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February 19, 2014

TO: Members
Joint Committee on Finance

FROM: Bob Lang, Director

SUBJECT: Assembly Bill 574 and Senate Bill 437: Designation of Agricultural Enterprise Areas

Assembly Bill 574 was introduced on December 18, 2013, and referred to the Assembly Committee on Agriculture. A public hearing was held on January 7, 2014. On February 13, 2014, the Assembly Committee on Agriculture recommended passage by a vote of 13 to 3. The bill was referred to the Joint Committee on Finance on February 18, 2014.

Senate Bill 437 was introduced on December 11, 2013, and referred to the Senate Committee on Agriculture, Small Business and Tourism. A public hearing was held on January 30, 2014. On February 12, 2014, the Committee on Agriculture, Small Business and Tourism recommended passage by a vote of 8 to 1. The bill was referred to the Joint Committee on Finance on February 18, 2014. For purposes of this summary, the companion proposals will be referred to as "the bill."

CURRENT LAW

Agricultural enterprise areas (AEAs) are a component of the farmland preservation program, also known as the Working Lands Initiative, under which Wisconsin agricultural land owners are eligible for refundable income-tax credits on acreage designated for long-term agricultural use and on which soil and water conservation practices are maintained. Tax credits for most farmland acreage are paid on the basis of land-use protections conferred on an eligible parcel. Specifically, credits are as follows: (a) $5 for each acre under a farmland preservation agreement, which is a voluntary restrictive covenant with the Department of Agriculture, Trade and Consumer Protection (DATCP) limiting subject lands to agricultural and other narrowly related uses for at least 15 years; (b) $7.50 for each acre in a farmland preservation zoning district established by a DATCP-certified local ordinance; and (c) $10 for each acre under both a farmland preservation agreement and in a farmland preservation zoning district. Credits are paid from a GPR sum-sufficient appropriation budgeted at $19,500,000 in 2013-14 and $20,000,000 in 2014-15.

(A separate GPR sum-sufficient appropriation is used to pay credits on continuing farmland preservation agreements in effect prior to 2009 Act 28, which made substantial changes to the farmland preservation program and tax credits. The pre-Act 28 credit is based on claimant income and property-tax liability. It is budgeted at $1,125,000 in 2013-14 and $900,000 in 2014-15.)

Agricultural enterprise areas generally are intended to foster agricultural development by establishing areas in which farming operations, as well as perhaps other agriculture-related entities such as farm implement dealers and processors of agricultural products, are planned to be a significant source of local economic activity. Under current law, DATCP may approve AEAs upon the petition of: (a) at least five farmers residing in the proposed area, provided petitioners meet eligibility requirements based on gross farm income (at least $6,000 in the preceding tax year, or at least $18,000 in the preceding three tax years); and (b) each local unit of government in which the area would be located. AEAs also may include parcels of supporters and cooperators, which may be parties other than the formal petitioners who are not eligible petitioners but who support the AEA proposal or plan to assist in the AEA's agricultural development. To be eligible for approval, a proposed AEA must: (a) be located entirely in areas designated for long-term farmland preservation under a county farmland preservation plan; (b) consist of contiguous parcels; and (c) consist of lands that are primarily in agricultural use. The statutes also require DATCP to give preference to petitions covering 1,000 acres or more.

Designation as an AEA does not by itself necessarily place additional requirements on lands located in the area, nor does it confer additional protection against potentially competing nonagricultural uses, each of which may be the case for agricultural lands under a local zoning ordinance. However, AEA designation does allow owners of the constituent lands to enter into farmland preservation agreements with DATCP, which makes the agreement holders eligible to claim farmland preservation tax credits.

The statutes currently limit total acreage in AEAs no more than 1,000,000 acres. Since AEAs were created under 2009 Act 28, DATCP has approved 25 AEAs covering approximately 743,500 acres in parts of 19 counties, including the following annual designations: (a) in 2010, 12 areas covering 195,500 acres; (b) in 2011, five areas covering 139,900 acres; (c) in 2012, five new areas and expansions of two previously designated areas, covering 171,500 acres; and (d) in 2013, three new areas and an expansion of one previously designated area, covering 236,600 acres. Each of these designations took effect January 1 of the following year. DATCP expects to consider another round of AEA proposals in 2014, following a March 31, 2014, deadline for submitting petitions.

SUMMARY OF BILL

The bill would increase the maximum acreage DATCP may designate as AEAs to 2,000,000 acres. The bill also would repeal an obsolete provision enacted under 2009 Act 28 that limited DATCP to designating not more than 15 AEAs covering not more than 200,000 acres before January 1, 2012. This provision was intended to function as a pilot phase for the AEA program immediately following its creation.

FISCAL EFFECT

If enacted, the bill would not have any direct fiscal effect in the 2013-15 biennium. This is due to further AEA designations likely not taking effect until January 1, 2015. Therefore, any agreements arising from such designations would claim the farmland preservation tax credit beginning with tax filings in the 2015-16 fiscal year, to the degree that any designations taking effect beginning in 2015 would surpass the current 1,000,000-acre limit.

In the bill's fiscal note, DATCP estimates the higher acreage cap could result in additional farmland preservation tax credit claims of perhaps $1.5 million to $2 million GPR annually, if and when the additional 1,000,000 acres were fully designated. The Department of Revenue (DOR) estimates the annual fiscal effect, once all additional acres are designated, would be $520,000 GPR annually. The estimates include several assumptions, described in the following paragraphs, in arriving at the two estimates.

Credit Eligibility of Lands. It is possible fewer than 1,000,000 additional acres would be eligible for farmland preservation tax credits. For instance, persons seeking to enter into a farmland preservation agreement, as well as persons seeking farmland preservation tax credits generally, must meet minimum requirements for gross farm income generated ($6,000 in the preceding tax year, or $18,000 over the preceding three tax years). Land under farmland preservation agreements also is strictly limited to: (a) agricultural uses; (b) closely related accessory uses, such as farm residences; or (c) undeveloped open space and natural resource uses. Therefore, acreage owned by agriculture-related enterprises, such as implement dealers or processing facilities, or properties with insufficient farm-based income, may be eligible for inclusion in AEAs but ineligible for farmland preservation agreements or tax credits.

Landowner Participation. In addition to some added AEA acreage being ineligible for tax credits, both agencies assume not all eligible landowners would enter into farmland preservation agreements. For instance, both fiscal notes report that as of late 2013, when approximately 500,000 acres in designated AEAs were eligible to enter into new farmland preservation agreements, approximately 80,000 acres, or approximately 16%, had been so enrolled. The extent to which this participation rate may increase in subsequent years is not clear.

Farmland Preservation Zoning Incidence. Farms in farmland preservation zoning districts and under farmland preservation agreements are eligible for credits of $10 per acre. DATCP reports that as of January 1, 2014, when the most recent designations took effect, approximately 511,300 acres in AEAs, or about two-thirds of the 743,500 total AEA acres designated, were co-located in farmland preservation zoning districts. Both agencies assume new AEA petitions would tend to originate in counties or towns with farmland preservation zoning ordinances, as described below in further detail.

In recent years, jurisdictions enacting DATCP-certified farmland preservation zoning ordinances anew have been mostly offset by those allowing their ordinance certifications to expire. However, DATCP reports jurisdictions allowing ordinances to expire have tended to be those areas in which few persons were claiming farmland preservation tax credits. DATCP also reports it expects some jurisdictions in the coming years to enact farmland preservation zoning ordinances where such zoning previously has not existed. However, it is uncertain when and how much acreage would be added. DATCP expects many jurisdictions to enact farmland preservation zoning ordinances after new county farmland preservation plans take effect, which, under 2009 Act 28, is expected generally to occur by January 1, 2016. Although additional AEAs could prompt jurisdictions not previously using farmland preservation zoning to enact new certified zoning ordinances to allow residents to claim the $10-per-acre credit, it is not assumed at this time the bill itself would induce broader enactment of farmland preservation zoning districts. Therefore, the bill's fiscal estimates assume any acreage in new AEAs would receive a net credit of: (a) $2.50 per acre, for those landowners already eligible for the zoning-based credit of $7.50 per acre; or (b) $5 per acre, for all other landowners that enroll in new farmland preservation agreements under new AEAs.

DATCP estimates that up to 50%, or 500,000, of the additional AEA acres would enter into farmland preservation agreements. Of these credit-eligible landowners, DATCP further estimates 80% of acreage (400,000 acres) would be located in farmland preservation zoning districts, with the remaining 20% (100,000 acres) under only a farmland preservation agreement. Once all additional AEAs were designated, DATCP estimates total additional farmland preservation tax credits could be $1.5 million GPR annually. This equates to an average credit of $3 for each of the 500,000 acres estimated to enroll in a farmland preservation agreement under the bill.

DOR estimates 16% of acreage designated as AEAs, or 160,000 acres total of an additional 1,000,000 acres, would enroll in farmland preservation agreements under the bill. This is consistent with the enrollment rate observed through 2013. DOR also assumes most new acreage in farmland preservation agreements (70%) would tend to be co-located with farmland preservation zoning districts. Such additions would yield an average annual increase of $520,000 GPR more in farmland preservation tax credit claims compared to current law once all 2,000,000 acres were designated. This would mean an average credit of $3.25 for each acre enrolled in a farmland preservation agreement under the bill.

Each agency's estimate is summarized in the following table. While the agencies similarly assume new AEA acreage under the bill would mostly yield additional farmland preservation tax credit claims of $2.50 per acre, the difference in the long-term annual fiscal effect is mostly attributable to different estimates for new enrollment in farmland preservation agreements (50% versus 16%).

Summary of Fiscal Estimates - AB 574/SB 437

	DATCP	DOR
AEA acres designated	1,000,000	1,000,000
Enrollment rate for acreage entering agreements	50%	16%
New agreement acreage	500,000	160,000
Percentage of new agreement acres in zoning	80%	70%
New agreement acres in zoning	400,000	112,000
Annual credits on new agreement acres ($2.50/acre)	$1,000,000	$280,000
Percentage of new agreement acres not in zoning	20%	30%
New agreement acres not in zoning	100,000	48,000
Annual credits on new agreement acres ($5/acre)	$500,000	$240,000
Annual additional credits	$1,500,000	$520,000

It is difficult to estimate how quickly new acreage would be designated in AEAs, were the acreage limit to be increased. For the bill's fiscal estimate, DOR assumes additions of 250,000 acres per year. DATCP assumes the additional 1,000,000 acres would be designated over approximately six years, beginning in 2015, or approximately 166,700 acres per year. (The average addition rate over the first four annual petition cycles has been 185,900 acres per year.) The rate of designation could impact how quickly tax credit claims increase in future biennia. New annual credit claims would be expected to last at least 15 years, which is the minimum duration for farmland preservation agreements, assuming participants' agreements remain in effect, and lands in farmland preservation zoning districts remain so designated.

Prepared by: Paul Ferguson