds any of the following:

20 (a) That the farmland preservation plan or amendment does not comply with
21 the requirements in s. 91.18.

22 (b) That the application for certification does not comply with s. 91.20.

1 (5) WRITTEN DECISION; DEADLINE. The department shall grant or deny an
2 application for certification under this section no more than 90 days after the day on
3 which the county submits a complete application, unless the county agrees to an
4 extension. The department shall issue its decision in the form required by s. 227.47
5 (1).

6 (6) CONDITIONAL CERTIFICATION. The department may grant an application for
7 certification under this section subject to conditions specified by the department in
8 its decision under sub. (5). The department may certify a farmland preservation plan
9 contingent upon the county board adopting the farmland preservation plan as
10 certified.

11 (7) EFFECTIVE DATE OF CERTIFICATION. A certification under this section takes
12 effect on the day on which the department issues its decision, except that if the
13 department specifies conditions under sub. (6), the certification takes effect on the
14 day on which the department determines that the county has met the conditions.

15 (8) EFFECTIVENESS OF PLAN AMENDMENTS. For purposes of this chapter and s.
16 71.613, a certified farmland preservation plan does not include an amendment
17 adopted after the effective date of this subsection ... [revisor inserts date], unless the
18 department certifies the amendment.

19 (9) WITHDRAWAL OF CERTIFICATION. The department may withdraw a
20 certification that it granted under sub. (3) (a) if the department finds that the
21 farmland preservation plan materially violates the requirements under s. 91.18.

22 **91.18 Requirements for certification of plan.** (1) A farmland preservation
23 plan qualifies for certification under s. 91.16 if it complies with all of the following:

24 (a) The requirements in s. 91.10 (1) and (2).

25 (b) Any other standards that the department specifies by rule.

1 (2) An amendment to a farmland preservation plan qualifies for certification
2 under s. 91.16 if it complies with all of the requirements in sub. (1) that are relevant
3 to the amendment and it does not cause the farmland preservation plan to violate
4 any of the requirements in sub. (1).

5 **91.20 Applying for certification of plan.** A county seeking certification of
6 a farmland preservation plan or amendment to a farmland preservation plan shall
7 submit all of the following to the department in writing, along with any other
8 relevant information that the county chooses to provide:

9 (1) The proposed farmland preservation plan or amendment.

10 (2) All of the following background information:

11 (a) A concise summary of the farmland preservation plan or amendment,
12 including key changes from any previously certified farmland preservation plan.

13 (b) A concise summary of the process by which the farmland preservation plan
14 or amendment was developed, including public hearings, notice to and involvement
15 of other governmental units within the county, approval by the county, and
16 identification of any key unresolved issues between the county and other
17 governmental units within the county related to the farmland preservation plan or
18 amendment.

19 (c) The relationship of the farmland preservation plan or amendment to any
20 county comprehensive plan.

X ****NOTE: The reference ⁱⁿ proposed par. (d) ^{in the proposed draft} to information that the department
requests seems redundant of sub. (4).

21 (3) A statement, signed by the county corporation counsel and the county
22 planning director, certifying that the farmland preservation plan or amendment
23 complies with all of the requirements in s. 91.18.

****NOTE: I do not believe that counties are required to have planning directors. If they are not, this must be changed.

1 (4) Other relevant information that the department requires by rule.

2 SUBCHAPTER III

3 FARMLAND PRESERVATION ZONING

4 **91.30 Authority to adopt.** A political subdivision may adopt a farmland
5 preservation zoning ordinance.

****NOTE: Does the draft need to address issues about whether county farmland preservation zoning applies in a town? See current s. 91.73.

6 **91.32 Certified ordinance.** The following zoning ordinances are certified, for
7 the purposes of this chapter and s. 71.613:

8 (1) An exclusive agricultural use zoning ordinance that was certified under s.
9 91.06, 2005 stats. and the certification has not expired or been withdrawn.

10 (2) A farmland preservation zoning ordinance that was certified under s. 91.36
11 and the certification has not expired or been withdrawn.

12 **91.34 Expiration of zoning certification.** (1) The certification of a
13 farmland preservation zoning ordinance that was certified under s. 91.06, 2005
14 stats., expires on the date provided in the certification or, if the certification does not
15 provide an expiration date, on the following date:

16 (a) January 1, 2011, for a county with a population of 216 or more persons per
17 square mile or a city, village, or town in such a county.

18 (b) January 1, 2012, for a county with a population of 76 to 215 persons per
19 square mile or a city, village, or town in such a county.

20 (c) January 1, 2013, for a county with a population of 46 to 75 persons per
21 square mile or a city, village, or town in such a county.

1 (d) January 1, 2014, for a county with a population of 30 to 45 persons per
2 square mile or a city, village, or town in such a county.

3 (e) January 1, 2015, for a county with a population of 20 to 29 persons per
4 square mile or a city, village, or town in such a county.

5 (f) January 1, 2016, for a county with a population of 1 to 19 persons per square
6 mile or a city, village, or town in such a county.

7 (2) The certification of a farmland preservation zoning ordinance that the
8 department certifies under s. 91.36 expires on the date specified under s. 91.36 (2).

X
****NOTE: See ^{the} note following s. 91.14

9 **91.36 Certification of zoning ordinance by the department. (1)**

10 GENERAL. The department may certify a farmland preservation zoning ordinance or
11 an amendment to a farmland preservation zoning ordinance as provided in this
12 section.

13 (2) CERTIFICATION PERIOD. (a) The department may certify a farmland
14 preservation zoning ordinance for a period that does not exceed 10 years. The
15 department shall specify the expiration date of the certification of the farmland
16 preservation zoning ordinance in the certification.

17 (b) The certification of an amendment to a certified farmland preservation
18 zoning ordinance expires on the date that the certification of the farmland
19 preservation zoning ordinance expires, except that the department may treat a
20 comprehensive revision of a certified farmland preservation zoning ordinance as a
21 new farmland preservation zoning ordinance and specify an expiration date for the
22 certification of the revised farmland preservation zoning ordinance as provided in
23 par. (a).

1 (3) SCOPE OF DEPARTMENT REVIEW. (a) The department may certify a farmland
2 preservation zoning ordinance or amendment to a farmland preservation zoning
3 ordinance based on statements submitted under s. 91.40 (3) (a) and (4), without
4 conducting any additional review or audit.

5 (b) The department may do any of the following before it certifies a farmland
6 preservation zoning ordinance or amendment:

7 1. Review the farmland preservation zoning ordinance or amendment for
8 compliance with the requirements under s. 91.38.

9 2. Review and audit the application for certification, including the statements
10 under s. 91.40 (3) and (4).

X ****NOTE: See ^{the} note following s. 91.16 (3) (b) 2. about review of plans.

11 (4) DENIAL OF CERTIFICATION. The department shall deny an application for
12 certification of a farmland preservation zoning ordinance or amendment if the
13 department finds any of the following:

14 (a) That the farmland preservation zoning ordinance or amendment does not
15 comply with the requirements in s. 91.38.

16 (b) That the application for certification does not comply with s. 91.40.

17 (5) WRITTEN DECISION; DEADLINE. The department shall grant or deny an
18 application for certification under this section no more than 90 days after the day on
19 which the political subdivision submits a complete application, unless the political
20 subdivision agrees to an extension. The department shall issue its decision in the
21 form required by s. 227.47 (1).

22 (6) CONDITIONAL CERTIFICATION. The department may grant an application for
23 certification under this section subject to conditions specified by the department in
24 its decision under sub. (5). The department may certify a farmland preservation

1 zoning ordinance contingent upon the political subdivision adopting the farmland
2 preservation zoning ordinance as certified.

3 (7) EFFECTIVE DATE OF CERTIFICATION. A certification under this section takes
4 effect on the day on which the department issues the certification, except that if the
5 department specifies conditions under sub. (6), the certification takes effect on the
6 day on which the department determines that the political subdivision has met the
7 conditions.

8 (8) AMENDMENTS TO ORDINANCES; CERTIFICATION. (a) Except as provided in par.
9 (b), an amendment to a certified farmland preservation zoning ordinance is
10 automatically considered to be certified as part of the certified farmland preservation
11 zoning ordinance.

12 (b) An owner may not claim farmland preservation tax credits under an
13 amendment to a certified farmland preservation zoning ordinance that is one of the
14 following and that is adopted after the effective date of this paragraph [revisor
15 inserts date], unless the amendment is certified by the department under this
16 section:

17 1. An amendment that is a comprehensive revision of a certified farmland
18 preservation zoning ordinance.

19 2. An amendment that extends coverage of a certified farmland preservation
20 zoning ordinance to a town that was not previously covered.

21 3. An ordinance of a type specified by the department by rule that may
22 materially affect compliance of the certified farmland preservation zoning ordinance
23 with the requirements under s. 91.38.

****NOTE: Everything that relates to eligibility for the credit should be in ch. 71 or
at least referenced there. I do not see a reference to this (par. (b)) in ch. 71.

1 (c) The department may withdraw certification of a farmland preservation
2 zoning ordinance if, as a result of an amendment adopted after the effective date of
3 this paragraph [revisor inserts date], the amended farmland preservation zoning
4 ordinance fails to comply with the requirements under s. 91.38. This paragraph
5 applies regardless of whether the farmland preservation zoning ordinance was
6 originally certified under s. 91.06, 2005 stats., or under this section.

7 (d) A political subdivision shall notify the department in writing whenever the
8 political subdivision adopts a material amendment to a certified farmland
9 preservation zoning ordinance. The political subdivision shall include a copy of the
10 amendment in the notice. For the purposes of this paragraph, an amendment that
11 rezones land out of a farmland preservation zoning district is not a material
12 amendment.

13 **91.38 Requirements for certification of ordinance.** (1) A farmland
14 preservation zoning ordinance does not qualify for certification under s. 91.36 unless
15 all of the following apply:

16 (a) The political subdivision develops and adopts the farmland preservation
17 zoning ordinance in accordance with relevant law.

****NOTE: It would be better to specifically reference the laws that this is intended to apply to. Is this meant to refer to the zoning laws under the county, city, village, and town chapters of the statutes?

****NOTE: The proposed draft required a declaration of purpose in the ordinance. There are a number of reasons that laws, including ordinances, should not contain purpose statements. If an ordinance actually protects farmland, the absence of a purpose statement is irrelevant and it seems pointless to deny certification on that basis.

18 (b) The farmland preservation zoning ordinance includes jurisdictional,
19 organizational, and enforcement provisions that are necessary for proper
20 administration.

1 (c) The farmland preservation zoning ordinance clearly designates farmland
2 preservation zoning districts in which land uses are limited in compliance with s.
3 91.42.

4 (d) The farmland preservation zoning ordinance includes maps that clearly
5 delineate each farmland preservation zoning district, so that a reader can easily
6 determine whether a parcel is within a farmland preservation zoning district; that
7 are correlated to the text under par. (e); and that comply with technical specifications
8 that the department establishes by rule.

9 (e) The text of the farmland preservation zoning ordinance clearly describes the
10 types of land uses authorized in each farmland preservation zoning district.

11 (f) The farmland preservation zoning ordinance is consistent with a certified
12 farmland preservation plan.

13 (g) Except as provided by the department by rule, land is not included in a
14 farmland preservation zoning district unless the land is included in a farmland
15 preservation plan area identified in the county certified farmland preservation plan.

****NOTE: Is it possible for an ordinance to be consistent with a plan, as required
by par. (f), if there is land in a farmland preservation zoning district that is not in a
farmland preservation plan area? If not, pars. (f) and (g) should be combined to provide
something like: The farmland preservation zoning ordinance is consistent with the
county certified farmland preservation plan, except that land that is not included in a
farmland preservation plan area may be included in a farmland preservation zoning
district as provided by the department by rule.

16 (h) If an overlay district, such as an environmental corridor, is superimposed
17 on a farmland preservation zoning district, all of the following apply:

18 1. The farmland preservation zoning ordinance clearly identifies the overlay
19 district as such.

✓

1 2. The overlay district is shown on the maps under par. (d) in a way that allows
2 a reader to easily identify the underlying farmland preservation zoning district and
3 its boundaries.

4 3. The overlay district does not remove land use restrictions from the
5 underlying farmland preservation zoning district.

X ****NOTE: Although I have a general idea of what is meant by "overlay district," it
is not a concept that appears in the statutes. The draft will have to either define the term
"overlay district" or describe the concept sufficiently thoroughly that readers can
understand what is meant. *enough enough*

6 (i) The farmland preservation zoning ordinance complies with any other
7 requirements that the department specifies by rule.

8 (2) An amendment to a farmland preservation zoning ordinance qualifies for
9 certification under s. 91.36 if it complies with all of the requirements in sub. (1) that
10 are relevant to the amendment and it does not cause the farmland preservation
11 zoning ordinance to violate any of the requirements in sub. (1).

12 **91.40 Applying for certification of ordinance.** A political subdivision
13 seeking certification of a farmland preservation zoning ordinance or amendment to
14 a farmland preservation zoning ordinance shall submit all of the following to the
15 department in writing, along with any other relevant information that the political
16 subdivision chooses to provide:

17 (1) The complete farmland preservation zoning ordinance or amendment
18 proposed for certification.

19 (2) All of the following background information:

20 (a) A concise summary of the farmland preservation zoning ordinance or
21 amendment, including key changes from any previously certified farmland
22 preservation zoning ordinance.

1 (b) A concise summary of the process by which the farmland preservation
2 zoning ordinance or amendment was developed, including public hearings, notice to
3 and involvement of other governmental units, approval by the political subdivision,
4 and identification of any key unresolved issues with other governmental units
5 related to the farmland preservation zoning ordinance or amendment.

6 (c) A description of the relationship of the farmland preservation zoning
7 ordinance or amendment to the county certified farmland preservation plan,
8 including any material inconsistencies between the ^ethe farmland preservation
9 zoning ordinance or amendment and the county certified farmland preservation
10 plan.

11 (3) One of the following:

12 (a) A statement, signed by the county planning director, certifying that the
13 farmland preservation zoning ordinance or amendment complies with s. 91.38 (1) (g)
14 and (h).

****NOTE: I do not believe that counties are required to have planning directors.
If they are not and it is desired to specify who signs the statement, this must specify an
officer or body that all counties must have. See also the next paragraph.

15 (b) A statement, signed by the applicant's chief elected official, certifying that
16 the county planning director failed or refused to comply with a request to provide a
17 statement under par. (a) and including the reason given by the county planning
18 director, if the county planning director gave a reason.

19 (4) A statement, signed by the applicant's attorney or chief elected official,
20 certifying that the farmland preservation zoning ordinance or amendment complies
21 with all applicable requirements in s. 91.38.

22 (5) Other relevant information that the department requires by rule.