

1999 DRAFTING REQUEST

Bill

Received: **01/29/99**

Received By: **traderc**

Wanted: **Soon**

Identical to LRB:

For: **Administration-Budget**

By/Representing: **Grinde**

This file may be shown to any legislator: **NO**

Drafter: **traderc**

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Subject: **Agriculture - miscellaneous**

Extra Copies:

Topic:

DOA:.....Grinde - County drainage board grants

Instructions:

See Attached

Drafting History:

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Typed</u>	<u>Proofed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
/1	traderc 01/30/99	jgeller 01/31/99	jfrantze 01/31/99	_____	lrb_docadmin 01/31/99		S&L

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1/?	traderc	1/31 JLG	JG/S	JG/KM 1/31			

FE Sent For:

<END>

STATE OF WISCONSIN
 DEPARTMENT OF ADMINISTRATION
 DIVISION OF EXECUTIVE BUDGET AND FINANCE
 DOA-5167 N(R08/95)

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COMMENTS / INSTRUCTIONS

Department of Agriculture, Trade and Consumer Protection

County Drainage Board Grants

1999-01 Biennial Budget Issue Paper

I. ISSUE

The department is currently proposing revisions to the drainage district rule, ch. ATCP 48, Wis. Adm. Code, because it has determined that the existing rule is inadequate to meet the objectives of the drainage district program. One of the proposed revisions to the drainage district rule requires that every county drainage board file with the department drainage district specifications for every drainage district under the board's jurisdiction (see appendix A). These specifications include a map showing drainage district boundaries, the alignment and extent of district drains, and the cross-section and grade profile of every district drain; and are the foundation for nearly everything that happens in a drainage district, such as:

- Delineation of landowner rights and responsibilities.
- Landowner assessments and damage awards.
- Operation and maintenance.
- Construction and restoration.
- Evaluation of proposed drainage modifications.
- Resolution of disputes between landowners, between landowners and the district, or between the district and outside parties.

For many drainage districts, specifications are missing, vague, or incomplete. This makes it difficult for county drainage boards to administer drainage districts and resolve drainage disputes.

The cost of complying with the proposed revision to the rule is estimated to be approximately \$5,000,000. While county drainage boards have the power to levy assessments against landowners to pay for these costs, it is unlikely that county drainage boards will support a rule revision which requires them to do so.

The drainage district administrative rule requires the county drainage board to prepare maps of district drains. Also the boards must prepare restoration plans, repair and maintenance plans, and runoff control plans. These plans assist the drainage board to administer the drainage districts under their jurisdiction. These plans also provide the basis for reducing soil erosion and protecting water quality.

How best can the department's drainage district program create an incentive for county drainage boards to file drainage district specifications for every drainage district under their jurisdiction?

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Budget Issue Paper**

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II. RECOMMENDATION

The department recommends the Board of Agriculture, Trade and Consumer Protection to obtain \$750,000 in FY 1999-00 and \$750,000 in FY 2000-01 in general purpose revenues for county drainage boards to comply with the provisions of ch. 88, Wis. Stats. and ATCP 48, Wis. Adm. Code.

III. BENEFITS

A. Farmers and other land owners and land users.

Farmers and other land owners within drainage districts will benefit from this proposal through improved agricultural activity and productivity. Having well established and maintained drainage facilities will assist farmers in planting crops earlier, reduce the risk of crop damage due to wet conditions, and make the agricultural lands easier to farm.

B. Drainage Boards

Primary responsibility for administering drainage districts resides with the county drainage boards. This proposal will allow the drainage boards to establish historic profiles and cross sections for district drains and prepare the various plans required in the department's administrative rule. The required plans include maps of the district facilities, restoration plans, repair and maintenance plans, and runoff control plans. Providing funding to drainage boards will improve their overall ability to administer the drainage districts, settle disputes, assist in applying for state permits, and provide incentives to drainage boards to implement state statutes and the department's administrative rule.

C. State Oversight and Assistance

Funding this proposal will improve the state's ability to oversee the drainage districts and provide better assistance to the county drainage boards. If profiles, cross sections, and plans are prepared; the state will be better prepared to review construction and restoration proposals, issue permits, and assist in achieving the state's responsibilities under ch. 88, Wis. Stats. and ATCP 48, Wis. Adm. Code.

D. Court System

The courts will benefit from well established profiles and cross sections and the preparation of good plans through improved decisions regarding appeals from affected landowners on actions or orders from the county drainage board. Drainage boards must establish benefits and costs; prepare maintenance and

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restoration plans, maps of district facilities, and operate the district facilities to maintain adequate drainage. All of these actions may be appealed to the courts.

E. Environment

The district drains must be designed, constructed and maintained by the county drainage board to prevent soil erosion and protect water quality. Funding this proposal will allow drainage boards to establish the profile, cross sections, and prepare plans that will allow the board to better administer the drainage districts to protect the environment, and comply with chs. 30 and 31, Wis. Stats., as administered by the Department of Natural Resources.

IV. BACKGROUND

A. Overview of Drainage District Program

Even before Wisconsin became a state, Wisconsin farmers drained land to produce agricultural crops. Drainage can be accomplished by drains that are constructed and maintained by private landowners. However, land can also be drained by drainage districts which drain land by means of common drains that cross individual property boundaries. Unlike private drains, drainage districts allow large amounts of land owned by many different landowners to be drained. Drainage districts also allow drainage facilities to be built that would have otherwise been too expensive for individual landowners to build. Thus, drainage districts are an efficient and cost effective mechanism to drain land.

Drainage districts are organized as special purpose governmental districts. Landowners in a district who benefit from drainage must pay assessments to cover the cost of constructing, maintaining, and repairing the drainage system. All drainage districts within a county are operated by the county drainage board, which is appointed by the circuit court. The county drainage board must operate drainage districts in compliance with ch. 88, Wis. States, and ch. ATCP 48, Wis. Adm. Code.

The department is currently aware of the existence of about 200 drainage districts in Wisconsin. Of the 72 counties in Wisconsin, 30 of them contain one or more drainage districts. The size of drainage districts varies widely across the state. For example, one county has a drainage district that consists of only two landowners while another county has a district that has over 1,000 landowners.

In 1989, the State Legislature transferred the drainage district program from the Department of Administration to the Department of Agriculture, Trade and Consumer Protection; and gave the department new responsibilities for regulating drainage district operations. As a result, in 1995, the department adopted drainage district rules under ch. ATCP 48, Wis. Adm. Code, to improve drainage district operations.

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B. Overview of Revisions to ch. ATCP 48, Wis. Adm. Code

The department is proposing revisions to ch., ATCP 48, Wis. Adm. Code because it has determined that the existing rule is inadequate to meet the objectives of the department's drainage district program. In order to address these inadequacies, the department assembled an advisory committee regarding potential changes to drainage district rule. As a result of the comments received from the advisory committee, the department is proposing to revise or repeal sections of ch. ATCP 48, Wis. Adm. Code.

The objectives of the proposed rule revisions are to clarify the legal obligations and rights of county drainage boards, landowners within drainage districts, and the department. Proposed changes to the rule:

- Require that every county drainage board shall adopt by December 31, 2000, certain drainage map specifications, including a map showing district boundaries, the alignment and extent of district drains, and the cross section and grade profile of every district drain.
- Spell out the minimum requirements that county drainage boards must include in their compliance plans submitted to the department.
- Establish procedures for landowners to object to the proposed changes to drainage specifications.
- Clarify procedures landowners must follow and criteria they must meet in order to withdraw water from a district drain.
- Develop a process for re-designating district drains and private drains.
- Establish new requirements for installing, modifying, and approving construction projects in district drains.
- Eliminate department approval of restoration projects.
- Create a process which allows landowners to petition county drainage boards, or the department, for certain actions, including the restoration, repair, or maintenance of a district ditch.
- Redefine the requirements that must be met within the district corridor.
- Refine benefits assessment procedures.
- Specify the rights and responsibilities assigned to landowners in drainage districts.
- Detail the process by which a county drainage board can change district specifications, such as changing district boundaries, designating a private drain as a district drain, and changing a formally established cross section, alignment, and grade profile.

C. Overview of Revisions to Section ATCP 48.20, Wis. Adm. Code

Currently under s. ATCP 48.20, Wis. Adm. Code, a county drainage board must file drainage district specifications (also called drainage district maps) for

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every drainage district under the drainage board's jurisdiction. County drainage boards were required to file specifications for all existing drainage districts by December 31, 1995. However, many county drainage boards have not yet filed them. The rule revisions expand and clarify the current requirements for drainage district specifications and extend the filing deadline to December 31, 2000.

Under the proposed rule revisions, the county drainage board must file a map showing all of the following:

- Drainage district boundaries.
- The alignment and extent of every district drain.
- The location and width of every district corridor.

Also, the county drainage board must document the grade profile and cross-section of every district drain. The proposed rule revisions define what is meant by a grade profile and cross-section:

A grade profile is a vertical section along the alignment of a drain. The formally established grade profile of a district ditch must include all of the following:

- The grade elevations at the top and bottom of the ditch.
- The estimated water surface elevations in the ditch at base flow.
- The estimated water surface elevations in the ditch in the event of a 10-year peak discharge.

A cross-section is a typical vertical section of a drain, taken at right angles to the center line of the alignment of the drain. The formally established cross-section of a district ditch must include all of the following:

- The top and bottom width of the ditch.
- The design depth of the ditch.
- The side slope angle of the ditch.

In some cases, court records establishing the cross-section or grade profile of a district drain may be unavailable or incomplete. In those cases, a county drainage board may reconstruct the documentation based on physical evidence in the drainage district. For example, a county drainage board may be able to reconstruct a historical grade profile based on soil conditions and the historical elevation of structures in a district drain. If a county drainage board cannot document a formally established cross-section or grade profile based on court records or physical evidence, it must establish an appropriate cross-section or grade profile with DATCP approval under proposed s. ATCP 48.21, Wis. Adm. Code.

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V. ANALYSIS

A. **Problem**

The cost of complying with proposed section ATCP 48.20, Wis. Adm. Code is estimated to be approximately \$5,000,000. This estimate was arrived at using the following assumptions:

Estimated district drain length = 10 miles

Estimated number of districts = 200

Estimated district drain miles = 2,000 drain miles (200 x 10)

Estimated cost per mile for specifications = \$2,500 per mile

Estimated total cost = \$5,000,000 (2,000 miles x \$2,500 per mile)

The department will have to offer some sort of incentive in order for county drainage boards to comply with proposed section ATCP 48.20, Wis. Adm. Code. Otherwise, the specifications for many drainage districts will remain missing, vague, or incomplete. As a result, county drainage boards will continue to have difficulties administering drainage districts and resolving drainage disputes.

B. **Possible Recommendations**

1. **Create a County Drainage Board Grant Program**

The department will need to offer some sort of financial incentive in order to build support for proposed section ATCP 48.20, Wis. Adm. Code and to ultimately achieve compliance with the rule. If the costs of complying with proposed section ATCP 48.20, Wis. Adm. Code were annualized over a four year implementation cycle, or \$1,250,000 per year, and underwritten by the state at a 60% cost share rate, the department would need to allocate \$750,000 per year in grant funds to drainage boards. Under this recommendation, drainage boards would assess landowners the remaining cost of \$500,000 per year to comply with the proposed section.

Advantages:

1. The drainage district program serves the public interest by improving water quality; and increasing agricultural activity and productivity; and protecting residential and commercial development. Thus, all citizens should pay for the drainage district program.
2. Creating a new grant program will not take money from other department programs.

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Disadvantages:

1. Landowners within drainage districts are the people who most directly benefit from drainage district program.
2. Funds to establish a new grant programs are limited.

2. Increase the Appropriations for the Soil and Water Resource Management (SWRM) Grant Program

The SWRM program was created by the legislature in 1982 under s. 92.14, Wis. States., to provide counties with financial and technical assistance for land and water conservation activities. The program allows a county land conservation committee to apply to the department for grants to help fund the costs of the county's land and water conservation activities. At the present time, this grant program is funded with General Purpose Revenue (GPR), Segregated Funds (SEG), and Bonding Revenue.

Relying on funds within the SWRM grant program is one possible recommendation for funding county drainage board compliance with proposed s. ATCP 48, Wis. Adm. Code. For the 1998-1999 fiscal year, the overall GPR allotment is \$2,455,700 and the SEG allotment is \$950,000 for the SWRM grant program.

The general purpose revenue appropriation could be increased by \$750,000 per year with the stipulation that the new appropriations be dedicated to compliance with ATCP 48, Wis. Adm. Code. The county drainage boards would be required to apply for these grant funds through their county board.

Advantages:

1. This grant allocation system or the soil and water resource management program is already in place. It could easily be expanded to cover the proposed new grants.

Disadvantages:

1. These grant funds are already used for other purposes including basic annual staffing grants, cost sharing for farmers to install conservation practices, and overall support to counties for soil and water conservation. Counties may view this expansion as a detraction from their primary responsibility.
2. County land conservation departments and county drainage boards do not always have an established working relationship. Thus, even if more money is given to county land conservation departments, some county drainage boards would not receive any grant money.

3. Assess Costs Against Landowners in Drainage Districts

Currently, county drainage boards assess the costs of drainage against landowners in a drainage district. One recommendation is that county drainage boards assess against landowners the cost of complying with proposed s. ATCP 48.20, Wis. Adm. Code.

Advantages:

1. No GPR funds would be needed or requested of the legislature.
2. Only those who benefit directly from the drainage district program (landowners in the drainage district) are contributing toward complying with proposed section ATCP 48.20, Wis. Adm. Code.

Disadvantages:

1. County drainage boards are already reluctant to assess their neighbors for much-needed maintenance projects in the district. Drainage boards would have a hard time "selling" an assessment which is being used to comply with an administrative rule.
2. In all likelihood, drainage boards will not establish drainage district specifications without funding from other sources.



State of Wisconsin
1999 - 2000 LEGISLATURE

SOON

LRB-2070/1

RCT.:...

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JL

DOA:.....Grinde – County drainage board grants

FOR 1999-01 BUDGET — NOT READY FOR INTRODUCTION

do not gen

1 AN ACT ...; relating to: the budget.

Analysis by the Legislative Reference Bureau

AGRICULTURE✓

Under current law, drainage boards operate drainage districts, which drain property owned by two or more persons. The department of agriculture, trade and consumer protection (DATCP)✓ assists drainage boards and oversees their activities and promulgates rules that apply to drainage boards.

This bill establishes a program under which DATCP makes grants to drainage boards to assist the boards to comply with applicable laws and rules.

For further information see the *state and local* fiscal estimate, which will be printed as an appendix to this bill.

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

2 SECTION 1. 20.115 (7) (d) ~~X~~ of the statutes is created to read:

3 20.115 (7) (d) *Drainage board grants*. The amounts in the schedule for grants

4 to drainage boards under s. 88.15.✓

****NOTE: This SECTION involves a change in an appropriation that must be reflected in the revised schedule in s. 20.005, stats.

1 SECTION 2. 88.15^x of the statutes is created to read:

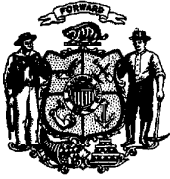
2 **88.15 Drainage board grants.** (1) From the appropriation under s. 20.115
3 (7) (d)[✓], the department^{of agriculture, trade and consumer protection} shall make grants to boards to assist boards to comply with
4 this chapter and rules promulgated under this chapter. A grant under this section
5 may not exceed 60%[✓] of the costs incurred by the board to comply with this chapter
6 and rules promulgated under this chapter.

7 (2) The department^{of agriculture, trade and consumer protection} shall promulgate rules for the administration of the
8 program under this section.

9 SECTION 9104[✓]. **Nonstatutory provisions; agriculture, trade and**
10 **consumer protection.**

11 (1) EMERGENCY RULES FOR DRAINAGE DISTRICT BOARD GRANTS. Using the procedure
12 under section 227.24[✓] of the statutes, the department of agriculture, trade and
13 consumer protection may promulgate a rule under section 88.15 (2)[✓] of the statutes,
14 as created by this act, for the period before the effective date of the permanent rule
15 promulgated under section 88.15 (2) of the statutes, as created by this act, but not
16 to exceed the period authorized under section 227.24 (1) (c)[✓] and (2)[✓] of the statutes.
17 Notwithstanding section 227.24 (1) (a), (2) (b) and (3) of the statutes, the department
18 is not required to provide evidence that promulgating a rule under this[✓] subsection
19 as an emergency rule is necessary for the preservation of the public peace, health,
20 safety or welfare and is not required to provide a finding of emergency for a rule
21 promulgated under this subsection.[✓]

22 (END)[✓]



State of Wisconsin
1999 - 2000 LEGISLATURE

LRB-2070/1
RCT;jlg:jf

DOA:.....Grinde – County drainage board grants

FOR 1999-01 BUDGET — NOT READY FOR INTRODUCTION

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