



# 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 03 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.

1           **91.42 Land use in farmland preservation zoning districts; general.** A  
2 farmland preservation zoning ordinance does not qualify for certification under s.  
3 91.36, if the farmland preservation zoning ordinance allows a land use in a farmland  
4 preservation zoning district other than the following land uses:

5           (1) Uses identified as authorized uses in s. 91.44.

6           (2) Uses identified as conditional uses in s. 91.46.

7           (3) Prior nonconforming uses, subject to the following:

8           (a) A prior nonconforming use that is a residence may be expanded or  
9 remodeled, as long as there is no increase in the number of dwelling units in the  
10 residence.

11           (b) A prior nonconforming use that is not a residence may continue without  
12 further approval unless it is materially altered.

13           (4) Other uses allowed by the department by rule.

14           **91.44 Authorized uses.** A farmland preservation zoning ordinance does not  
15 comply with s. 91.42 if the farmland preservation zoning ordinance allows as an  
16 authorized use in a farmland preservation zoning district a land use other than the  
17 following land uses:

      \*\*\*\*NOTE: The introduction in the proposed draft began with "except as provided  
by the department by rule." I omitted that because it seemed redundant of sub. (7). If it  
was meant to allow DATCP to narrow the authorized uses, please let me know and I will  
modify the draft.

18           (1) Agricultural uses.

19           (2) Accessory uses.

      \*\*\*\*NOTE: Farm residences are included in the definition of "accessory use." It  
would be redundant to list them here.

20           (3) Agriculture-related uses.

1           (4) Nonfarm residences constructed in a rural residential cluster in accordance  
2 with an approval of the cluster as a conditional use under s. 91.46 (1) (e).

3           (5) Undeveloped natural resource and open space areas.

      \*\*\*\*NOTE: Any zoning district may contain undeveloped land. It is not clear why  
this language is wanted or what an "undeveloped natural resource" area is or that this  
provision describes a land use. Are there some kinds of undeveloped areas that are  
intended to be prohibited from a farmland preservation zoning district?

4           (6) A transportation, utility, communication, or other use that is required  
5 under state or federal law to be located in a specific place or that is authorized to be  
6 located in a specific place under a state or federal law that preempts the requirement  
7 of a conditional use permit for that use.

      \*\*\*\*NOTE: The proposed language was confusing and I have attempted to clarify it.  
I do not think that it is necessary, however. If a state or federal law prevents a political  
subdivision from keeping a facility from being located in a farmland preservation district,  
the ordinance does not need to state that the facility is allowed there. It does not matter  
what the ordinance says. Do zoning ordinances provide, for example, that an electric  
transmission facility is allowed in an A-1 residential district if state or federal law  
requires or authorizes it to be placed there?

8           (7) Other uses identified by the department by rule.

9           **91.46 Conditional uses. (1) GENERAL.** A farmland preservation zoning  
10 ordinance does not comply with s. 91.42 if the farmland preservation zoning  
11 ordinance allows as a conditional use in a farmland preservation zoning district a  
12 land use other than the following land uses:

      \*\*\*\*NOTE: The introduction in the proposed draft began with "except as provided  
by the department by rule." I omitted that because it seemed redundant of par. (j). If it  
was meant to allow DATCP to narrow the conditional uses, please let me know and I will  
modify the draft.

13           (a) Agricultural uses.

14           (b) Accessory uses.

15           (c) Agriculture-related uses.

16           (d) Nonfarm residences that qualify under sub. (2) or that meet more restrictive  
17 standards in the farmland preservation zoning ordinance.

1 (e) Nonfarm residential clusters that qualify under sub. (3) or that meet more  
2 restrictive standards in the farmland preservation zoning ordinance.

3 (f) Transportation, communications, pipeline, electric transmission, utility, or  
4 drainage uses that qualify under sub. (4).

5 (g) Governmental, institutional, religious, or nonprofit community uses, other  
6 than uses covered by par. (f), that qualify under sub. (5).

7 (h) Nonmetallic mineral extraction that qualifies under sub. (6).

8 (i) Oil and gas exploration or production that is licensed by the department of  
9 natural resources under subch. II of ch. 295.

10 (j) Other uses allowed by the department by rule.

11 (2) NONFARM RESIDENCES. A nonfarm residence qualifies for the purposes of  
12 sub. (1) (d) if it is a single-family residence and the political subdivision determines  
13 that all of the following apply:

14 (a) The ratio of nonfarm residential acreage to farm acreage on the base farm  
15 tract on which the nonfarm residence will be located will not be greater than 1 to 20  
16 after the nonfarm residence is constructed.

\*\*\*NOTE: This would not seem to work if a farmer wanted to rent rather than sell  
a nonfarm residence. In such a case, what would the farm acreage be?

17 (b) There will not be more than 4 nonfarm residences, nor more than 5  
18 residences of any kind, on the base farm tract after the nonfarm residence is  
19 constructed.

20 (c) The location of the proposed nonfarm residential parcel, and the location of  
21 the nonfarm residence on that nonfarm residential parcel, will not do any of the  
22 following:

23 1. Unnecessarily convert prime farmland from agricultural use.

\*\*\*\*NOTE: It is unclear what kind of standards should be used to make this determination. If the parcel is on prime farmland, under what conditions should it be determined that it is necessary to put the house there? Could this be worded in a way that would make it more clear what the governing body is supposed to consider? As it is, it seems likely to me that this would simply be ignored.

1           2. Significantly impair or limit the current or future agricultural use of other  
2 protected farmland.

3           **(3) NONFARM RESIDENTIAL CLUSTER.** A political subdivision may issue one  
4 conditional use permit that covers more than one nonfarm residence in a qualifying  
5 nonfarm residential cluster. A nonfarm residential cluster qualifies for the purposes  
6 of sub. (1) (e) if all of the following apply:

7           (a) The parcels on which the nonfarm residences would be located are  
8 contiguous.

9           (b) The political subdivision imposes legal restrictions on the construction of  
10 the nonfarm residences so that if all of the nonfarm residences were constructed,  
11 each would satisfy the requirements under sub. (2).

12           **(4) TRANSPORTATION, COMMUNICATIONS, PIPELINE, ELECTRIC TRANSMISSION, UTILITY,**  
13 **OR DRAINAGE USE.** A transportation, communications, pipeline, electric transmission,  
14 utility, or drainage use qualifies for the purposes of sub. (1) (f) if all of the following  
15 apply:

16           (a) The use and its location are necessary, considering alternative locations, or  
17 are specifically approved under state or federal law.

X           \*\*\*\*NOTE: "Under state or federal law" seems unclear. I think that many utility  
uses and many of the other kinds of uses listed here would be approved "under state law,"  
if that means by a state agency, so that this requirement might be easily met in many  
cases. Highways are often authorized by legislation, I think, although the law may not  
specify the exact route. When it must be determined whether a *use and location* are  
"necessary," is that intended to mean that there is no alternative location, that the service  
to be provided is essential, and that there is no other way to provide the service? That  
would seem to be a very difficult standard to meet. If not, what is the requirement  
intended to mean? (I realize that this language is similar to current law.)

1 (b) The use does not unnecessarily convert land from agricultural use to other  
2 uses or unnecessarily develop undeveloped natural resource or open space areas.

\*\*\*\*NOTE: Again, taken literally, this would seem to be a very difficult standard to meet. Or is it meant to say that no more land is converted than is necessary to carry out the use (or something like that)?

3 (c) The use does not unnecessarily convert prime farmland from agricultural  
4 use.

X \*\*\*\*NOTE: The issues here are similar to those raised in the preceding note and to those in the note following sub. (2)(c) 1. Does this actually add anything to what par. (b) provides, that is, would it be possible to satisfy par. (b) but violate this paragraph?

5 (d) The use does not unnecessarily impair or limit the current or future  
6 agricultural use of other protected farmland.

\*\*\*\*NOTE: Similar issues again.

7 (e) The farmland preservation zoning ordinance requires construction damage  
8 to be limited and repaired, to the extent feasible, to maintain and restore the  
9 agricultural use of the land.

10 (5) GOVERNMENTAL, INSTITUTIONAL, RELIGIOUS, OR NONPROFIT COMMUNITY USE. A  
11 governmental, institutional, religious, or nonprofit community use qualifies for the  
12 purposes of sub. (1) (g) if all of the following apply:

13 (a) The use and its location are necessary, considering alternative locations.

\*\*\*\*NOTE: Similar issues to those under sub. (4).

14 (b) The use does not unnecessarily convert land from agricultural use to other  
15 uses or develop undeveloped natural resource or open space areas.

\*\*\*\*NOTE: Similar issues to those under sub. (4).

16 (c) The use does not unnecessarily convert prime farmland from agricultural  
17 use.

\*\*\*\*NOTE: Similar issues to those under sub. (4).

18 (d) The sum of the following does not exceed 5 acres:

19 1. The acreage converted from agricultural use to other uses.

1           2. The acreage of undeveloped natural resource or open space areas developed.

2           (e) The use does not unnecessarily impair or limit the current or future  
3 agricultural use of other protected farmland.

      \*\*\*\*NOTE: Similar issues to those under sub. (4).

4           (f) The farmland preservation zoning ordinance requires construction damage  
5 to be limited and repaired, to the extent feasible, to maintain and restore the  
6 agricultural use of the land.

7           **(6) NONMETALLIC MINERAL EXTRACTION.** Nonmetallic mineral extraction  
8 qualifies for the purposes of sub. (1) (h) if all of the following apply:

9           (a) The operation complies with subch. I of ch. 295 and rules promulgated under  
10 that subchapter, with applicable provisions of the local ordinance under s. 295.13 or  
11 295.14, and with any applicable requirements of the department of transportation  
12 concerning the restoration of nonmetallic mining sites.

13           (b) The operation does not unnecessarily convert land from agricultural use to  
14 other uses or develop undeveloped natural resource or open space areas.

15           (c) The operation does not unnecessarily convert prime farmland from  
16 agricultural use.

17           (d) The operation does not unnecessarily impair or limit the current or future  
18 agricultural use of other protected farmland.

19           (e) The farmland preservation zoning ordinance requires the land to be  
20 restored to agricultural use, to the extent feasible and consistent with any required  
21 locally approved reclamation plan, when extraction is completed.

      \*\*\*\*NOTE: There are similar issues here as with the earlier subsections.

22           **91.48 Rezoning of land out of a farmland preservation zoning district.**

23           A political subdivision with a certified farmland preservation zoning ordinance may

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1 rezone land out of a farmland preservation zoning district without having the  
2 rezoning certified under s. 91.36, if all of the following apply:

3 (1) The political subdivision finds all of the following, after public hearing:

4 (a) The land is better suited for a use not allowed in the farmland preservation  
5 zoning district.

6 (b) The rezoning is consistent with any applicable comprehensive plan.

7 (c) The rezoning is consistent with the county certified farmland preservation  
8 plan.

\*\*\*\*NOTE: Given that an ordinance (when it is adopted) must be consistent with the farmland preservation plan, is it possible for a rezoning out of a farmland preservation district to be consistent with the plan, unless the plan itself is amended? Note that the draft prohibits including in a farmland preservation plan area any land that is planned for development within 15 years.

9 (d) The rezoning will not impair or limit the agricultural use of other protected  
10 farmland.

11 (2) The owner of the land pays to the political subdivision a conversion fee equal  
12 to \$100 per acre of rezoned land or a different amount specified by the department  
13 by rule.

14 (3) The political subdivision annually provides all of the following to the  
15 department and, if the political subdivision is not a county, to the county:

\*\*\*\*NOTE: It doesn't really seem workable to condition a particular rezoning on the local government doing this. What if a county approves a rezoning and then does not comply with this subdivision? subsection

16 (a) A description of the amount of land that the political subdivision has  
17 rezoned out of a farmland preservation zoning district since the effective date of this  
18 paragraph .... [revisor inserts date], or since the date it last complied with this  
19 subsection, whichever is later, and a map that clearly shows the location of the land.

1 (b) A description of the amount of revenue that the political subdivision  
2 received as conversion fees under sub. (2) since the effective date of this paragraph  
3 ... [revisor inserts date], or since the date it last complied with this subsection,  
4 whichever is later.

5 **91.49 Use of conversion fees.** A political subdivision shall use conversion  
6 fees received under s. 91.48 (2) for its costs related to farmland preservation  
7 planning, zoning, or compliance monitoring.

8 **91.50 Exemption from special assessments. (1)** Except as provided in sub.  
9 (3), no political subdivision, special purpose district, or other local governmental  
10 entity may levy a special assessment for sanitary sewers, water, lights, or drainage  
11 against land in agricultural use, if the land is located in a farmland preservation  
12 zoning district.

13 **(2)** A political subdivision, special purpose district or other local governmental  
14 entity may deny the use of improvements for which the special assessment is levied  
15 to land that is exempt from the assessment under sub. (1).

16 **(3)** The exemption under sub. (1) does not apply to any of the following:

17 (a) An assessment that an owner voluntarily pays, after the assessing  
18 authority provides notice of the exemption under sub. (1).

19 (b) An assessment lawfully imposed by a drainage district under ch. 88.

X  
\*\*\*\*NOTE: Would any body other than a drainage district levy a special assessment  
for drainage? If not, "drainage" should be removed from sub. (1) and sub. (3) (b) should  
be deleted. I omitted proposed sub. (3)(c) because the exemption in sub. (1) only applies  
to land in agricultural use. Are assessments levied for "light"? I realize that's what  
current law says, but it seems outdated. Or, if it means "street lighting," using "street  
lighting" would make it more clear.

20

## SUBCHAPTER IV

21

## FARMLAND PRESERVATION AGREEMENTS

**91.60 Farmland preservation agreements; general. (1) AGREEMENTS**

AUTHORIZED. The department may enter into a farmland preservation agreement, in compliance with s. 91.62, with the owner of a tract of land that is eligible under sub. (2).

\*\*\*NOTE: Is there some significance to the use of the word "tract" here, as opposed to parcel or some other word? One of the dictionary definitions of "parcel" is a tract or plot of land.

**(2) ELIGIBLE LAND.** A tract of land is eligible if all of the following apply:

(a) The tract consists of at least 35 contiguous acres on a farm that produced at least \$6,000 in gross profits during the last taxable year preceding the year in which the owner applies for a farmland preservation agreement or a total of at least \$18,000 in gross farm profits during the last 3 taxable years preceding that year.

(b) The tract is located in a farmland preservation area identified in a farmland preservation plan certified under s. 91.06, 2005 stats., if the certification included an expiration date, or is located in a farmland preservation area identified certified by the department under s. 91.16.

*in a farmland preservation plan*

(c) The department has promulgated rules for designating working lands enterprise areas.

(d) The tract is in a working lands enterprise area designated in accordance with the rules under par. (c).

**(3) PRIOR AGREEMENTS.** (a) Except as provided in s. 91.66, a farmland preservation agreement entered into before the effective date of this paragraph ... [revisor inserts date], remains in effect for the term specified in the agreement and under the terms that were agreed upon when the agreement was last created, extended, or renewed.

\*\*\*NOTE: Is this meant to include the penalty for withdrawing land from or terminating an agreement? What about soil conservation standards?

1 (b) The department may not extend or renew a farmland preservation  
2 agreement entered into before the effective date of this paragraph .... [revisor inserts  
3 date.

4 **91.62 Farmland preservation agreements; requirements. (1) CONTENTS.**

5 The department may not enter into a farmland preservation agreement unless the  
6 agreement does all of the following:

7 (a) Specifies a term of at least 15 years.

8 (b) Includes a correct legal description of the tract of land covered by the  
9 farmland preservation agreement.

10 (c) Includes provisions that restrict the tract of land to the following uses:

11 1. Agricultural uses and accessory uses.

12 2. Undeveloped natural resource and open space uses.

13 (2) FORM. The department shall specify a form for farmland preservation  
14 agreements that complies with s. 59.43 (2m).

15 (3) EFFECTIVENESS. A farmland preservation agreement takes effect when it is  
16 signed by all owners of the land covered by the farmland preservation agreement and  
17 by the department.

18 (4) RECORDING. The department shall provide a copy of a signed farmland  
19 preservation agreement to a person designated by the signing owners and shall  
20 promptly present the signed agreement to the register of deeds for the county in  
21 which the land is located for recording.

\*\*\*NOTE: Generally, documents are recorded rather than filed. See s. 59.43 (1) (a).  
An agreement is recorded under current law (s. 91.13 (9)).

1           (5) CHANGE OF OWNERSHIP. A farmland preservation agreement is binding on  
2 a person who purchases land during the term of a farmland preservation agreement  
3 that covers the land.

4           **91.64 Applying for a farmland preservation agreement.** (1) SUBMITTING  
5 AN APPLICATION. An owner who wishes to enter into a farmland preservation  
6 agreement shall submit an application, on a form provided by the department, to the  
7 county clerk of the county in which the land is located.

8           (2) CONTENTS OF APPLICATION. A person submitting an application under sub.  
9 (1) shall include all of the following in the application:

10           (a) The name and address of each person who has an ownership interest in the  
11 land proposed for coverage by the agreement.

12           (b) The location of the land proposed for coverage, indicated by street address,  
13 global positioning system coordinates, or township, range, and section.

      \*\*\*\*NOTE: Should it say "subdivision of section" or "quarter" or "quarter-quarter"  
      section, as is done in several places in the statutes?

14           (c) The legal description of the land proposed for coverage.

15           (d) A map or aerial photograph of the land proposed for coverage, showing  
16 parcel boundaries, residences and other structures, and significant natural features.

17           (e) Information showing that the land proposed for coverage is eligible under  
18 s. 91.60 (2).

19           (f) A description of every existing mortgage, easement and lien, other than liens  
20 on growing crops, on land proposed for coverage, including the name and address of  
21 the person holding the lien, mortgage, or easement.

- 1       ✓ (g) A signed statement from each person required to be identified under par.  
2       (f) acknowledging that the person's lien, mortgage, or easement will be subject to the  
3       land use restrictions in the agreement.

      \*\*\*\*NOTE: I am uncertain whether this language is intended to ensure that liens, mortgages, and easements are subject to the land use restrictions or simply to ensure notice that this will be the case. If the former, it should probably say that the person agrees that the person's interest is subject to the restrictions or that the person subordinates the person's interest or something like that. If this is just intended to ensure that the interest holder has notice, the question is whether, under other law, the person's interest would actually be subject to the agreement. I do not know whether that is so.

4       (h) Any other information required by the department ✓ by rule.

5       (i) Any fee under sub. (2m).

6       **(2m)** COUNTY PROCESSING FEE. A county may charge a reasonable fee for  
7       processing an application for a farmland preservation agreement.

8       **(3)** COUNTY REVIEW. (a) A county shall review an application under sub. (2) to ✓  
9       determine whether the land proposed for coverage meets the requirements under s.  
10      91.60 (2) (b) and (d). The county shall provide its findings to the applicant in writing ✓  
11      within 60 days after the day on which the county clerk receives a complete  
12      application.

      \*\*\*\*NOTE: I don't think that it needs to say that the planning director may do this, as in the proposed language, although if the intent is to impose restrictions on who may do this, that should be made explicit. There is also the question of whether every county has a planning director.

13      (b) If the county finds under par. (a) that the land proposed for coverage meets ✓  
14      the requirements under s. 91.60 (2) (b) and (c), the county shall promptly send all of ✓  
15      the following to the department, along with any other comments that the county ✓  
16      chooses to provide:

- 17           1. The original application, including all of the information provided with the  
18      application.  
19           2. A copy of the county's findings.

1 (4) DEPARTMENT ACTION ON APPLICATION. (a) The department may enter into a  
2 farmland preservation agreement under s. 91.60 (1) based on a complete application  
3 and on county findings under sub. (3) (b), if the department finds that the proposed  
4 farmland preservation agreement complies with s. 91.62.

\*\*\*\*NOTE: Where does the proposed agreement come from? Under current law,  
DATCP prepares it.

5 (b) The department may decline to enter into a farmland preservation  
6 agreement for any of the following reasons:

7 1. The application is incomplete.

8 2. The proposed farmland preservation agreement does not comply with s.  
9 91.62.

10 3. Other reasons provided to the applicant in writing.

\*\*\*\*NOTE: Shouldn't there be some guidance in the law as to the kind of reasons that  
may be used?

11 **91.66 Terminating a farmland preservation agreement.** (1) The  
12 department may terminate a farmland preservation agreement or release land from  
13 a farmland preservation agreement at any time if all of the following apply:

14 (a) All of the owners of land covered by the farmland preservation agreement  
15 consent to the termination or release, in writing.

16 (b) The department finds that the termination or release will not impair or limit  
17 agricultural use of other protected farmland.

18 (c) The owners of the land pay to the department a conversion fee equal to \$100  
19 per acre of land released from the farmland preservation agreement agreement or  
20 a different amount specified by the department by rule, except that no conversion fee  
21 is required if the land is converted from agricultural use by direct government action,  
22 including government purchase or condemnation.

\*\*\*\*NOTE: "Direct government<sup>✓</sup> action" seems unclear to me. Is there some other kind of governmental action than purchase or condemnation that could cause land to be converted from agricultural use? If not, it would be better to eliminate that phrase. If so, please let me know and I will try to clarify this.

1           (2) The department shall provide a copy of its decision to terminate a farmland  
2           preservation agreement or release land from a farmland preservation agreement to  
3           a person designated by the owners of the land and shall present a copy of the decision  
4           to the register of deeds for the county in which the land is located for recording.

5           **91.68 Violations of farmland preservation agreements.** (1) The  
6           department may bring an action in circuit court to do any of the following:

7           (a) Enforce a farmland preservation agreement.

8           (b) Restrain, by temporary or permanent injunction, a change in land use that  
9           violates a farmland preservation agreement.

10          (c) Seek a civil forfeiture for a change in land use that violates a farmland  
11          preservation agreement.

12          (2) A forfeiture under sub. (1) (c) may not exceed twice the value of the land  
13          covered by the agreement at the time of the violation.

14          **91.70 Farmland preservation agreements; exemption from special**  
15          **assessments.** (1) Except as provided in sub. (3), no political subdivision, special  
16          purpose district, or other local governmental entity may levy a special assessment  
17          for sanitary sewers, water, lights, or drainage against land in agricultural use, if the  
18          land is covered by a farmland preservation agreement.

19          (2) A political subdivision, special purpose district or other local governmental  
20          entity may deny the use of improvements for which the special assessment is levied  
21          to land that is exempt from the assessment under sub. (1).

22          (3) The exemption under sub. (1) does not apply to any of the following:

1 (a) An assessment that an owner voluntarily pays, after the assessing  
2 authority provides notice of the exemption under sub. (1).

3 (b) An assessment lawfully imposed by a drainage district under ch. 88.

X  
\*\*\*\*NOTE: See <sup>e the</sup> note following proposed s. 91.50.

#### 4 SUBCHAPTER V

#### 5 SOIL AND WATER CONSERVATION

#### 6 **91.80 Soil and water conservation by persons claiming tax credits. (1)**

7 An owner claiming farmland preservation tax credits under s. 71.613 shall comply  
8 with applicable land and water conservation standards promulgated by the  
9 department under ss. 92.05 (3) (c) and (k), 92.14 (8), and 281.16 (3) (b) and (c).

\*\*\*\*NOTE: Is this intended to apply to owners with preexisting agreements? If so,  
is there any problem with that? Do the agreements themselves have language about the  
standards that must be met?

10 (2) An owner is not eligible for farmland preservation tax credits related to a  
11 farm if the county land conservation committee has issued a notice of noncompliance  
12 under s. 91.82 (2) against the farm and has not withdrawn the notice of  
13 noncompliance.

\*\*\*\*NOTE: This is not necessary given proposed s. 71.613 (3) (a) 2.

14 **91.82 Compliance monitoring. (1) COUNTY RESPONSIBILITY.** A county land  
15 conservation committee shall monitor compliance with s. 91.80 (1) and for that  
16 purpose may do any of the following:

17 (a) Inspect land that is covered by a farmland preservation agreement or  
18 farmland preservation zoning and that is in agricultural use.

19 (b) Require an owner to certify, not more than annually, that the owner  
20 complies with s. 91.80 (1).

1           (2) NOTICE OF NONCOMPLIANCE. A county land conservation committee may  
2 issue a written order of noncompliance to an owner, and may file a copy of the notice  
3 with the department of revenue, if the committee finds that the owner has done any  
4 of the following:

      \*\*\*\*NOTE: Wouldn't you want to require the committee to notify DOR if it issues a  
notice? Because isn't a person ineligible if an order is issued and wouldn't you want DOR  
to know that?

5           (a) Failed to comply with s. 91.80 (1). ✓

6           (b) Failed to permit a reasonable inspection under sub. (1) (a). ✓

7           (c) Failed to certify compliance <sup>as</sup> required under sub. (1) (b). ✓

      \*\*\*\*NOTE: It seems that to determine that a landowner falsely certified compliance,  
the committee would have to determine that the landowner failed to comply with s. 91.80  
(1). That is why I deleted the last part of proposed par. (c).

8           (3) PROCEDURE. The department may promulgate rules prescribing procedures  
9 for the administration of this section by land conservation committees.

      \*\*\*\*NOTE: Shouldn't the draft say something about requiring committees to  
withdraw or cancel notices? See current s. 92.104 (2).

10          **SECTION 39.** 92.04 (2) (c) of the statutes is repealed.

11          **SECTION 40.** 92.05 (3) (L) of the statutes is amended to read:

12           92.05 (3) (L) *Technical assistance; performance standards.* The department  
13 shall provide technical assistance to county land conservation committees and local  
14 units of government for the development of ordinances that implement standards  
15 adopted under s. 92.07 (2), 92.105 (1), 92.15 (2) or (3) or 281.16 (3). The department's  
16 technical assistance shall include preparing model ordinances, providing data  
17 concerning the standards and reviewing draft ordinances to determine whether the  
18 draft ordinances comply with applicable statutes and rules.

19 **History:** 1981 c. 346; 1983 a. 410 s. 2200 (2); 1985 a. 332 s. 251 (8); 1987 a. 27; 1991 a. 309; 1995 a. 227; 1997 a. 27; 1999 a. 9.

20          **SECTION 41.** 92.104 of the statutes is repealed.

**SECTION 42.** 92.105 of the statutes is repealed.

**SECTION 43**

1           **SECTION 43.** 92.106 of the statutes <sup>✓</sup> is repealed.

2           **SECTION 44.** 92.14 (2) (e) of the statutes is amended to read:

3           92.14 (2) (e) Promoting compliance with the requirements under ss. ~~92.104~~ and  
4           <sup>✓</sup> ~~92.105~~ land and water conservation by persons claiming <sup>✓</sup> a farmland preservation  
5           credit tax credits under subch. IX of ch. ~~71~~ <sup>S.</sup> 71.613.

6           **History:** 1987 a. 27, 297; 1989 a. 56; 1991 a. 39, 309; 1993 a. 16, 166, 213; 1995 a. 27, 225, 227; 1997 a. 27; 1999 a. 9, 185; 2001 a. 16.

7           **SECTION 45.** 92.14 (3) (a) 1. of the statutes is amended to read:

8           92.14 (3) (a) 1. Compliance with requirements under ss. ~~92.104~~ and ~~92.105~~ s.  
9           <sup>✓</sup> ~~91.80~~ (1) by persons claiming <sup>✓</sup> a farmland preservation credit tax credits under subch.  
9           IX of ch. ~~71~~ s. 71.613.

10          **History:** 1987 a. 27, 297; 1989 a. 56; 1991 a. 39, 309; 1993 a. 16, 166, 213; 1995 a. 27, 225, 227; 1997 a. 27; 1999 a. 9, 185; 2001 a. 16.

11          **SECTION 46.** 92.14 (3) (d) of the statutes is amended to read:

12          92.14 (3) (d) Implementing land and water resource management projects  
13          undertaken to comply with the requirements under ss. ~~92.104~~ and ~~92.105~~ s. ~~91.80~~ (1)  
14          by persons claiming <sup>✓</sup> a farmland preservation credit tax credits under subch. IX of ch.  
14          ~~71~~ s. 71.613.

15          **History:** 1987 a. 27, 297; 1989 a. 56; 1991 a. 39, 309; 1993 a. 16, 166, 213; 1995 a. 27, 225, 227; 1997 a. 27; 1999 a. 9, 185; 2001 a. 16.

16          **SECTION 47.** 101.143 (4) (ei) 1m. a. of the statutes is amended to read:

17          101.143 (4) (ei) 1m. a. The owner or operator of the farm tank owns a parcel  
18          of 35 or more acres of contiguous land, on which the farm tank is located, which is  
19          devoted primarily to agricultural use, as defined in s. 91.01 (1), including land  
20          designated by the department of natural resources as part of the ice age trail under  
21          s. 23.17, which during the year preceding submission of a first claim under sub. (3)  
22          produced gross farm profits, as defined in s. 71.58 (4), of not less than \$6,000 or  
23          which, during the 3 years preceding that submission produced gross farm profits, as  
24          defined in s. 71.58 (4), of not less than \$18,000, or a parcel of 35 or more acres, on  
                which the farm tank is located, of which at least 35 acres, during part or all of the

\*\*\* Note: A different treatment of these <sup>parts</sup> of s. 92.14 <sup>✓</sup> may be necessary, given  
that there are, in effect, 2 farmland preservation tax credits.  
under this draft

1 year preceding that submission, were enrolled in the conservation reserve program  
2 under 16 USC 3831 to 3836.

\*\*\*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:** 1987 a. 399; 1989 a. 31, 254, 255; 1991 a. 39, 82, 269; 1993 a. 16, 301, 416, 491; 1995 a. 27 ss. 3665 to 3683m, 9116 (5); 1995 a. 227, 247, 378,  
417; 1997 a. 27, 35, 237, 252, 283; 1999 a. 9, 185; 2001 a. 16, 109; 2003 a. 33; 2005 a. 75.

3 **SECTION 48.** 101.143 (4) (ei) 1m. b. of the statutes is amended to read:

4 101.143 (4) (ei) 1m. b. The claim is submitted by a person who, at the time that  
5 the notification was made under sub. (3) (a) 3., was the owner of the farm tank and  
6 owned a parcel of 35 or more acres of contiguous land, on which the farm tank is or  
7 was located, which was devoted primarily to agricultural use, as defined in s. 91.01  
8 (1), including land designated by the department of natural resources as part of the  
9 ice age trail under s. 23.17, which during the year preceding that notification  
10 produced gross farm profits, as defined in s. 71.58 (4), of not less than \$6,000 or  
11 which, during the 3 years preceding that notification, produced gross farm profits,  
12 as defined in s. 71.58 (4), of not less than \$18,000, or a parcel of 35 or more acres, on  
13 which the farm tank is located, of which at least 35 acres, during part or all of the  
14 year preceding that notification, were enrolled in the conservation reserve program  
15 under 16 USC 3831 to 3836.

\*\*\*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:** 1987 a. 399; 1989 a. 31, 254, 255; 1991 a. 39, 82, 269; 1993 a. 16, 301, 416, 491; 1995 a. 27 ss. 3665 to 3683m, 9116 (5); 1995 a. 227, 247, 378,  
417; 1997 a. 27, 35, 237, 252, 283; 1999 a. 9, 185; 2001 a. 16, 109; 2003 a. 33; 2005 a. 75.

16 **SECTION 49.** 165.25 (4) (ar) of the statutes, as affected by 2005 Wisconsin Act  
17 458, is amended to read:

18 165.25 (4) (ar) The department of justice shall furnish all legal services  
19 required by the department of agriculture, trade and consumer protection relating  
20 to the enforcement of ss. 91.68, 100.171, 100.173, 100.174, 100.175, 100.177, 100.18,  
21 100.182, 100.20, 100.205, 100.207, 100.209, 100.21, 100.28, 100.37, 100.42, 100.50,

1 100.51, and 100.195 and chs. 126, 136, 344, 704, 707, and 779, together with any  
2 other services as are necessarily connected to the legal services.

NOTE: NOTE: Par (ar) is shown as amended eff. 4-1-07 by 2005 Wis. Act 458. Prior to 4-1-07 it reads:NOTE:

3 (ar) The department of justice shall furnish all legal services required by the department of agriculture, trade and consumer protection  
4 relating to the enforcement of ss. 100.171, 100.173, 100.174, 100.175, 100.177, 100.18, 100.182, 100.20, 100.205, 100.207, 100.209, 100.21, 100.28,  
5 100.37, 100.42, 100.50 and 100.51 and chs. 126, 136, 344, 704, 707, and 779, together with any other services as are necessarily connected to  
6 the legal services.

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.

7 SECTION 50. 281.16 (3) (e) of the statutes is amended to read:

8 281.16 (3) (e) An owner or operator of an agricultural facility or practice that  
9 is in existence before October 14, 1997, may not be required by this state or a  
10 municipality to comply with the performance standards, prohibitions, conservation  
11 practices or technical standards under this subsection unless cost-sharing is  
12 available, under s. 92.14 or 281.65 or from any other source, to the owner or operator.  
13 For the purposes of this paragraph, sub. (4) and ss. 92.07 (2), 92.105 (1), 92.15 (4) and  
14 823.08 (3) (c) 2., the department of natural resources shall promulgate rules that  
15 specify criteria for determining whether cost-sharing is available under s. 281.65  
16 and the department of agriculture, trade and consumer protection shall promulgate  
17 rules that specify criteria for determining whether cost-sharing is available under  
18 s. 92.14 or from any other source. The rules may not allow a determination that  
19 cost-sharing is available to meet local regulations under s. 92.07 (2), 92.105 (1) or  
20 92.15 that are consistent with or that exceed the performance standards,  
21 prohibitions, conservation practices or technical standards under this subsection  
22 unless the cost-sharing is at least 70% of the cost of compliance or is from 70% to 90%  
23 of the cost of compliance in cases of economic hardship, as defined in the rules.

History: 1997 a. 27; 1999 a. 9.

\*\*\*\*NOTE: How should this be treated?

24 SECTION 51. 281.65 (5) (b) of the statutes is amended to read:

1           281.65 (5) (b) Prepare sections of the priority watershed or priority lake plan  
2 relating to farm-specific implementation schedules, requirements under ss. ~~92.104~~  
3 and ~~92.105~~ 91.80 (1), animal waste management and selection of agriculturally  
4 related best management practices and submit those sections to the department for  
5 inclusion under sub. (4m) (b). The best management practices shall be cost-effective  
6 best management practices, as specified under sub. (4) (e), except in situations in  
7 which the use of a cost-effective best management practice will not contribute to  
8 water quality improvement or will cause a water body to continue to be impaired as  
9 identified to the federal environmental protection agency under 33 USC 1313 (d) (1)  
10 (A).

**History:** 1977 c. 418; 1979 c. 34, 221; 1979 c. 355 s. 241; 1981 c. 20; 1981 c. 346 s. 38; 1983 a. 27; 1983 a. 189 s. 329 (16); 1983 a. 416; 1985 a. 29; 1987 a. 27; 1989 a. 31, 336, 366; 1991 a. 39, 309; 1993 a. 16, 166, 213, 246, 491; 1995 a. 27, 201, 225; 1995 a. 227 s. 428; Stats. 1995 s. 281.65; 1995 a. 404 s. 204; 1997 a. 27, 209, 237; 1999 a. 9; 1999 a. 150 s. 672; 2001 a. 16, 109; 2003 a. 33.

11           **SECTION 52.** 281.65 (5) (d) of the statutes is amended to read:

12           281.65 (5) (d) Develop a grant disbursement and project management schedule  
13 for agriculturally related best management practices to be included in a plan  
14 established under sub. (4) (g) and identify recommendations for implementing  
15 activities or projects under ss. 91.80 (1), 92.10, ~~92.104~~ and 92.105.

**History:** 1977 c. 418; 1979 c. 34, 221; 1979 c. 355 s. 241; 1981 c. 20; 1981 c. 346 s. 38; 1983 a. 27; 1983 a. 189 s. 329 (16); 1983 a. 416; 1985 a. 29; 1987 a. 27; 1989 a. 31, 336, 366; 1991 a. 39, 309; 1993 a. 16, 166, 213, 246, 491; 1995 a. 27, 201, 225; 1995 a. 227 s. 428; Stats. 1995 s. 281.65; 1995 a. 404 s. 204; 1997 a. 27, 209, 237; 1999 a. 9; 1999 a. 150 s. 672; 2001 a. 16, 109; 2003 a. 33.

16           **SECTION 53.** 281.65 (5) (e) of the statutes is amended to read:

17           281.65 (5) (e) Identify areas within a priority watershed or priority lake area  
18 that are subject to activities required under ss. ~~92.104~~ and ~~92.105~~ 91.80 (1).

**History:** 1977 c. 418; 1979 c. 34, 221; 1979 c. 355 s. 241; 1981 c. 20; 1981 c. 346 s. 38; 1983 a. 27; 1983 a. 189 s. 329 (16); 1983 a. 416; 1985 a. 29; 1987 a. 27; 1989 a. 31, 336, 366; 1991 a. 39, 309; 1993 a. 16, 166, 213, 246, 491; 1995 a. 27, 201, 225; 1995 a. 227 s. 428; Stats. 1995 s. 281.65; 1995 a. 404 s. 204; 1997 a. 27, 209, 237; 1999 a. 9; 1999 a. 150 s. 672; 2001 a. 16, 109; 2003 a. 33.

\*\*\*\*NOTE: I do not know whether these are the appropriate changes to s. 281.65.

19

(END)

DNote

**DRAFTER'S NOTE**  
**FROM THE**  
**LEGISLATIVE REFERENCE BUREAU**

LRB-0447/P1dn

RCT:.....

MES:kjf

Date

This is a preliminary draft of the proposal to replace the farmland preservation program. Mark Shovers drafted the tax credit provisions and I drafted ch. 91. This is a complex proposal. Please review the draft very carefully. We have included a number of notes in the draft raising issues about specific provisions.

The draft does not yet include all of the changes that must be made outside of ch. 91 because of the repeal and recreation of ch. 91. For one thing, there are statutory cross-references to the current definition of agricultural use in ss. 30.29 (3) (b), 32.035 (1) (b), 66.0721 (1) (a), 101.143 (4) (ei) 1m. a., and b., and 823.08 (2) (b). Please review the statutes containing those cross-references to determine whether there will be any problems with changing the reference to the new definition.

There seem to be some issues with the draft related to the transition from current law to the new provisions. For example, there will be a delay in getting new zoning ordinances certified. The provisions relating to base farm tracts do not deal with what will happen until the ordinances are certified. Please consider whether there are additional transitional issues. I assume that there should be a delayed effective date for the repeal and recreation of ch. 91. Please consider what it should be.

Is the \$100 per acre conversion fee intended to apply to persons with farmland preservation agreements entered into before the bill takes effect? I don't think that the draft is clear in that respect. If the new conversion fee is intended to apply in that case, might there be an impairment of contract problem? Some land is currently covered by exclusive agricultural zoning and by an agreement. The draft needs to be clear about what happens if the owners of such land have it rezoned and released from the agreement.

Also, please consider whether there are issues about the application of other provisions in the draft to persons who currently have agreements.

Please contact us with questions and redraft instructions.

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

*four*

Please review the treatment of the farmland preservation credit very carefully to ensure that it is consistent with your intent. I could not repeal and recreate subch. IX, as your draft indicates because your instructions stated that you wanted holders of farmland preservation agreements to be able to continue with their agreements, and the credit under subch. IX, until the agreements expired. See page 8 in the analysis part of your instructions. Another reason that I couldn't just repeal subch. IX is because taxpayers may file amended returns for 4 years under s. 71.75 (2), so the current version of the statute must remain until the possibility for appeals does not exist.

X  
X

Because the draft contains, in effect, <sup>two</sup> 2 farmland preservation tax credits, there were quite a few cross-references that needed to be changed. I was pretty sure that some should be changed, and I changed those. I was unsure about whether others should be changed, so I added a "\*\*\*\*NOTE" with a question. There are also quite a few other statutes that you need to look at to decide whether the current cross-reference to "subch. IX" is OK, or whether it needs to be modified. Please review the following tax statutes and let me know how you would like them treated: ss. 71.03 (6m), 71.07 (2fd) (b), 71.07 (3m) (c) 1., 71.07 (6e) (c) 2., 71.28 (1) (fd) (b), 71.47 (2m) (c) 1., 71.49 (1) (f), and 71.88 (2) (b).

Current law requires a claimant to be domiciled in this state during the entire year. See s. 71.58 (1) (intro.). Do you want a similar provision in this bill? If not, do you want the credit prorated for nonresidents or part-year residents based on the ratio of their Wisconsin adjusted gross income to their federal AGI?

X

Marc E. Shovers  
 Senior Legislative Attorney  
 Phone: (608) 266-0129  
 E-mail: marc.shovers@legis.wisconsin.gov

**DRAFTER'S NOTE  
FROM THE  
LEGISLATIVE REFERENCE BUREAU**

LRB-0447/P1dn  
RCT&MES:kjf:jf

December 14, 2007

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Also, please consider whether there are issues about the application of other provisions in the draft to persons who currently have agreements.

Please contact us with questions and redraft instructions.

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

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Current law requires a claimant to be domiciled in this state during the entire year. See s. 71.58 (1) (intro.). Do you want a similar provision in this bill? If not, do you want the credit prorated for nonresidents or part-year residents based on the ratio of their Wisconsin adjusted gross income to their federal AGI?

Rebecca C. Tradewell  
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Marc E. Shovers  
Senior Legislative Attorney  
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**Tradewell, Becky**

---

**From:** Matson, James K - DATCP [James.Matson@Wisconsin.gov]  
**Sent:** Tuesday, February 12, 2008 4:42 PM  
**To:** Tradewell, Becky  
**Cc:** Nilsestuen, Rod J - DATCP; Romanski, Randy - DNR; Arts, James L - DATCP; Pielsticker, Kathy F - DATCP; Jelinski, Dave - DATCP; Foye, Keith W - DATCP; Steffel, Sherry M - DATCP; Knapp, Barb H - DATCP  
**Subject:** Comments on Farmland Preservation Bill (LRB-0447/P1)  
**Attachments:** Comments on Draft Legislation (2-12-08).doc; Comments on Draft Legislation - Appendix A revised.doc

Hi Becky -- Here are our preliminary comments on the farmland preservation bill draft. Thanks for all your good work so far. I will be out of the office until the end of February, but you can contact me after that at 224-5022. If you want to talk to program staff, you might start with Keith Foye at 224-4603. -- Jim Matson



Comments on Draft Legislation ...      Comments on Draft Legislation ...



State of Wisconsin  
Jim Doyle, Governor

Department of Agriculture, Trade and Consumer Protection  
Rod Nilsestuen, Secretary

**DATE:** February 12, 2008  
**TO:** Rebecca Tradewell, LRB Managing Attorney  
**FROM:** Jim Matson, DATCP Counsel  
**SUBJECT: Farmland Preservation Preliminary Draft Bill  
(LRB-0447/P1)**

We have the following preliminary comments and questions on this draft bill. As usual, you have done an excellent job of analysis and drafting. We may have further comments or changes as we continue to refine the proposal (I'm sure you will also have questions).

Thanks again for your work on this big project. Feel free to call me at 224-5022 if you have any questions or wish to discuss further (I will be out of the office from Feb. 14-29).

### Appropriations

We understand that the draft does not yet address appropriation changes.

### Chapter 23

✓ It is OK to repeal 23.094(2)(c)3., since we will be repealing the cross-referenced provision (s. 92.104). We understand that we will retain references to the land and water resource management program under s. 92.10, the soil and water resource management program under s. 92.14, and the nonpoint pollution abatement program under s. 281.65 (ss. 23.094(2)(c)2., 3. and 5.).

### Chapter 66

✓ In s. 66.0721(1)(b), we might prefer the new cross-reference to s. 71.613(1)(g) for reasons of long-term consistency. That change would also extend, to more farms, the protection against special or water sewer assessments. We do not know whether local governments would have any objection.

### Chapter 71

We had proposed to repeal the farmland tax credit provisions under ss. 71.07(3m), 71.28(2m) and 71.47(2m), and to repeal and recreate the farmland preservation tax credit provisions under subch. IX of ch. 71. The LRB draft takes a different approach, by "sunsetting" the current provisions and creating new provisions effective for tax year 2009. We understand that the result is basically the same.

*Agriculture generates \$51.5 billion for Wisconsin*

We assume that the LRB approach is basically designed to accommodate legitimate delayed claims for tax credits earned in past years. We are not experts on tax drafting, and we would defer to the LRB approach. We would merely offer the following comments:

- We do not think it is necessary to change current cross-references in the “sunsetting” provisions, other than to clarify (as LRB has done) that the references refer to 2005 Stats. For example, references in the “sunsetting” provisions could still cite to s. 71.58 of 2005 Stats., rather than the new s. 71.613, because those references will not affect tax credit claims under the new law (beginning with claims for tax year 2009).
- Rather than amending ss. 71.07(2fd), 71.28(1fd) and 71.47(1fd), would it be possible to repeal those provisions altogether because they appear to refer to a one-time tax credit for the year 1988 (now long gone)?
- The LRB draft creates a new s. 71.61(9), which prohibits farmland preservation tax credit claims under the “old” law for tax years beginning after December 31, 2008. But it allows claimants covered by farmland preservation agreements to claim tax credits under the “old” law until their farmland preservation agreements expire. The “new” farmland preservation tax credit provisions under s. 71.613 also make tax credits available to claimants covered by farmland preservation agreements. Does that mean that claimants covered by farmland preservation agreements could “double dip” by claiming tax credits under both the “old” and “new” laws? May the claimant seek credits under the “old” but not the “new” law, or vice versa? May the claimant elect to claim credits under either the “old” or “new” law, but not both? We should be clear about what we intend.

We would like to modify s. 71.613(2) to read as follows:

(2) FILING CLAIMS. Subject to the limitations and conditions provided in sub. (3), a claimant may claim as a credit against the tax imposed under s. 71.02, 71.23, or 71.43, up to the amount of those taxes, an amount calculated by multiplying the claimant’s qualifying acres by the following applicable amount:

(a) \$10 if the qualifying acres are located in a farmland preservation zoning district and are also covered by a farmland preservation agreement created after *[legislative reference bureau inserts effective date of this act]*.

(b) \$7.50 if the qualifying acres are located in a farmland preservation zoning district, but not covered by a farmland preservation agreement created after *[legislative reference bureau inserts effective date of this act]*.

(c) \$5 if the qualifying acres are covered by a farmland preservation agreement created after *[legislative reference bureau inserts effective date of this act]*, but are not located in a farmland preservation zoning district.

***[NOTE: After the effective date of this act, farmland preservation agreements may only be created in "working lands enterprise areas" designated according to DATCP rules under s. 91.60(2)(c).]***

### Chapter 91

- ✓ **91.01(1)** The LRB draft deletes the phrase "on a farm." We believe that the phrase should be retained.
- ✓ **91.01(2)(a)1 (drafter's note).** It is OK to delete the term "fiber."
- ✓ **91.01(2)(a)2 (drafter's note).** It is probably OK to define the term "livestock." The definition in s. 951.01(3) does not work, because it excludes animals such as horses (which we would like to include). An alternative might be to use the following definition (which is similar to the current definition in ATCP 10):  

"Livestock" means bovine animals, equine animals, goats, poultry, sheep, swine, farm-raised deer, farm-raised game birds, camelids, ratites and farm-raised fish.
- ✓ **91.01(2)(a)8 (drafter's note).** We think that the LRB draft is OK as written. If there is any problem in application, we can clarify by rule using our authority under s. 93.01(7), Stats.
- ✓ **91.01(2)(b) (drafter's note).** OK to include floriculture. OK to delete "undeveloped natural resource and open space use" from this definition.
- ✓ **91.01(3)(a) (drafter's note)** OK to include ethanol and bio-diesel plants.
- ✓ **91.01(4) (drafter's note)** We would prefer to use the term "permitted use" rather than "authorized use" or "unconditional use." We completely agree that the term "permitted use" is unfortunate, but it is the term generally used in the planning and zoning community, in zoning ordinances, and court decisions interpreting zoning law. So we would be inclined to conform to the current (admittedly unfortunate) general usage. The use of another term would likely be confusing to local officials.
- ✓ **91.01(5)(a) (drafter's note)** Until a new ordinance is certified, residential siting would be governed by the existing ordinance (if any). Local governments may adopt and enforce zoning ordinances (including farmland zoning ordinances) without ever having them certified. Certification is only required in order for farmers to claim tax credits. If this bill is enacted, local governments will need to have ordinances newly certified by a certain date in order for farmers to continue receiving tax credits under the ordinance. Newly certified ordinances must meet the minimum zoning standards (including residential density standards) specified in the bill. Ordinances that fail to meet those standards will no longer be certified after a certain date. Local governments will still be able to apply those ordinances, but farmers will no longer be able to claim tax credits.

- ✓ **91.01(13) (drafter's note)** We are OK with deleting the phrase "and is part of a single economic unit for purposes of income tax filing." We believe that our intended use of the phrase "primarily devoted to" is basically consistent with the current DOR definition of "land devoted primarily to agricultural use" (TAX 18.02(1)).
- ✓ **91.01(16)** We are not sure why it is necessary to include the phrase "when not preceded by 'certified'". A plan certified under the old law may also continue to be certified, for a period of time, under the new law (see ss. 91.12 and 91.14 created by the bill). A plan may also be adopted under the new law, pursuant to s. 91.10, without ever being certified for purposes of farmland preservation tax credit eligibility.
- ✓ **91.01(18) (drafter's note)** OK to delete the definition of "farmland preservation zoning ordinance" as suggested by the drafter's note (keep definition of "farmland preservation zoning district").
- ✓ **91.01(25)(a) (drafter's note)** The term "land capability classification" appears to be correct. We should delete the reference to a map published by NRCS. Data are available from NRCS, probably down to the parcel level, but not necessarily in map form.
- ✓ **91.01(26) (drafter's note)** It is OK to take the word "isolated" out of the "prior nonconforming use" definition. We might want to add some language to s. 91.42(3) to clarify that prior nonconforming uses should be the exception, not the rule, in farmland preservation zoning districts. If prior nonconforming uses are pervasive throughout the district, the district may be improperly zoned.
- ✓ **91.04 (new provision)** We would like to create a new provision to say something like the following:

**91.04 Department to report.** At least once every 2 years, beginning not later than December 31, 2011, the department shall submit a farmland preservation report to the board of agriculture, trade and consumer protection. The department shall prepare the report in cooperation with the department of revenue, and shall provide copies of the report to the department of revenue and the department of administration. The report shall include all of the following:

(1) A review and analysis of farmland availability, uses and use trends in this state, including state and county information related to farmland conversion.

(2) A review and analysis of relevant information related to the farmland preservation program under this chapter and associated tax credit claims under ch. 71, Stats. The review and analysis shall include information related to all of the following:

(a) Program participation by political subdivisions and landowners.

(b) Tax credit claims by landowners, including the number of claimants, the amount of credits claimed, acreage covered by tax credit claims, the amount of credits claimed under zoning ordinances vs. farmland preservation agreements, and relevant projections and trends.

(c) The number, identity and location of counties with certified farmland preservation plans, and trends and developments related to plan certification.

(d) The number, identity and location of political subdivisions with certified farmland preservation zoning ordinances, and trends and developments related to ordinance certification.

(e) The number, nature and location of working lands enterprise areas designated in accordance with rules under s. 91.60(2)(c).

(f) The number and location of farmland preservation agreements, including new and expired agreements.

(g) Conservation compliance by landowners under s. 91.80, and compliance activities by county land conservation committees under s. 91.82.

(h) Rezoning of land out of farmland preservation districts under s. 91.48, including the amounts of conversion fees paid to political subdivisions under s. 91.48(2).

(i) Program costs, cost trends and cost projections.

(i) Key issues related to program performance, and key recommendations if any to enhance performance.

✓ **91.10** We understand the need for greater clarity related to content, procedures and deadlines for county farmland preservation plans. We would suggest the language in *Appendix A*, attached. We do not think it is necessary to duplicate the procedural language from s. 66.1001(4), and we would prefer to incorporate those procedural requirements by reference. We have set a general deadline of 2015, but counties wishing to continue participation in the farmland preservation (tax credit) program will need to act sooner in order to renew their current plan certification before it expires.

✓ **91.14 (drafter's note).** We agree that it might be good to specify a date as of which the population is determined, for purposes of the deadlines under sub. (1). The effective date of the draft bill would be fine.

- ✓ **91.14.** We would like to modify the expiration schedule, so that certifications of the following county plans would expire on the following dates:
- December 31, 2011 for a county with a population of 216 or more persons per square mile.
  - December 31, 2012 for a county with a population of 76 to 215 persons per square mile.
  - December 31, 2013 for a county with a population of 46 to 75 persons per square mile.
  - December 31, 2014 for a county with a population of 30 to 45 persons per square mile.
  - December 31, 2015 for a county with a population of 29 or fewer persons per square mile.
- ✓ **91.16(3) (drafter's note).** We are not necessarily wedded to the term "audit." The idea is that DATCP could independently verify the facts asserted in the county's certification application. Perhaps "independently verify" would work.
- ✓ **91.20(2)(c) (drafter's note).** OK.
- ✓ **91.20(3) (drafter's note).** We could say "...signed by the county corporation counsel and by the county planning director or chief elected official...."
- ✓ **91.30 (drafter's note).** The applicability of a county zoning ordinance in towns is governed by county and municipal law, and should be no different for farmland preservation zoning than for other zoning. We don't think it is necessary to address the issue in this bill.
- ✓ **91.34 (drafter's note).** We agree that it might be good to specify a date as of which the population is determined, for purposes of the deadlines under sub. (1). The effective date of the draft bill would be fine.
- ✓ **91.34.** We would like to modify the expiration schedule, so that certifications of current farmland preservation ordinances would expire on the following dates (if no expiration date is specified in the current certification):
- December 31, 2012 for a county with a population of 216 or more persons per square mile.
  - December 31, 2013 for a county with a population of 76 to 215 persons per square mile.
  - December 31, 2014 for a county with a population of 46 to 75 persons per square mile.
  - December 31, 2015 for a county with a population of 30 to 45 persons per square mile.

- December 31, 2016 for a county with a population of 29 or fewer persons per square mile.

✓ **91.36(3) (drafter's note).** We are not necessarily wedded to the term "audit." The idea is that DATCP could independently verify the facts asserted in the political subdivision's certification application. Perhaps "independently verify" would work.

✓ **91.36(8)(b) (drafter's note).** We agree that there should be a cross-reference to s. 91.38(8)(b) in ch. 71. Do you or Mark Shovers have a suggestion on the location and wording of that cross-reference? *see p. 15*

✓ **91.38(1)(a) (drafter's note 1)** Paragraph (a) is meant to refer to laws, under the county, city, village and town chapters of the statutes, related to required procedures for adopting ordinances generally and zoning ordinances in particular.

✓ **91.38(1)(a) (drafter's note 2)** OK to delete "purpose" requirement.

✓ **91.38(1)(g) (drafter's note)** We would prefer to have 2 separate paragraphs – one related to general consistency (reasonable consistency?) between plans and ordinances, and one that specifically prohibits farmland preservation zoning districts from including lands that are not planned for preservation. This reflects our certification experience to date. Ordinances are seldom *perfectly* consistent with plans (for example, they may designate somewhat smaller acreage for farmland preservation compared to somewhat older county plans). We have generally tolerated minor inconsistencies, except that we have been strict in saying that certified farmland preservation zoning districts (eligible for farmland preservation tax credits) may only include land that is planned for preservation. Thus, for example, landowners cannot claim farmland preservation tax credits for land that the county plans for commercial or residential development.

✓ **91.38(1)(h) (drafter's note)** "Overlays" are widely used in zoning ordinances. An "overlay" superimposes *additional* zoning restrictions on portions of one or more underlying zoning districts (for example, an "overlay" might superimpose additional zoning restrictions in portions of a farmland preservation district to establish an environmental corridor through that district). An "overlay" is not a separate zoning district as such (although the term "overlay district" is widely used), so zoning restrictions applicable to the underlying district(s) also apply within the "overlay" area. Properly used, an "overlay" adds to and does not eliminate zoning restrictions applicable to the underlying district. It might be good to define the term to ensure a consistent understanding of its use in the farmland preservation program.

✓ **91.40(3)(a) (drafter's note)** We could modify par. (a) to refer to "county planning director or chief elected official."

- ✓ **91.44(intro.) (drafter's note)** We had intended to leave open the possibility of narrowing, as well as expanding, authorized uses by rule. Also, as noted earlier, we think that the term "authorized use" (as opposed to "permitted use") will be confusing to local officials. The new LRB construction of 91.44, combined with the term "authorized use," seems to preclude "conditional uses" in farmland preservation zoning districts.
- ✓ **91.44(5) (drafter's note)** Subsection (5) is not absolutely essential but does help clarify, for local officials, that it is OK to include undeveloped natural resource and open space areas in a farmland preservation district (not all of the land in the district needs to be actively farmed). There is some tendency for local ordinances to pockmark the landscape with small "island" farmland preservation districts, rather than broad districts that cover a wider contiguous geographic area. By clarifying that farmland preservation districts may include a broader range of compatible uses (including natural areas and agriculture-related uses), this bill is designed to encourage and facilitate the latter type of districts.
- ✓ **91.44(6) (drafter's note)** Subsection (6) may not be essential, but it may clarify that certain transportation, utility, communication and other uses specifically approved or mandated under state or federal law may be allowed without a local permit in a farmland preservation district. If the state or federal action is truly preemptive, the local government may be precluded from applying the "conditional use" analysis under s. 91.46(4).
- ✓ **91.46(1) (drafter's note)** We had intended to leave open the possibility of narrowing, as well as expanding, authorized uses by rule.
- ✓ **91.46(2)(a) (drafter's note)** A "farm residence" includes any residence identified in s. 91.01(19). A "farm residence" includes a residence occupied by any of the persons identified in s. 91.01(19)(a), regardless of whether that person is an owner or renter of that residence. A building may lose its status as a "farm residence" when there is a change of renters, just as it may when there is a change of owners. In s. 91.46(2)(a), it may be possible to delete the last phrase "after the nonfarm residence is constructed."
- 91.46(2)(c)1. (drafter's note)** The draft intentionally gives local governments discretion to determine (based on the widely variable facts of each case) whether a nonfarm residential parcel "unnecessarily" converts prime farmland from agricultural use. This may be a starting point for discussion, between the landowner and local government, of possible alternative construction sites on the property.
- 91.46(4)(a) (drafter's note)** The draft intentionally gives local governments discretion to determine (based on the widely variable facts of each case) whether the use and location are "necessary" for purposes of issuing a conditional use permit. ✓ On the other hand, if the *use and location* are *specifically approved* under state or federal law, the local government does not have to find that the use and location are "necessary" (others have already made that determination or an equivalent determination). Subsection (4)

addresses situations in which state or federal authorities have blessed a particular use and location, but have not completely preempted an additional requirement of local approval (compare to comment under 91.44(6) above).

**91.46(4)(b) and (c) (drafter's notes)** See previous comments. Paragraph (c) is slightly different from par. (b), especially if the prime farmland is not currently in agricultural use.

**91.46(4)(d) (drafter's note)** See previous comments. Paragraph (d) differs from pars. (b) and (c), because it addresses effects on *neighboring* land – not just the land parcel directly affected.

**91.46(5) and (6) (drafter's notes)** See previous comments related to drafter's notes under sub. (4).

✓ **91.48(1)(c) (drafter's note)** Ordinances are seldom *perfectly* consistent with plans (see comment under s. 91.38(1)(g) above). We could perhaps substitute the term “reasonably consistent.”

✓ **91.48(2)** Modify to read:

91.48(2) The owner of the land pays to the political subdivision a conversion fee equal to the greater of the following:

(a) \$1,000 per acre or a different amount specified by the department by rule.

(b) An amount specified in the certified farmland preservation zoning ordinance.

✓ **91.48(3) (drafter's note)** Perhaps 91.48(intro.), (1) and (2) should be renumbered 91.48(1) (intro.), (a) and (b), and 91.48(3) should be renumbered (2), so that the reporting requirement is separate from the rezoning conditions.

✓ **91.50(3) (drafter's note)** We agree with the changes suggested in the drafter's note.

✓ **91.60(1) (drafter's note)** We could delete the term “tract of” and simply refer to “land.”

✓ **91.60(2)(b)** Replace this paragraph with the following:

(b) The land is located in a farmland preservation area identified in a certified farmland preservation plan. [See draft sections 91.01(6), 91.12 and 91.14].

✓ **91.60(3)(a) (drafter's note)** Since a farmland preservation agreement is a contract, contract terms (including terms related to withdrawal penalties and land conservation requirements) would normally remain unchanged for the term of the contract (despite subsequent law changes)

except as otherwise agreed by the parties or provided in the contract. A landowner might claim the benefit of subsequent statutory changes that were favorable to the landowner (DATCP might have a hard time objecting), but it would be difficult for DATCP to enforce subsequent statutory changes against the landowner unless the the original contract included the landowner's agreement to comply with current *and future* state land conservation requirements. All landowners (including those with farmland preservation agreements) must comply with the latest current statutory conservation requirements, but DATCP may not threaten withdrawal of farmland preservation tax credits as an enforcement sanction to force compliance with new requirements that were not contemplated in the original contract (other sanctions may be available under other applicable law).

✓ **91.62(4) (drafter's note).** Agreed.

✓ **91.64(2)(b) (drafter's note).** We think that par. (b) is OK as written, especially because the applicant is required to provide a legal description under par. (c) and a map or aerial photo under par. (d).

✓ **91.64(2)(g) (drafter's note).** We would like to ensure that other interests are subordinated to the agreement. Perhaps we should add a provision to s. 91.62, saying that the farmland preservation agreement itself must include signed subordination agreements by existing lien, mortgage and easement holders (that is what we do under the current CREP conservation easement program).

✓ **91.64(3)(a) (drafter's note).** OK.

✓ **91.64(3)(b)** Modify line 9 to read:

...the requirements under s. 91.60(2)(b) and **(d)**....

✓ **91.64(4)(a) (drafter's note).** DATCP would still prepare the agreement.

✓ **91.64(4)(b) (drafter's note).** We could modify sub. (4)(b) to read as follows (delete par. (b)3):

(b) The department may decline to enter into a farmland preservation agreement for good cause, including any of the following reasons:

1. The application is incomplete.
2. The proposed farmland preservation agreement does not comply with s. 91.62.

✓ **91.66(1)(c) (drafter's note).** OK to eliminate the phrase "direct government action" (retain "government purchase or condemnation").

✓ **91.70 (drafter's note).** Same as response to drafter's note under 91.50(3).

- ✓ **91.80(1) (drafter's note).** See response to drafter's note under 91.60(3)(a).
- ✓ **91.80(2) (drafter's note).** OK to delete sub. (2), given the existence of s. 71.613(3)(a)2.
- ✓ **91.82(2)(intro.) (drafter's note).** OK to say that the committee must give a copy of the notice to DOR.
- ✓ **91.82(2)(c) (drafter's note).** OK.
- ✓ **91.82(3) (drafter's note).** We could add a subsection saying that the committee shall withdraw the notice if the committee finds that the landowner has corrected the alleged violation.
- ✓ **91.82** Add the following requirements:
- A county land conservation committee must inspect each farm (for which the operator claims farmland preservation tax credits) for compliance with s. 91.80(1) at least once every 4 years.
  - At least once every 4 years, DATCP must review each county's compliance with this inspection requirement.
- ✓ **92.14(3)(d) (drafter's note).** OK.
- ✓ **101.143 (drafter's notes).** We think it would be OK to use the new definition of "gross farm profits" under s. 71.613(1).
- ✓ **281.16(3)(3) (drafter's note).** Delete references to s. 92.105(1), consistent with the repeal of s. 92.105 by this bill.
- ✓ **281.65** We would suggest citing 281.16(3)(e) rather than 91.80(1).

## *Appendix A*

**91.10 County plan required.** (1) A county shall adopt a farmland preservation plan under this section by January 1, 2015, regardless of whether the county applies for certification of that plan under s. 91.16. If the county has a comprehensive plan, the farmland preservation plan shall be consistent with and included in the comprehensive plan. The farmland preservation plan may incorporate, by reference, information contained in other parts of the comprehensive plan.

(2) A farmland preservation plan under sub. (1) shall do all of the following:

(a) State the county's policy related to farmland preservation and agricultural development, including the development of enterprises related to agriculture.

(b) Identify, describe and document other development trends, plans or needs that may affect farmland preservation and agricultural development in the county, including trends, plans or needs related to population and economic growth, housing, transportation, utilities, communications, business development, community facilities and services, energy, waste management, municipal expansion and environmental preservation.

(c) Identify, describe and document all of the following:

1. Agricultural uses of land at the time that the farmland preservation plan is adopted, including key agricultural specialties if any.
2. Key agricultural resources, including available land, soil and water resources.
3. Key infrastructure related to agriculture, including key processing, storage, transportation, supply, distribution and marketing facilities.

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

5. County agricultural development goals, including goals related to the development of enterprises related to agriculture. The plan shall identify anticipated changes in the nature, scope, location and focus of agricultural production, processing, supply and distribution.

6. Actions that the county will take to preserve farmland and promote agricultural development.

7. Key land use issues related to preserving farmland and promoting agricultural development, and plans to address those issues.

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

(e) Include maps that clearly delineate all areas included under par. (d), so that a reader can easily determine whether a parcel is included within an identified area. Each map shall be clearly correlated with text that describes the types of land uses planned for each area identified on that map.

(g) Identify programs and other actions that the county and local governmental units within the county may use to preserve the areas identified under par. (d).

(3) To adopt a farmland preservation plan under sub. (1), a county shall follow procedures required under s. 66.1001(4) for the adoption of a comprehensive plan.

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

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

Sections Affected Post-Drafting-Check For 07-0447/P1

Tuesday, April 1, 2008 11:25 am

Current Wisconsin Statutes updated through 2007 Act 199

SECTION (Sub)(Par)	TREATMENT	AFFECTED BY
71.08(1)(intro.)	am.	Act 0020
71.08(1)(intro.)	(aff. 2005 WisAct 479) am.	Act 0097
71.10(4)(i)	am.	Act 0020
71.10(4)(i)	[see s. 76 of]	Act 0096
165.25(4)(ar)	(aff. 2005 WisAct 458) am.	Act 0076
165.25(4)(ar)	am. effec. 4-1-2007 .... WisAct 458 of	2005
165.25(4)(ar)	(aff. 2005 WisAct 458) am.	Act 0096
709.03(form)24m.	cr. effec. 11-1-2008	Act 0121

**Shovers, Marc**

**To:** Shovers, Marc  
**Subject:** Instructions for /P2 of LRB -0447 (Chs. 66 and 71)

**DATE:** February 12, 2008  
**TO:** Rebecca Tradewell, LRB Managing Attorney  
**FROM:** Jim Matson, DATCP Counsel  
**SUBJECT: Farmland Preservation Preliminary Draft Bill  
 (LRB-0447/P1)**

We have the following preliminary comments and questions on this draft bill. As usual, you have done an excellent job of analysis and drafting. We may have further comments or changes as we continue to refine the proposal (I'm sure you will also have questions).

Thanks again for your work on this big project. Feel free to call me at 224-5022 if you have any questions or wish to discuss further (I will be out of the office from Feb. 14-29).

**Chapter 66**

In s. 66.0721(1)(b), we might prefer the new cross-reference to s. 71.613(1)(g) for reasons of long-term consistency. That change would also extend, to more farms, the protection against special or water sewer assessments. We do not know whether local governments would have any objection.

**Chapter 71**

We had proposed to repeal the farmland tax credit provisions under ss. 71.07(3m), 71.28(2m) and 71.47(2m), and to repeal and recreate the farmland preservation tax credit provisions under subch. IX of ch. 71. The LRB draft takes a different approach, by "sunsetting" the current provisions and creating new provisions effective for tax year 2009. We understand that the result is basically the same.

We assume that the LRB approach is basically designed to accommodate legitimate delayed claims for tax credits earned in past years. We are not experts on tax drafting, and we would defer to the LRB approach. We would merely offer the following comments:

- We do not think it is necessary to change current cross-references in the "sunsetted" provisions, other than to clarify (as LRB has done) that the references refer to 2005 Stats. For example, references in the "sunsetted" provisions could still cite to s. 71.58 of 2005 Stats., rather than the new s. 71.613, because those references will not affect tax credit claims under the new law (beginning with claims for tax year 2009).
- Rather than amending ss. 71.07(2fd), 71.28(1fd) and 71.47(1fd), would it be possible to repeal those provisions altogether because they appear to refer to a one-time tax credit for the year 1988 (now long gone)? *I think so*
- The LRB draft creates a new s. 71.61<sup>(9)</sup>, which prohibits farmland preservation tax credit claims under the "old" law for tax years beginning after December 31, 2008. But it allows claimants covered by farmland preservation agreements to claim tax credits under the "old" law until their farmland preservation agreements expire. The "new"

04/15/2008

farmland preservation tax credit provisions under s. 71.613 also make tax credits available to claimants covered by farmland preservation agreements. Does that mean that claimants covered by farmland preservation agreements could "double dip" by claiming tax credits under both the "old" and "new" laws? May the claimant seek credits under the "old" but not the "new" law, or vice versa? May the claimant elect to claim credits under either the "old" or "new" law, but not both? We should be clear about what we intend.

We would like to modify s. 71.613(2) to read as follows:

(2) FILING CLAIMS. Subject to the limitations and conditions provided in sub. (3), a claimant may claim as a credit against the tax imposed under s. 71.02, 71.23, or 71.43, up to the amount of those taxes, an amount calculated by multiplying the claimant's qualifying acres by the following applicable amount:

*subject to*

(a) \$10 if the qualifying acres are located in a farmland preservation zoning district and are also covered by a farmland preservation agreement created after *that is entered into* **[legislative reference bureau inserts effective date of this act]**.

(b) \$7.50 if the qualifying acres are located in a farmland preservation zoning district, but not covered by a farmland preservation agreement created after **[legislative reference bureau inserts effective date of this act]**.

(c) \$5 if the qualifying acres are covered by a farmland preservation agreement created after **[legislative reference bureau inserts effective date of this act]**, but are not located in a farmland preservation zoning district.

**[NOTE: After the effective date of this act, farmland preservation agreements may only be created in "working lands enterprise areas" designated according to DATCP rules under s. 91.60(2)(c).]**

Editor for file

- 92.104.....- 23.094 (2) (c) 3., 71.59 (1) (c), (2) (b), 91.13 (8) (d), 92.14 (2) (e), (3) (a) 1., (d), 281.65 (5) (b), (d), (e)
- 92.104.....(3).....- 92.104 (4)
- 92.105.....- 71.59 (1) (c), (2) (c), 91.13 (8) (dm), 91.80 (2), 92.04 (2) (c), 92.106, 92.14 (2) (e), (3) (a) 1., (d), 281.65 (5) (b), (d), (e)
- 92.105.....(1) to (3).....- 71.59 (1) (d) 5.
- 92.105.....(1).....- 92.05 (3) (L), 281.16 (3) (e)
- 92.105.....(5).....- 71.59 (1) (d) 5.
- 92.105.....(7).....- 91.80 (2)
- 92.105.....(7)(b) to (d).....- 92.105 (7) (a)

X-refs to repeated 92.104 & 92.105  
(1) (d) 5.  
71.59 (1) (c), (2) (b)

Editor:  
For file X-refs not done  
↓

ch. 91..... - 70.32 (1g), 71.60 (1) (c) 1., 93.06 (10m), 187.09, 301.046 (1),  
301.048 (4) (b), 301.13, 301.16 (2), (3), 301.18 (2), 938.533 (3)  
(b), 938.538 (4) (b)