



Legislative Fiscal Bureau

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Joint Committee on Finance

Paper #1207

Aids in Lieu of Taxes (DNR)

CURRENT LAW

Since 1992, when DNR acquires land, the Department pays aids in lieu of property taxes on the land to the city, village or town in which the land is located in an amount equal to the tax that would be due on the estimated value of the property at the time it was purchased (generally the purchase price), adjusted annually to reflect changes in the equalized valuation of all land, excluding improvements, in the taxation district. The municipality then pays each taxing jurisdiction (including the county and school district) a proportionate share of the payment, based on its levy.

Aids in lieu payments are made from a sum sufficient, GPR appropriation.

GOVERNOR

No provision.

DISCUSSION POINTS

1. The 1999-01 biennial budget act (1999 Act 9) provided \$460 million in bonding for a ten-year reauthorization of the Warren Knowles-Gaylord Nelson stewardship program beginning in 2000-01 for the purpose of acquiring land to expand recreational opportunities and protect environmentally sensitive areas. The annual bonding authority under the program was \$46 million, ending in fiscal year 2009-10. Of the annual authority, \$34.5 million in 2001-02 is allocated to general land acquisition for conservation and recreation purposes.

2. The 2001-03 biennial budget (2001 Act 16) increased the overall bonding authority to \$572 million and the annual bonding allocation from \$46 million to \$60 million beginning in 2002-03 (with \$45 million each year available for the land acquisition subprogram and \$15 million

available for property development and local assistance subprogram).

3. The Department of Natural Resources has a variety of options with respect to land acquisition under the Stewardship 2000 program. It may purchase the land outright using funds allocated for that purpose. The Department may also purchase conservation easements on property, essentially buying certain rights from the landowner. These rights are typically purchased in perpetuity – the landowner may sell the property, but the conditions of the easement are attached to the deed. Easements can include (but are not limited to) public access rights for hunting and fishing, rights-of-way for trails, and development restrictions for ecologically valuable property. The DNR may also provide matching grants to non-profit conservation organizations (NCOs) or units of local government to acquire land. Any land acquired with the help of stewardship dollars may not be converted to uses inconsistent with uses approved by DNR.

4. There are advantages and disadvantages to the Department in each of these cases. When the DNR purchases land directly with stewardship funds, it has greater control over the long-term management of, and public access to, the property. This is especially beneficial when wildlife or plant populations are key factors in the property's conservation value. Department-owned property can be managed to promote animal or plant population goals, including controlled burning or species protection. Some drawbacks of this approach include the responsibility for ongoing maintenance and management of the property, and the obligation to make payments in lieu of property taxes to local taxing districts. The purchase of an easement on a property is limited to the specific rights or benefits of the easement, making overall property or species management difficult. However, with the purchase of an easement, the responsibility for payment of property taxes and most of the costs of maintaining the property remain with the landowner.

5. When the land is purchased for conservation purposes by a non-profit conservation organization or local unit of government, the Department's contribution is limited to not more than 50% of the land's current fair market value plus other acquisition costs as determined by administrative rule. The fifty percent match requirement is a powerful acquisition tool – it encourages external contributions and (in effect) doubles the amount of land that the Department is able to protect from development for a given amount of money. At the same time, since it does not hold ownership, the DNR is not responsible for payments in lieu of taxes on this property. In both the case of purchase by a local unit of government and purchase by a non-profit conservation organization, the property would cease to be taxed. The disadvantage to the Department is the loss of direct control over the property. Any management for conservation purposes must be accomplished either directly by or with the cooperation of the new landowner. This can, in some cases, make it more difficult for the Department to achieve its management objectives.

6. Finally, DNR occasionally purchases land from non-profit conservation organizations (such as the Nature Conservancy or Trout Unlimited) for inclusion in a state project. Under this circumstance, a parcel that produced no tax revenue under its prior ownership would generate aids in lieu of property tax payments under DNR ownership.

7. DNR provides aids to cities, villages, or towns in lieu of property taxes for DNR-

owned land within each municipality. Payments vary depending on when land was purchased. The aid payment for land purchased prior to July 1, 1969, is 80¢ per acre. For land purchased after July 1, 1969 but prior to December 31, 1991, payments are based on the statewide average property tax rate for municipal, county, and school taxes for the tax year after purchase applied to the land's assessed value. For this category of land, each year after the initial year the payment is reduced by 10% of the first year amount until the greater of 10% or a payment of 50¢ per acre is reached in the tenth and subsequent years. Land purchased beginning in 1992 is subject to current regulations for the determination of aids in lieu of taxes payments.

8. Land purchased by the DNR is exempt from property taxes under the property tax exemption for state-owned property. However, land acquired by the DNR beginning in 1992 is subject to a state payment in-lieu of property taxes made from a sum-sufficient GPR appropriation. Those payments are calculated under a tax equivalency formula intended to compensate local governments for the taxes that would be paid on the property if it were taxable. Total payments are calculated by multiplying the property's estimated value by a mill rate. The estimated value is generally based on the property's purchase price. Each year, that value is adjusted, based on the percentage change in equalized value of other unimproved real property in the municipality where the property is located, as determined by the Department of Revenue. The mill rate used in the calculation is the current tax rate for all purposes, net of state tax credits, that is applied in the municipality where the property is located. The municipality receiving the payment is required to share it with overlying local governments, such as the school district, county and technical college district.

9. The following table shows GPR aids in lieu of property taxes payments made by the state to local units of government over the last five fiscal years.

TABLE 1

<u>Fiscal Year</u>	<u>Aids in Lieu Payment</u>
1996-97	\$1,735,600
1997-98	1,873,000
1998-99	2,374,200
1999-00	2,537,900
2000-01	3,393,500

10. Although this formula is intended to produce a state payment that is equivalent to what is paid in property taxes, in practice, state payments typically exceed the property taxes that would have been paid on the property because the purchase price of conservation land has routinely exceeded the property's assessed value. In October of 2000, the Legislative Audit Bureau (LAB) released an evaluation of the Warren Knowles-Gaylord Nelson Stewardship program. The report found that within a sample of 74 property acquisition grants, the average appraised value per acre of the property was more than double (120% greater) than the average assessed value per acre. When adjustments were made to make comparisons on a per-property rather than a per acre basis, the average difference increased to 305%. The Legislative Audit Bureau noted that the sample was

specifically selected to include large grants. Since it was not a random sample, the result could not be projected to all grants. While these wide discrepancies in appraised and assessed valuations have raised questions by some about the fair market value of stewardship properties, the report also notes that infrequent updates in assessed values also raise questions about fairness in local property taxes.

11. When acquiring land with stewardship funds, DNR generally hires private real estate appraisers to determine the fair market value of prospective land purchases. A large disparity between assessed and appraised value may result from local assessors significantly undervaluing all property, not having updated assessments or as a result of local land use policies. Assessors and appraisers generally determine the value of property based on the property's highest and best use, which is that use which will produce the greatest net return to the property owner over a reasonable period of time. Commonly-accepted definitions of highest and best use utilized by appraisers generally take into account four different factors when making the determination: physical possibility, (taking into account the size, terrain, soil composition and utility availability for the parcel that may limit the use of the land); legal permissibility, (including applicable zoning regulations, building codes, deed restrictions, historic district controls and environmental regulations); financial feasibility, (meaning any use that produces a positive rate of return based on the characteristics of the property); and maximum productivity, (under which no other use of the land would provide a greater net return to the owner based on land costs, physical characteristics, legal constraints and the economic characteristics of the surrounding area).

12. For a particular piece of property, there may be some difference of opinion among those doing the property valuation relating to any of these factors. The physically possible uses of the parcel, for example, would be influenced by the proximity of a sewer line to the parcel. The legally permissible uses of a parcel of land could be affected by current zoning designations and a particular municipality's history of approving zoning changes that affect the ability of land in the municipality to be developed. In these cases, assessors and appraisers (and potential buyers) must make certain assumptions related to these factors to be able to determine a value for the property.

13. Providing less than the fair market value for land could be considered a taking without just compensation in violation of the Fifth and Fourteenth Amendment to the U.S. Constitution. Further, under Wisconsin Statutes s. 32.09(5)(b), any increase or decrease in the fair market value of a property caused by any public improvement for which property is acquired, or the likelihood that the property would be acquired for such an improvement, may not be taken into account in determining just compensation for the property.

14. A number of purchases that have come before the Joint Committee on Finance for review have involved parcels of land proposed for acquisition where the appraised value was significantly greater than the assessed value. Assessed value is the value placed on a property by the local unit of government for property tax purposes. Most assessors value property at some fraction of market value, despite a statutory requirement that property be assessed at full value. A series of court cases, dating back to the nineteenth century, has interpreted statutes to allow assessed values at a fraction of market value, provided the same fraction applies to all property in the taxation district. As a result, local assessors can assess property at a level below market value without violating the

state constitution's requirement of uniform taxation.

15. Provisions of 2001 Act 16 required DNR to provide the appraisals of any property acquired under the stewardship program to the clerk and the assessor of the local unit of government where the property is located within 30 days of acquiring the property. In addition, assessors are directed to include the information in the appraisal (including comparable sales) when setting land values. This provision is intended to encourage local assessors to bring local assessed property values more in line with market value.

16. If open space that could be preserved is likely to otherwise be developed, it is often within the power of localities to zone the land in such a way as to maintain it in a relatively undeveloped state, if that is the preferred local option. In addition, a significant contributor to the rapidly escalating value of some properties may be a municipality's history of rezoning agricultural or open space land to allow residential or commercial development. The power of zoning as a tool for land preservation, however, is limited by the willingness of the locality to maintain land in an undeveloped state. Further, zoning ordinances must allow a reasonable use of the property by the owner to avoid a taking of private property for public use.

17. To the extent that the purchase price paid by DNR for land is based on appraised values and to the extent that appraised values exceed assessed values, the resulting aids in lieu payments made under state ownership of land may be greater than the property taxes that would be paid if the property remained under private ownership. Further, in some cases lands purchased by the state were fully or partially exempted from property taxation before purchase (such as managed forest lands, railroad rights-of-way or properties owned by certain tax-exempt corporations).

18. When the DNR property being purchased (a) is exempt from local property taxes (such as when owned by certain nonprofits or public utilities), (b) is subject to preferential tax treatment (such as under the managed forest law or agricultural use value), or (c) has a purchase price that exceeds the local assessed value, transferring the property to DNR results in a net gain in revenues for the affected local governments. Further, the location of tax-exempt property causes tax base sensitive state aids to be shifted between local governments. These aids include general school aids and the aidable revenues component of shared revenue, which is paid to counties and municipalities. These aid programs employ distribution formulas based on the policy of tax base equalization. This policy allows local governments with the same level of per student or per capita expenditures to have identical tax rates, regardless of their differences in tax base. When land becomes tax-exempt due to its purchase by the state, a local government or a conservation organization, state aid is shifted to the local governments that experience the tax base loss. Although this policy should result in local tax rates remaining unchanged, each aid program contains features that delay or distort the complete effects of the aid shift. An example would be the maximum constraint provision of the shared revenue program, which "caps" the percentage increase that a county or municipality can receive in any year.

19. The following table compares the estimated aids in lieu payment due on a range of properties acquired by DNR under the stewardship program to the amount paid in taxes for the year

prior to the state acquiring the property. Examples were selected based on an August, 2001 expiration date of the state's option to purchase. In some cases, properties benefited from use value assessment, which would result in a lower than expected tax bill in the previous year. In cases where the property acquired was a fraction of a larger parcel, the tax attributed to the smaller parcel is estimated.

TABLE 2

Selected 2001 State Land Purchases

<u>Property Category</u>	<u>County</u>	<u>Purchase Price</u>	<u>2000 Taxes</u>	<u>Aids in Lieu Estimation*</u>	<u>Change</u>
North Fish Creek Fishing Area	Bayfield	\$40,000	\$130	\$845	550%
South Shore Lake Superior Fish and Wildlife Area	Bayfield	30,000	254	662	161
Statewide Natural Area	Buffalo	260,100	2,400	6,240	160
Ludwig Woods Natural Area	Calumet	43,000	68	832	1,124
Statewide Natural Area	Calumet	28,500	167	551	230
Chippewa Moraine State Recreation Area	Chippewa	26,000	418	463	11
Tom Lawin Wildlife Area	Chippewa	130,000	308	1,963	537
Kickapoo Wildlife Area	Crawford	345,000	1,675	7,887	371
Rush Creek State Natural Area	Crawford	57,000	869	1,320	52
Statewide Natural Area	Crawford	400,000	37**	9500	25,576
Ice Age Trail	Dane	557,460	2,400	11,300	371
North County Trail	Douglas	28,000	65	415	539
Statewide Natural Area	Green Lake	64,500	806	1,195	48
White River Wildlife Area	Green Lake	18,000	109	325	198
Governor Dodge State Park	Iowa	335,000	3,375	8,499	152
Streambank Protection	Iowa	100,000	977	2,537	160
Waterloo Wildlife Area	Jefferson	30,400	96	582	506
Newwood Wildlife Area	Lincoln	198,000	237	3,683	1,454
Statewide Spring Ponds	Marathon	6,000	51	119	132
Lower Chippewa State Natural Area	Pepin	308,275	5,460	7,765	42
Nine Mile Island State Natural Area	Pepin	280,000	1,715	5,508	221
Western Prairie Habitat Restoration Area	Polk	288,000	1,400	5,011	258
Dewey Marsh Wildlife Area	Portage	26,700	360	473	31
Paul Olson Wildlife Area	Portage	135,200	964	2,373	146
Willow Creek Fishing Area	Richland	57,800	770	1,400	82
Navarino Wildlife Area	Shawano	11,710	216	228	6
Onion River Streambank Protection	Sheboygan	615,000	4,100	9,900	141
Western Prairie Habitat Restoration Area	St. Croix	374,500	3,075	5,917	92
Kettle Moraine State Forest	Waukesha	569,913	1,100	11,300	927
Statewide Habitat Areas	Waupaca	126,000	1,026	2,727	166
Glacial Habitat Area	Winnebago	252,000	1,286	5,133	299
Rat River Wildlife Area	Winnebago	<u>56,700</u>	<u>310</u>	<u>987</u>	218
Total		\$5,798,758	\$36,224	\$117,640	225%

*Aids in lieu estimation is calculated using the purchase price multiplied by the effective tax rate of the taxing district for 2000.

**Property enrolled in forest crop law.

20. In most cases, the aids in lieu payment to municipalities greatly exceeds revenues previously generated by property taxes. The Department indicates that the current formula has led to a reduction in the number of local objections to state acquisition of land. However, it may be argued that the intent of the formula was to establish a fair level of compensation, rather than to create a financial incentive, for municipalities to cooperate with state land acquisition.

21. The current aids in lieu formula is calculated by multiplying the estimated value of the property (generally the purchase price) by the effective tax rate of the taxation district, and is adjusted annually to reflect changes in the equalized valuation of all land, excluding improvements, in the taxation district. It may be argued that if the goal is to compensate municipalities for lost tax revenue, that the formula should be modified to instead define the estimated value as the equalized assessed value of the property in the year prior to purchase by the state or the purchase price, whichever is less. In cases where the property had previously been tax exempt, the last recorded equalized assessed value could be used, or a payment of \$1 per acre would be made (such as in a case where a historical assessed value could not be determined), whichever amount was greater. The amount determined under this revised formula could then continue to be adjusted annually to reflect changes in the equalized valuation of all land, excluding improvements, in the taxation district. This formula would provide local governments with an amount approximating the lost level of tax revenue. Such a formula could more closely meet the state goal of protecting local governments from a loss in property tax revenues. However, even under this formula, in some cases (such as for previously tax-exempt land or when the property has been enrolled under the managed forest law program), payments in lieu of property taxes would increase over what the taxation district had been receiving previously. Although, in these cases other additional payments (such as a portion of the timber harvest revenue for MFL property) would be lost.

22. The fiscal effect of this formula change would depend on how much the equalized assessed values for the area where DNR purchases land varies from the market value. If property purchased is within a taxation district where property values are assessed at a fraction of market value (or where assessments are substantially out of date), the aids in lieu payment would be considerably less than if it were calculated using the appraised value of the property (which should reflect fair market value). As previously mentioned, the sample analyzed by LAB indicated that, on average, appraised values were two to four times higher than assessed values. For the 32 properties shown in Table 2, aids in lieu of property tax payments would more than triple the tax revenues previously received by local taxation districts. Neither the LAB sample nor Table 2 constitutes a random sample, so the results cannot be reliably generalized across all cases in order to precisely predict the level of savings that the state would experience. However, both the LAB and LFB selected samples would indicate that it would be reasonable to expect that GPR payments of aids in lieu of taxes would be reduced by more than one-half for lands purchased after the effective date of the provision.

23. Alternatively, it may be argued that current property tax relief programs (such as agricultural land under use value assessment) provide an incentive for land owners to engage in desirable land use practices. Adjusting the aids in lieu formula in this manner would maintain local revenues at the same level while potentially limiting the previously targeted benefit (the

preservation of farm land). However, permanent preservation of the land as park or greenspace may be viewed by some as consistent with the goals of these other programs. Further, municipalities may argue that while the aids in lieu of taxes payment may be equivalent to the amount of revenue previously received, the payment could be much less than the potential revenues to the taxation district should the property be sold to a party intent on capitalizing on its development potential. In addition, the payment would not increase above the average rate of growth for the taxation district, limiting its potential for greater revenue generation through future development.

24. On the other hand, it may be argued that the benefits of state ownership (such as increased public access, resource management, tourism, and recreation), may exceed the perceived cost. Recreational opportunities such as public hunting, fishing, snowmobiling, hiking, biking, and nature appreciation can increase tourism-related revenue to the region, and the modified aids in lieu of property tax payments would ensure that local governments do not experience a reduction in the support that they had been experiencing (and would see an increase in the case of certain tax-exempt properties). Further, local government infrastructure costs associated with developed property would be avoided. In addition, property values of land surrounding the protected greenspace may increase to the benefit of the local taxing districts.

25. It should be noted that as current costs associated with the payment of aids in lieu of taxes are due to previous land purchases, modifying the formula to determine payment levels would affect future land acquisitions and are not likely to affect expenditures in this biennium. However, future GPR expenditures would be expected to be reduced substantially to generally reflect actual property tax levels of properties being purchased by the state.

ALTERNATIVES TO BILL

1. For lands purchased after enactment of the bill, adjust the current aids in lieu of property taxes formula by defining the estimated value of the property to mean the lower of the equalized assessed value of the property prior to purchase by the Department or the purchase price (instead of the purchase price, as currently provided in statute). In cases where the property had previously been tax exempt, the last recorded equalized assessed value would be used, or a payment of \$1 per acre would be made, whichever amount was greater. The amount determined under this formula would continue to be adjusted annually to reflect changes in the equalized valuation of all land, excluding improvements, in the taxation district. (GPR Payments for aids in lieu of property taxes would be expected to decline by more than one-half for future purchases.)

2. Maintain current law.

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