

WISCONSIN LEGISLATOR BRIEFING BOOK 2017-18

CHAPTER 9 - AGRICULTURE

Agriculture is a vital industry in Wisconsin. Key programs, tax policies, and laws support growth in the agricultural sector, address the environmental impacts of agricultural practices, and promote the preservation of agricultural land. Various state regulations also ensure food safety and prevent the spread of disease. The Wisconsin Department of Agriculture, Trade, and Consumer Protection is the agency with primary responsibility for administering state agricultural programs.

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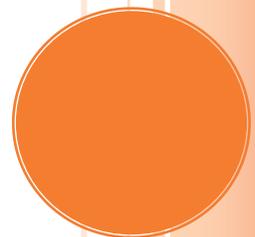


TABLE OF CONTENTS

INTRODUCTION	1
STATE PROGRAMS	1
Technical and Legal Assistance.....	1
Marketing Assistance	2
Financial Assistance	2
DAIRY-SPECIFIC PROGRAMS.....	3
Dairy 30x20 Initiative.....	3
LAND USE AND ENVIRONMENT	3
Livestock Facility Siting	4
Nonpoint Source Performance Standards	4
Pesticides.....	5
FARMLAND PRESERVATION	5
TAXATION	5
Property Taxation	5
Farmland Preservation Tax Credit	6
Income Tax Credit for Agricultural Production Activities.....	6
FOOD SAFETY AND DISEASE PREVENTION.....	6
Food Safety.....	6
Movement of Animals	6
Livestock Premises Registration	7
Deer Farm Registration.....	7
Raw Milk	7
RIGHT TO FARM	7
FENCE LAW.....	7
ADDITIONAL REFERENCES	8
GLOSSARY	8

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INTRODUCTION

Wisconsin ranks among the top states in the production of agricultural commodities such as carrots, cheese, corn for silage, cranberries, snap beans, milk, oats, and potatoes.

Agricultural economics in Wisconsin depends in part on national and international market forces. For example, the volume of agricultural exports typically increases when the U.S. dollar is weak. Nationally, the cost of agricultural inputs such as fuel and fertilizer and market prices for agricultural products are important factors.

Government at all levels also plays a role in agriculture, both in support of the industry and in its regulation. On the federal level, the U.S. Department of Agriculture (USDA) provides crop insurance to farmers, offers assistance to beginning farmers, and administers various programs relating to conservation, energy, and the development of agricultural markets.

STATE PROGRAMS

The Wisconsin Department of Agriculture, Trade, and Consumer Protection (DATCP) is the state agency with primary responsibility for administering agricultural programs. Other state entities, such as the University of Wisconsin (UW)-Extension and the Wisconsin Housing and Economic Development Authority (WHEDA), also provide assistance to farmers.

Technical and Legal Assistance

Wisconsin Farm Center

The Wisconsin Farm Center, housed within DATCP, provides information on the introduction of new agricultural technologies; offers financial counseling for farm

Wisconsin Farm Center's toll-free line: 1-800-942-2474.

Email: farmcenter@wisconsin.gov

businesses; coordinates a mediation and arbitration program; assists with rewiring farms to update antiquated electrical wiring and to minimize stray voltage; and answers general legal questions relating to issues such

as taxation, estate planning, leases, and credit-debtor law.

UW-Extension Programs

The UW-Extension Cooperative Extension farming website is:

<http://fyi.uwex.edu/topic/farming/>

UW-Extension has significant resources available to farmers and others who work in the agricultural sector. Many of the resources focus on agricultural practices. For example, UW-Extension provides tips on farm budgeting and

energy use, and provides recommendations on farming during difficult financial times. In addition, UW-Extension conducts research on pest management, sustainable agriculture, general business management, and farm safety.

Marketing Assistance

DATCP Agriculture Development Division

Through its Agriculture Development Division, DATCP works to develop, grow, and diversify Wisconsin agriculture, food, and related businesses. It operates the Farm Center, described above, and provides assistance with product development, identifying new markets, developing product identities, and exporting products to other states and countries.

Collective Marketing

Some of Wisconsin's agricultural producers market products collectively. One of the ways collective marketing is accomplished is through a system of agricultural marketing orders. Marketing orders are typically requested by producers of a specific commodity in a petition to DATCP. A marketing order levies a "check-off," which is an assessment on

Some agricultural producers market products collectively, through state marketing boards.

each producer, that generates revenues for the program. A marketing order is issued by the DATCP Secretary following a referendum in which the marketing order is approved by a majority of the producers, and thereafter is legally binding on all producers. Revenues from the check-off are used for research and development, public education, and marketing efforts. There are currently seven active marketing boards in the state, including marketing boards for cherries, cranberries, corn, milk, soybeans, ginseng, and potatoes.

The Wisconsin Milk Marketing Board's website includes links to cheese recipes, maps, and more:
<http://www.eatwisconsincheese.com>

"Something Special from Wisconsin"
 Branding Campaign

DATCP authorizes specified products produced or manufactured in Wisconsin to be included in the state's trademarked "Something Special from Wisconsin" branding campaign. Approved products may bear the "Something Special from Wisconsin" logo. To be eligible, 50% of a product's value must be attributable to Wisconsin ingredients, production, or processing activities.

Financial Assistance

WHEDA administers loan guarantee programs related to agriculture under ch. 234, Stats., including the following:

- The Credit Relief Outreach Program (CROP), which provides guarantees on agricultural production loans.
- The Farm Asset Reinvestment Management (FARM) program, which provides loan guarantees for starting, expanding, or modernizing agricultural operations.
- The Agricultural Production Disaster Assistance Program, which guarantees loans for certain extraordinary disaster-related costs.
- The Agricultural Development Program, under which guarantees can be issued for loans for capital or items to be used for processing or marketing products made from agricultural commodities produced in Wisconsin.

The agricultural producer security fund program, administered by DATCP under ch. 126, Stats., is intended to protect agricultural producers from financial default by those purchasing the producer's products. This program affects dairy plant operators, vegetable processing plants, public warehouses, and grain dealers by providing a thorough review of the financial status of product purchasers and requires them to provide financial assurances to protect the producers if payments are not made.

DAIRY-SPECIFIC PROGRAMS

Various state programs and initiatives provide support to the dairy industry. In addition to the programs discussed below, DATCP provides assistance to organic dairy farms, assists with diagnosing problems with animal herd health, and offers support to dairy farmers interested in incorporating grazing on their farms.

Dairy 30x20 Initiative

The Dairy 30x20 initiative, also called the "Grow Wisconsin Dairy" initiative, aims to help Wisconsin dairy farms to produce 30 billion pounds of milk annually by 2020 to meet growing demand. Under this initiative, various financial and technical benefits are available to dairy producers and processors. DATCP staff who coordinate this program may be reached at 855-WIDAIRY or GrowWisconsinDairy@wi.gov.

Wisconsin Center for Dairy Research

The Wisconsin Center for Dairy Research is located on the UW-Madison campus. It is one of the premier dairy research centers in the country. The center researches topics such as cheese making, dairy protein processing and separation, and product safety technologies. Part of the funding for the center comes from assessments under the milk marketing order, described above.

LAND USE AND ENVIRONMENT

Like other types of entities, agricultural businesses must comply with laws regulating natural resources, land use, and the environment. The laws that apply to a given

agricultural use depend on the nature of the agricultural practice and the characteristics of a given site. In addition to the laws described below, a particular agricultural operation may be subject to state or federal laws governing water use, waste management, or other environmental impacts.

Some of the regulatory programs, such as soil and water conservation requirements, animal waste regulations, and fertilizer and nutrient requirements, are imposed through a long-term management strategy rather than a traditional regulatory program. Some program requirements are imposed only when public funds are available to assist farmers in complying with the regulations.

Livestock Facility Siting

The livestock facility siting law, s. 93.90, Stats., establishes state water quality and odor management standards to be applied to any local regulation of new or expanding livestock facilities. The law applies to livestock facilities with 500 or more animal units.¹

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The livestock siting law requires *local government* regulations relating to new or expanded livestock facilities to adhere to state standards governing the local permitting process. The purpose of this law is to establish uniform standards statewide for livestock facility siting and expansion. The Livestock Facility Siting Review Board oversees challenges to local siting decisions.

Nonpoint Source Performance Standards

Nonpoint source pollution, or runoff pollution, is water pollution that is diffuse in nature, having no single, well-defined point of origin. Wisconsin law regulates nonpoint source pollution from farming activities.

Wisconsin law requires the Department of Natural Resources (DNR) to establish nonpoint source performance standards, and DATCP must write rules identifying practices for farmers to use to meet those standards. Specific performance standards include requirements related to nutrient management², erosion, tillage setbacks, phosphorus management, and manure storage and management. Cost sharing may be available to pay for the implementation of practices designed to meet these standards and, in some situations, must be provided before a farmer can be compelled to comply. [s. 281.16, Stats.]

¹ “Animal units” are calculated according to formulas set forth in s. NR 243.05, Wis. Adm. Code.

² “Nutrient management” is a method whereby farmers adopt a plan for managing all sources of nutrients particularly (nitrogen and phosphorous) that are applied to the land. The plan covers nutrients deposited by application of fertilizer, growing legumes, and manure spreading. Nutrient management often reduces the costs of fertilizer application for farmers and is intended to reduce the amount of nutrients that can be washed away from the fields during rainfall and carried into surface waters and groundwater.

Pesticides

Pesticides are subject to comprehensive regulation by DATCP in a state-run program based on federal mandates. Pesticide regulation is intended to protect public health, including the health of agricultural workers and nearby residents, and to protect the environment, particularly groundwater. The regulations focus on application methods and rates and disposal of pesticide containers. Licensing and certification is required for most pesticide applicators. In certain cases, state law exceeds federal requirements. For example, Wisconsin has exceeded minimum federal regulations for atrazine, a herbicide that has been found in Wisconsin's groundwater. [ch. 94, Stats.; ch. ATCP 29 Wis. Adm. Code.]

FARMLAND PRESERVATION

Relatively high prices for farm commodities in recent years have slowed a general trend toward selling agricultural land for non-agricultural purposes. However, market pressures have made the sale of agricultural land for non-agricultural uses attractive in some parts of the state.

Counties that would like to preserve agricultural uses of land in certain areas may adopt agricultural preservation plans, which must be certified by DATCP. Other municipalities may also adopt farmland preservation ordinances, but they must be consistent with the county's certified plan. [ch. 91, Stats.] Farms certified for farmland preservation zoning may be eligible for the farmland preservation tax credit, discussed below.

Counties and other municipalities may adopt agricultural preservation plans.

TAXATION

Property Taxation

In Wisconsin, for purposes of determining property taxes, agricultural land is assessed at its value for use as agricultural land, rather than at its market value. Market value may reflect other considerations, such as the capacity to develop the property for nonfarm uses. This approach, commonly referred to as "use-value assessment," has resulted in a major reduction in the amount of property taxes paid by Wisconsin farmers, with the intent of reducing the property tax burden on farmers so that land may be maintained in agricultural use.

Use-value taxation reduces farmers' property tax burden.

Agricultural forest land, defined as land that either is producing or is capable of producing commercial forest products and that meets one of several conditions, is likewise assessed

below market value for purposes of property taxes. This land is assessed at 50% of its fair market value. [s. 70.32 (2r), Stats.; ch. Tax V, Wis. Adm. Code.]

Farmland Preservation Tax Credit

Through the Farmland Preservation Tax Credit, the state provides an income tax credit to owners of land that is subject to certain agricultural use restrictions. The credits vary from \$5 to \$10 per acre. To be eligible, the land must be under a farmland preservation agreement and either in an area certified for farmland preservation zoning or in a designated agricultural enterprise area. [s. 71.57 et. seq., Stats.]

Income Tax Credit for Agricultural Production Activities

The 2011-13 Biennial Budget Act created a tax credit for qualified manufacturing and agricultural production activities. Eligible activities include qualified domestic production activities that are derived from property located in Wisconsin and assessed as manufacturing or agricultural property.

The amount of the credit is being phased in, from 3.75% for tax years beginning in 2014, to 5.025% for tax years beginning in 2015, and 7.5% for tax years beginning in 2016 or subsequent years. Once fully phased in, the credit will effectively eliminate state income tax liability arising from business operations for many agricultural producers. [ss. 71.07 (5n) and 71.28 (5n), Stats.]

FOOD SAFETY AND DISEASE PREVENTION

Agriculture is subject to a wide variety of state and federal regulations intended to protect public health and safety. In general, food safety regulations apply to agriculture in the same manner as to any other industry.

Food Safety

DATCP and the Department of Health Services (DHS) share responsibility for the regulation of food safety, although DATCP has the primary responsibility for ensuring the safety of agricultural product production and processing.

Movement of Animals

DATCP administers a regulatory program that requires documentation of the movement of certain animals in Wisconsin, primarily to prevent the spread of disease. Imported livestock must be properly identified, and DATCP rules specify identification standards for each species. Animals entering Wisconsin require a certificate of

Animals entering the state must have a certificate of veterinary inspection.

veterinary inspection, and some may require a permit. Some livestock moved within the state must also be tested, and reporting requirements apply to certain animal diseases when discovered. [ch. 95, Stats.; chs. ATCP 10 and 12, Wis. Adm. Code.]

Livestock Premises Registration

Each location where livestock are kept (such as farms, feedlots, livestock dealers and haulers, and even backyard poultry flocks) must be registered with DATCP. The registration program provides a database of information that is used to track the source and spread of animal diseases. Information provided by a premises owner is confidential, unless release of the information is necessary to control disease. Premises registration is not the same as individual animal identification. [s. 95.51, Stats.]

Deer Farm Registration

In general, every person who keeps farm-raised deer in Wisconsin must register with DATCP. Keepers of farm-raised deer also must comply with requirements governing disease testing, fencing, and other requirements. [ch. 169, Stats.]

Raw Milk

The sale of unpasteurized (i.e., “raw”) milk is generally prohibited in Wisconsin. However, farmers may make incidental sales of raw milk, provided that the milk is delivered directly to the consumer on the farm where the milk is produced; is consumed by the consumer or the consumer’s family or nonpaying guests; and the farm does not advertise the sale of milk or sell the milk in the regular course of business. [s. 97.24, Stats.; ch. ATCP 60, Wis. Adm. Code.]

RIGHT TO FARM

Wisconsin’s “right to farm” law is set forth in s. 823.08, Stats. Despite its name, the law does not explicitly create a “right” to farm. Instead, the law directs courts to favor agricultural uses in certain legal disputes.

The law applies to civil suits in which a plaintiff alleges that a farm’s activities are a nuisance, meaning that the activities substantially and unreasonably harm the plaintiff’s use and enjoyment of his or her property. If the farm’s activities are not a substantial threat to public health or safety, the law generally prevents a plaintiff from successfully curtailing the farm’s activities under such a claim.

Neighbors share the responsibility for maintaining fences along agricultural land.

FENCE LAW

Wisconsin’s fence law is set forth in ch. 90, Stats. When one or both of two neighboring properties is used for farming or grazing, both neighbors are

equally responsible for maintaining a fence along the boundaries between the properties. Unless the neighbors agree to an alternate arrangement, the general rule is that each owner is responsible for the half of the fence that he or she views on the right when looking toward the property line from his or her property. If one of the property owners refuses to construct or maintain the portion of the fence for which the owner is responsible, “fence viewers” may be called upon to observe the situation and determine whether repairs are necessary. Town supervisors (or village board or city council members) typically serve as fence viewers.

ADDITIONAL REFERENCES

1. USDA, National Agricultural Statistics Service, Wisconsin Statistics, https://www.nass.usda.gov/Statistics_by_State/Wisconsin/index.php.
2. Legislative Audit Bureau audit reports at <http://www.legis.wisconsin.gov/lab>:
 - Letter Report, *Use Value Assessment of Agricultural Land* (July 2010).
 - Audit Report 08-6, *Food and Dairy Safety Program*.
3. UW-Extension:
 - *Fact Sheet No. 13, Fences in Agricultural Areas*, <http://lgc.uwex.edu/program/pdf/FactSheets/fs13FencesAgricultural.pdf>
 - *Status of Wisconsin Agriculture 2014*, <http://www.aae.wisc.edu/pubs/status/docs/status2014.pdf>
 - Deller, Steven C., *Contributors of Agriculture to the Wisconsin Economy* (2014), <http://anre.uwex.edu/economicimpact>

GLOSSARY

Farming: Defined broadly to mean not only planting and harvesting crops and raising livestock or other animals, but also activities such as processing, drying, packing, packaging, freezing, grading, or storing agricultural products.

Nonpoint source pollution: Water pollution that does not have a single, well-defined point of origin. Runoff from agricultural land is a common form of nonpoint source pollution.

Use-value taxation: For property tax purposes, land in agricultural use in Wisconsin is assessed based on its value for agricultural production rather than its market value.

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