K

Legislative Fiscal Bureau
One East Main, Suite 301 • Madison, WI 53703 • (608) 266-3847 • Fax: (608) 267-6873

May 13, 1999 Joint Committee on Finance Paper #866

Farmland Preservation Program Changes (Shared Revenue and Tax Relief -- Property Tax Credits)

[LFB 1999-01 Budget Summary: Page 543, #4, Page 544, #5 (part) and Page 547, #6]

CURRENT LAW

The farmland preservation credit received by eligible claimants depends on the interaction of household income and allowable property taxes and on the contract, zoning or planning provisions that cover the land. The initial step in the credit formula determines the income factor, which can be interpreted as the amount of income that a household can afford to contribute to payment of property taxes. By including higher percentages of income as income rises, the income factor introduces an element of progressivity to the program.

The income factor is then deducted from eligible property taxes ($6,000 maximum) to determine what portion of the tax is "excessive" for a claimant with a particular income level. The "excessive" property tax is then prorated to determine the potential credit, which guarantees that claimants of all income levels continue to pay part of their property tax, with larger farms paying a higher percentage. The potential credit amount is then adjusted to 70%, 80% or 100% of that amount, depending on the degree of land use restriction, with larger credits given for more restrictive conditions.

Finally, regardless of income, claimants may receive 10% of their eligible property taxes if that amount is larger than the tax credit formula amount. These claimants are generally those with a high income level compared to their property taxes. As a result of their relatively higher income, their "excessive" property taxes are reduced to the point where it is more beneficial to receive the minimum credit.

GOVERNOR

Modify the formula used to compute farmland preservation credits, effective with claims filed for tax years beginning after December 31, 2000. Sunset the farmland preservation credit program, with no new credits to be paid for a tax year that begins after December 31, 2002.

Eligible Applicants. Delete the requirement that claimants submit a copy of their farmland preservation agreement or a certificate from their local zoning authority that certifies that their land is subject to, and conforms with, an approved exclusive agricultural zoning ordinance. Replace this with a requirement that claimants submit a copy of a certificate of compliance with local soil and water conservation requirements, issued by the county land conservation committee having jurisdiction over the claimants' farmland. A certificate of compliance would certify that the state and local soil and water conservation standards that apply to a claimant's farmland are being met. The effect of these changes is to allow all farmers who meet soil and water conservation standards to claim a credit, rather than only those covered by a farmland preservation agreement or exclusive agricultural zoning. The bill would not require county land conservation committees to provide potential claimants a certificate of compliance with soil and water conservation standards.

Credit Computation. Reduce the amount of property taxes that can be used in computing a credit from $6,000 to $4,000. Specify that the potential credit would be calculated as 40% of the first $2,000 of excessive property taxes plus 60% of the next $1,000 of excessive property taxes plus 70% of the next $1,000 of excessive property taxes. Under current law, the potential credit is calculated as 90% of the first $2,000 of excessive property taxes plus 70% of the second $2,000 of excessive property taxes plus 50% of the third $2,000 of excessive property taxes. Excessive property taxes equal total eligible property taxes minus an income factor, which the bill would not modify. Under the bill, the maximum potential credit would be $2,100, rather than $4,200 under current law. Specify that claimants may receive a credit equal to 10% of their total eligible property taxes, which would be limited to $4,000, or the amount computed under the proposed formula, whichever is greater.

Establish that the credit amount, using the household income and property taxes for the year for which a claim is filed, could be the greater of the credit as calculated under farmland preservation law: (a) as it exists at the end of the year for which the claim is filed; or (b) as it existed on the date on which the farmland became subject to a current certificate of compliance issued by a county land conservation committee.

Specify that current law provisions that reduce the potential credit based on the type of land use restrictions affecting the claimant's farmland do not apply to claims filed for tax years beginning after December 31, 2000.

Land Use and Soil and Water Conservation Requirements. The bill would also modify the farmland preservation agreement, agricultural preservation planning, exclusive agricultural

zoning and soil and water conservation requirements associated with the modified credit requirements. DATCP would not be allowed to enter into any new farmland preservation agreements after the effective date of the bill.

Sale, Donation and Transfer of Property Development Rights. Establish statutory provisions and procedures related to the sale, donation and transfer of property development rights associated with farmland to the state, countries, municipalities and nonprofit organizations. Define development rights to mean a holder's nonpossessory interest in farmland that imposes a limitation or affirmative obligation, the purpose of which is to retain or protect natural, scenic or open space values of farmland, assuring the availability of farmland for agricultural, forest, wildlife habitat or open space use, protecting natural resources or maintaining or enhancing air or water quality.

Farmland Acreage Credit. Provide $500 GPR in 1999-00 and $1,000 GPR in 2000-01 to fund the estimated cost of the farmland preservation acreage income tax credit, created under the bill. Specify that the acreage credit would be a refundable income or franchise tax credit that would first be available in tax years beginning after December 31, 1998, with funding provided from a sum sufficient, general fund appropriation. Allow a claimant to receive both a farmland preservation credit and a farmland preservation acreage credit. Provide that if a claimant sells, donates or transfers the development rights to the claimant's land, the amount of the acreage credit for such land would be: (a) 50 cents per acre, if the farming rights on the acreage are retained; or (b) 30 cents per acre, if the farming rights on the acreage are not retained. Specify that no new claims for the acreage credit could be made for a tax year beginning after December 31, 2002.

DISCUSSION POINTS

The farmland preservation tax credit program responds to three different policy goals; (a) to preserve agricultural land and open space and encourage local land use planning; (b) to encourage compliance with state soil and water conservation standards; and (c) to provide tax relief to owners of agricultural land. In considering the proposed changes to the farmland preservation program, it may be useful to consider which policy goals should be the focus of the program and which, if any, should be eliminated.

The first part of this paper discusses the three goals associated with the farmland preservation tax credit. That discussion is followed by an analysis of how the current farmland preservation program is meeting those goals, and how other existing or alternative state programs or policies meet each of those goals.

Estimates of credit costs in the 1999-01 biennium reflect the impact that SSA 2 to SB 114 would have on agricultural property taxes in the state. That bill, as amended by the Committee's substitute amendment, would replace the current per parcel lottery credit with a lottery and gaming credit for principal residences and would double the size of the farmland tax relief credit.

Farmland Preservation and Land Use Planning

1. The impact of urban and suburban growth on the availability of land for agricultural production has been a concern for several decades. However, in the 1970s this concern intensified nationwide, when several states, including Wisconsin, developed programs to slow the conversion of agricultural land to other uses.

2. Among the policy issues related to the impact of urban and suburban growth is the loss of some of the country's most productive agricultural land to development. These losses have an impact on the rural culture and landscapes, as well as on the number of farms and the makeup of the farm economy, which could have a long-term food supply impact. Also, it is argued that rapid growth or "sprawl" in these historically rural areas can lead to undisciplined or patchwork approaches to land use, which may lead to a more dispersed population. Such growth may result in increased costs to tax and rate payers as the demand for transportation, utility, emergency and other public services becomes more widespread.

3. A recent study by Northern Illinois University identified the prime farmland areas of the country that are experiencing their state's most rapid development. The study identified an 11,020 square mile area, consisting primarily of southeastern Wisconsin, with portions of northern Illinois, as the third most threatened, prime agricultural area in the country. The study indicates that, because of suburban growth in the Milwaukee-Racine, Janesville-Beloit, Madison, Rockford and Chicago areas, some of the best farmland in these areas is being used for development.

4. The following table compares the acreage of land in farms in the state over the past 18 years by region of the state.

Comparison of the Number of Acres in Farms

District	1980	1990	1998	1980-1998 % Change
Northwest	1,950,000	1,830,000	1,660,000	-14.9%
North Central	1,925,000	1,740,000	1,570,000	-18.4
Northeast	1,035,000	980,000	850,000	-17.9
West Central	3,162,000	3,040,000	2,910,000	-8.0
Central	1,735,000	1,640,000	1,580,000	-8.9
East Central	2,280,000	2,130,000	1,980,000	-13.2
Southwest	2,960,000	2,930,000	2,710,000	-8.4
South Central	2,545,000	2,420,000	2,340,000	-8.1
Southeast	1,008,000	890,000	800,000	-20.6
Statewide Total	18,600,000	17,600,000	16,400,000	-11.8%

5. For many areas of the state, the land use requirements associated with the farmland preservation program are the most significant land use planning efforts conducted at the local level.

Soil and Water Conservation

6. Over the past two decades, the federal and state governments have developed programs and provided funding aimed at maintaining agricultural and rural resources through reducing soil erosion and nutrient runoff from farmland and farm operations. By removing fertile topsoil, soil erosion reduces the productivity of agricultural land and contributes to the degradation of water quality in streams and lakes.

7. Nonpoint source pollution is generated from sources that are diffuse in nature and have no single, well-defined point of origin, such as factories or municipal sewerage systems. Soil erosion and runoff of nutrients and sediment from agricultural fields and operations are believed to be major contributors to nonpoint source pollution. DNR estimates that nearly one-half of the lakes and streams within assessed watersheds are degraded by nonpoint sources, with an additional one-quarter considered threatened. Within these areas, nonpoint source pollution is responsible for 90% of the observed degradation in lake water quality and 40% of the observed degradation in stream water quality.

8. In recent years, both federal and state legislation have begun to focus on nonpoint sources of water pollution. Additional federal requirements aimed at controlling runoff from agricultural land and animal operations are likely to be forthcoming. Provisions in 1997 Act 27 require state and local water quality standards for agricultural facilities and prescribe the practices and standards for farms to limit nonpoint source pollution and achieve water quality. Also, Act 27 authorized state and local governments to prohibit certain practices and activities associated with agricultural operations.

9. In order to assist farmers in meeting these requirements, the state and federal governments have established several programs to provide farmers with financial assistance to install practices or facilities on farms that control nonpoint source water pollution. These practices range from constructing manure storage facilities to paying farmers to reduce the amount of tillage performed on cropland. The following table lists the proposed level of state and federal funding for soil and water conservation in the state for 1999-01, excluding the funding associated with the farmland preservation tax credit.

Funding Provided in 1999-01 for State Farmers to Meet Federal and State Soil and Water Conservation Requirements ($ Millions)

DATCP	
Land and Water Resource Management Grants	$11.4
Conservation Reserve Enhancement Program – State	11.6
DNR	
Nonpoint Source Grant Funding	41.1
USDA	
Conservation Reserve Enhancement Program	17.4
Conservation Reserve Program	78.0
Environmental Quality Incentive Program	6.2
TOTAL	$165.7

10. The majority of the state funds are provided as 50%-70% cost-sharing grants to farmers to fund soil conservation and water pollution control practices. However, some of the funding would be used to provide grants for counties to hire staff to assist farmers when they initiate conservation practices or install related facilities. The state bonding for the conservation reserve enhancement program (CREP) is contained in the proposed reauthorization of the state's stewardship program. The federal funding is provided directly to farmers through the county USDA offices. The federal funding associated with the conservation reserve and CREP programs is generally intended to provide per acre amounts to farmers willing to remove land from productive agriculture as a soil and water conservation measure. However, a significant amount of the funds may be used to provide cost-sharing grants to initiate conservation practices or install related facilities on, or adjacent to, productive agricultural lands.

11. The state and federal funding indicated above is not provided uniformly throughout the state. Rather, the funding tends to be focused on areas of the state where soil and water conservation is a higher priority.

Farmland Property Tax Relief

12. For several decades, Wisconsin farmers and farm groups have contended that property tax relief for farmers should be a legislative priority. This contention has been based on two basic arguments. First, that farming is a land and property intensive industry, compared to other forms of business, causing farmers to pay a disproportionate share of the costs of financing local government expenditures. Second, that farm property taxes in Wisconsin rank among the highest in the country, which hampers the relative competitiveness of the state's farmers.

13. In recent years, farmers have received property tax reductions due to the state's assumption of two-thirds funding of partial school revenues and due to the state's use value assessment law. However, Wisconsin farmers continue to rank high in the level of property taxes paid in comparison to farmers in most other states. The following table provides estimates of farm tax rates for the ten states with the highest rates and the nation as a whole. The table does not reflect credits that the various states may provide though the income tax system, such as the farmland preservation credit.

Comparison of Farm Real Estate Property Taxes to Farm Values for 1994 and 1997 Tax Years

	1994 Property Taxes (per $100 of value)		1997 Property Taxes (per $100 of value)
All 48 Contiguous States	$0.75	All 48 Contiguous States	$0.71
Wisconsin	2.35	Wisconsin	2.05
New York	1.72	New York	1.88
Nebraska	1.44	Nebraska	1.30
Michigan	1.32	New Hampshire	1.22
New Hampshire	1.20	Maine	1.21
South Dakota	1.16	Oregon	1.21
Iowa	1.13	Vermont	1.20
Vermont	1.09	South Dakota	1.14
Maine	1.07	Michigan	1.12
Minnesota	1.05	Minnesota	1.03

The farm tax rate in Wisconsin will likely drop as use value assessment continues to be phased-in. For example, based on ongoing lottery and gaming credit funding of $112.5 million annually, if use value assessment had been fully phased-in at that time, the estimated 1999 agricultural property tax rate would have been $1.27 per $100 of market value.

Farmland Preservation Tax Credit

14. The current farmland preservation program provides tax incentives to eligible owners of farmland for agreeing to maintain their land in agricultural use or as open space. In order for landowners to qualify for tax credits, counties must have county agricultural preservation plans that identify areas of agricultural preservation and transition areas, which are those areas in agricultural use but targeted for development. Landowners in these areas may qualify for a tax credit if a county or municipal ordinance restricts their land to agricultural use through exclusive agricultural zoning. When land is designated as agricultural preservation or transition land in a county agricultural plan, a landowner may enter into a farmland preservation agreement and receive a tax credit. Credit recipients who remove their land from exclusive agricultural zoning or from an agreement are required to pay back the amount of tax credits received in the previous ten years.

15. The following points relate to the current program as a land use planning mechanism:

- Participation in the farmland preservation program peaked in 1990-91 at nearly 25,000 claimants. In 1998, DATCP estimated that 8.1 million of the state's 16.4 million acres of farmland were covered by exclusive agricultural zoning or farmland preservation agreements.

- Proponents of the land use aspects of the program contend that making the tax credit contingent on local planning and zoning encourages counties and municipalities to make planning, zoning and land use decisions that may not otherwise be made. While not eliminating development of agricultural land, the program's land use planning and exclusive agricultural zoning requirements have forced local officials to make affirmative rezoning decisions regarding where development should occur, and this has inhibited development in some areas of the state. Proponents contend that eliminating the farmland preservation and land use requirements of the tax credit program would remove a strong incentive for counties and municipalities to perform planning and zoning activities.

- Some argue that the current farmland preservation program does not effectively focus the program's resources on those agricultural properties that are under the most development pressure, since some tax credits are paid for land that is likely to remain in farming.

- Others contend that a 100% property tax credit on farmland would not likely limit growth in some areas of the state where there is the most extreme development pressure. Therefore, it is argued that the credit should be focused on the land that is most likely to remain in production.

- Some argue that the signup of new agreements should be eliminated and the focus of the program should be on exclusive agricultural zoning areas because this is a more comprehensive land use tool. Exclusive agricultural zoning encompasses large, contiguous blocks of farmland, while farmland preservation agreements preserve farmland on a parcel-by-parcel basis. Further, zoning provides farms protection from neighboring, incompatible uses and from development on surrounding land that can exacerbate development pressure. Finally, local jurisdictions have procedures in place for monitoring and enforcing zoning ordinances. The degree to which local officials similarly enforce the land use requirements under individual agreements varies.

- Others contend that local units of government too frequently approve rezones from exclusive agricultural zoning in areas under development pressure. Further, DATCP is not proactively collecting the required paybacks of the credit on rezoned acres. Since the program's inception in 1977 through June, 1998, DATCP has processed approximately 11,000 requests to rezone a total of 127,000 acres out of exclusive agricultural zoning. This equals only 3% of the total program acreage in 1998. However, rezoning requests that have occurred since 1994 account for nearly 35% of that acreage. Further, six counties (Dane, Jefferson, La Crosse, Rock, Sheboygan and Walworth), which are under development pressure, accounted for 56% of the rezoned acres. Historically, DATCP has found that approximately 65% of the land rezoned out of exclusive agricultural zoning is rezoned for residential use.

16. The following points relate to the current program as a soil and water conservation mechanism:

- The soil and water conservation aspects of the current credit were added as a policy goal to ensure that the state did not provide a tax credit to farmers who were not practicing sound soil and water conservation practices. Soil and water conservation has been a subordinate policy goal for the program, in that the land use restrictions associated with the farmland play a much greater role in determining the size of the credit.

- Some contend that the credit should be expanded to include all farmers in the state who are practicing sound soil and water conservation, rather than only those who also meet the land use restriction aspects of the program. The bill would do this, by shifting the focus toward soil and water conservation. Others argue that soil and water conservation should not be the primary focus of the program, because several grant programs are already available to meet this goal.

- Another issue associated with the soil and water conservation aspects of the program relates to the degree to which the requirement has been enforced. County conservation staff enforce the program. It is estimated that, on average, county staff visit each claimant's property once every six years. Therefore, the annual level of noncompliance with this requirement could be greater than reported. In 1997, 33 of the nearly 22,000 tax credit claimants (0.15%) received notices of noncompliance with the program's soil and water conservation requirements and had their credit claims rejected.

17. The following points relate to the current program as a property tax relief measure:

- Since the inception of the credit in 1977-78, approximately $475.8 million has been paid to farmers under farmland preservation agreements or exclusive agricultural zoning, including nearly $20 million in 1997-98. In 1997-98, the average percentage of property taxes offset by farmland preservation tax credits was 25.8%. Those that received an amount greater than the 10% minimum credit received, on average, a credit equal to nearly 50% of their taxes.

- Since 1996-97, credits have declined due to the assumption of two-thirds funding of partial school revenues by the state and as a result of the state's use value assessment law. The shift to use value assessment will likely continue to have a downward impact on the property taxes associated with agricultural land and the corresponding credit payments. Credits totaled $28.4 million in 1995-96 and are estimated to drop to $18.1 million in 2000-01.

- The farmland preservation tax credit does not provide property tax relief to all farmers. In 1997, approximately 38% of farm operations that met the income definition of a farm received a credit.

- The income factor has come under scrutiny in recent years because it has remained the same since 1987, when off-farm income, including spousal income, was added. As incomes have grown, this factor has decreased the level of tax credits.

Modifications to the Existing Farmland Preservation Program

18. The proposed sunset provision and formula changes would apply to all farmland preservation claimants. According to DOA, these modifications were not intended to apply to claimants who hold a farmland preservation agreement, but rather to new claimants and claimants who currently file under exclusive agricultural zoning. DOA intended that current agreement holders would continue to receive credits as calculated under current law until their agreement expires or is relinquished. In order to meet this intent, the bill would have to be amended.

19. DOA indicates that the proposed modifications and sunset are intended to force a review of the program. The Governor's Budget in Brief indicates that the proposed changes are in response to criticism of the program in recent years by agricultural interests, local units of government and state agencies because of the cumbersome structure of the program and the lack of clear policy goals.

20. The bill would eliminate the farmland preservation and land use planning policy aspects of the program, effective for tax years beginning after December 31, 2000. Further, the proposal would not allow DATCP to enter into any new farmland preservation agreements, beginning on the effective date of the bill. DOA indicates that the bill's comprehensive planning provisions would replace farmland preservation as the land use planning vehicle for local units of government.

21. The tax credit formula created under the bill would reduce the maximum property tax credit by half, and would expand the eligibility to all farmers in the state who are in compliance with soil and water conservation standards. It is estimated that in 2001-02, the first year in which the modified credits would be paid, the costs of the proposed credit could range between $11.2 million, if no additional farmers participate in the program, to $27.5 million, if all currently eligible farmers participate. The following table compares the credit that would be received under current law and the proposed credit, for claimants with various levels of income and property taxes.

Comparison of Current Law Credit and Proposed Credit

	Property Taxes					
Income	$1,000	$2,000	$3,000	$4,000	$5,000	$6,000
Current Law						
$0	$900	$1,800	$2,500	$3,200	$3,700	$4,200
10,000	585	1,485	2,255	2,955	3,525	4,025
20,000	100	585	1,485	2,255	2,955	3,525
30,000	100	200	300	405	1,305	2,115
Proposed Credit						
$0	$400	$800	$1,400	$2,100	$2,100	$2,100
10,000	260	660	1,190	1,855	1,855	1,855
20,000	100	260	660	1,190	1,190	1,190
30,000	100	200	300	400	400	400
Percent Change						
$0	-55.6%	-55.6%	-44.0%	-34.4%	-43.2%	-50.0%
10,000	-55.6	-55.6	-47.2	-37.2	-47.4	-53.9
20,000	0.0	-55.6	-55.6	-47.2	-59.7	-66.2
30,000	0.0	0.0	0.0	-1.2	-69.3	-81.1

22. By deleting the land use aspects of the program, the bill would establish a credit program that provides property tax relief to farmers who meet soil and water conservation standards. However, unlike other programs that provide assistance to farmers who meet these standards, the proposed credit program would not target those areas of the state most in need of water quality improvement. If encouraging soil and water conservation is a secondary goal, the Committee could focus on whether the proposed credit is the most desirable means of accomplishing the remaining goal, property tax relief.

23. If the Committee decides to retain a state program to encourage farmland preservation through land use restrictions, there are a number of alternatives that could be considered. These include retaining the current program or developing new programs that target this objective in different ways.

24. Under the current structure, prohibiting the state from entering into additional farmland preservation agreements would focus future tax credits toward those areas concerned enough about the loss of agricultural resources to develop an exclusive agricultural zoning ordinance. Over time, this could allow larger tax credits in areas where local governments have made a commitment and planned for the preservation of agricultural land.

25. Some have argued that the funding currently provided for the tax credit could be converted to a per acre grant program. Grants could be provided only in those areas willing to adopt exclusive agricultural zoning ordinances. This would continue to focus the program on land use and would delete the income factor reduction to the tax credit under the current formula, in that everyone would receive the same per acre credit amount regardless of income. Also, this approach would de-link the program from agricultural property taxes, which have declined in recent years and have had the effect of lowering the total credits associated with the program.

26. This type of grant program would relegate the property tax relief aspects of the current credit program to a secondary role. Although the grants would still lower the property tax burden for recipients, they would not be proportional either to the total level of property taxes or a measure of "excessive" property taxes.

27. The per acre grant program could be administered by DATCP, which currently handles some of the state-level administration and compliance aspects of the farmland preservation program. If the current tax credit were converted to a grant program in 2000-01, an estimated $18.1 million would be available. However, it is estimated that agreement holders would receive approximately $4.4 million of this amount under existing agreements. Therefore, in 2000-01, $13.7 million would be available for per acre grants to farmers under exclusive agricultural zoning. DATCP could be provided authority to promulgate rules to administer the program and to determine the per acre grant amount. This could either be constant or could vary based on the level of development pressure the land is under and the agricultural productivity of the land. On average, a $13.7 million program could provide per acre grants ranging from $1.87, if all farmers currently under exclusive agricultural zoning apply, to $3.18, if only those currently receiving farmland preservation credits apply.

Property Development Rights Program

28. The bill would also create a farmland preservation acreage income tax credit for farmers who sell or transfer the property development rights associated with their land to the state, a local unit of government or a nonprofit group. The acreage credit for such land would be: (a) 50 cents per acre, if the farming rights on the acreage are retained; or (b) 30 cents per acre, if the farming rights on the acreage are not retained.

29. Under the bill, the owner of a 200-acre farm could receive $60 or $100 annually, depending on whether the farming rights are retained. However, farmers could also receive the difference between the use value and the market value of their property when they sell the development rights. While the per acre credit amount could be considered minimal, the dollar amount associated with the sale of the property development rights could be substantial. For example, a 200-acre farm with a market value of $1,000 per acre and a use value of $500 per acre could provide the seller of the development rights $100,000, and the farmer could remain in farming. If the revenue associated with the sale of the rights is sufficient to induce a farmer to sell, the additional inducement of a per acre tax credit may not be necessary.

30. Several states and local units of government have developed programs that compensate farmers for transferring their right to develop their land. For example, through 1997, the State of Massachusetts' 20-year old property development rights program had protected 40,000 acres of land from potentially being converted to non-farm uses.

31. Other states have found that the primary benefits of property development rights programs are that they protect agricultural resources permanently and they allow farmers to realize a portion of their property value while remaining in farming. Further, the programs can provide property tax relief to farmers because the lands where development rights are transferred would be assessed at full use value.

32. Some of the concerns associated with property development rights programs are that the number of public or nonprofit entities with the funds necessary to purchase the properties is limited while the supply of farmland that may be eligible for the program is substantial. Further, monitoring and enforcing the provisions of property development agreements require the ongoing investment of resources. Another concern is that development might "leap-frog" over areas where development rights were sold, which could exacerbate the sprawl of development.

33. To address the lack of funds available for purchasers of development rights, the Committee could consider providing some funding associated with the current farmland preservation credit to fund a matching grant program to local units of government or nonprofit entities to purchase property development rights. In order to avoid reducing credit payments, the funding for this purpose could be linked to the savings in total credit costs that occurs as use value assessment is phased-in. For example, the bill would provide $20.1 million in 1999-00 and $19.5 million in 2000-01 for farmland preservation credits, but current estimates are that only $19.0 million in 1999-00 and $18.1 million in 2000-01 will be needed. Therefore, $1.1 million in 1999-00 and $1.4 million in 2000-01 could be allocated to a property development rights program without affecting current credit recipients.

Farmland Tax Relief Credit

34. The farmland tax relief credit was created in the 1989-91 budget. The credit is currently equal to 10% of up to $10,000 of net property taxes levied on agricultural land, for a maximum credit of $1,000. In 1997-98, approximately $11.7 million in property tax credits were provided to 58,433 claimants.

35. SSA 2 to SB 114 would increase the 10% reimbursement rate to 20% and double the size of the maximum credit from $1,000 to $2,000. These increases would be effective with taxes that become payable in 2000.

36. Unlike the farmland preservation tax credit, the farmland tax relief credit provides broad-based tax relief to farmers. The acreage and production eligibility requirements are the same as the farmland preservation credit, but claimants are not required to be under any land use restriction or in compliance with soil and water conservation standards, and the credit amounts do

not vary with the claimant's income.

37. If the Committee decides to emphasize broad-based property tax relief, one alternative would be to delete the existing farmland preservation tax credit and replace it with a tax credit on all agricultural land. A credit equal to a percentage of property taxes on all agricultural land, rather than agricultural land and farm improvements, regardless of whether it is under certain land use restrictions or in compliance with soil and water standards, would likely be considered constitutional. This credit could be displayed on property tax bills. It is estimated that, in 2000-01, providing a 10% credit on the property taxes paid on all agricultural land in the state would result in approximately $13.9 million in total credit costs. Using recent estimates of the number of farms in the state, a $13.9 million property tax credit program would provide an average tax credit of $176 per farm.

38. If a property tax credit equal to 10% of property tax bills on agricultural land were to replace the current farmland preservation program, those receiving a current credit under a farmland agreement would continue to receive that credit until their agreement expires. Under this alternative, the total credit cost in 2000-01 would equal $18.3 million ($13.9 million associated with the 10% credit plus an estimated $4.4 million associated with farmland preservation agreements).

39. Under this broad-based credit, more individual farmers would receive a credit (approximately 79,000 farms), but the credit amount would likely be reduced for most current recipients. Those current claimants with low incomes and high property taxes would likely experience the greatest reduction in their credits.

Use Value Assessment

40. A 1974 amendment to the state constitution's uniformity clause permits agricultural land to be treated differently from other types of property for property tax purposes. The provision states that the "taxation of agricultural land and undeveloped land, both as defined by law, need not be uniform with the taxation of each other nor with the taxation of other real property." While the Constitution allows the taxation of agricultural land to be nonuniform with the taxation of other categories of land, it does not specifically state that all agricultural land must be treated the same. An opinion of the Attorney General concludes that uniform treatment must be extended within the classification of agricultural land although the courts have neither considered nor sustained this conclusion.

41. Prior to 1996, state law required assessors to value agricultural land like all other property, at its highest and best use. When agricultural land was located in areas where nonagricultural activities were also occurring, agricultural land assessments were affected by sales of comparable agricultural properties being converted to other uses. Buyers of those properties often paid more than buyers intending to keep land in an agricultural use. Sales of agricultural land intended for other uses caused increases in the assessments of surrounding agricultural land and higher property taxes, which eroded the land's profitability when used for agricultural purposes.

42. Provisions in 1995 Act 27 require agricultural land assessments to be based entirely on the land's use for farming, beginning in 2007. Under use value assessment, agricultural land values will be estimated on a per acre basis, using the income that could be generated by the land through farming divided by a capitalization rate. The Act 27 provisions establish two steps to phase-in use value assessments. First, agricultural land assessments were "frozen" at their 1995 levels in 1996 and 1997. Second, agricultural land values will be based on a combination of "frozen" 1995 values and current year use values between 1998 and 2006. For 1998, the frozen value was adjusted by 10% of the difference between the two values. The adjustment factor equals 20% for 1999 and will increase in 10% increments until 2007.

43. The 1995 provisions authorizing use value assessment reflect two policy objectives. The first objective is to preserve existing farmland by reducing its conversion to other uses. Between 1990 and 1998, the amount of land in farms statewide declined by 1.2 million acres from 17.6 million acres to 16.4 million acres, according to DATCP. However, data compiled by DOR that summarizes "arm's-length" sales between 1990 and 1998 indicates that the amount of agricultural land that was sold for other intended uses peaked at 90,971 acres in 1993, but declined in each succeeding year. In 1997, DOR reports that 62,157 acres of agricultural land was sold for other intended uses.

44. The second objective of use value assessment is to provide property tax relief to farmers by reducing the taxable value of agricultural land and the taxes on that land. Between 1990 and 1995, statewide agricultural land values increased at an average, annualized rate of 3.2%, but have since decreased from $9,017.4 million in 1995 to $7,967.2 million in 1998, or by 11.6%. About half of the decrease occurred when property that was previously included in the agricultural class was reclassified and included in other property classes. Between 1990 and 1998, the value for all taxable property increased at an average, annualized rate of 7.3%. The percent of statewide tax base comprised of agricultural land has declined from 4.5% in 1995 to 3.2% in 1998.

45. While a number of factors have influenced the change in agricultural values and taxes on agricultural land, the 1995 Act 27 provisions authorizing use value assessments have had a significant effect on agricultural taxes. The following table compares net property taxes on agricultural land and on all taxable property between 1990 and 1998 and helps illustrate the effect of use value assessment.

Comparison of Net Taxes on Agricultural Land and on All Property
(million $)

Year	Property Taxes Net of School Levy Tax Credits: Agricultural Land	Percent Change	All Property	Percent Change	Agricultural Taxes as a Percent of Total Taxes
1990(91)	$211.1		$4,068.9		5.2%
1991(92)	219.7	4.1%	4,413.4	8.5%	5.0
1992(93)	235.0	7.0	4,850.2	9.9	4.8
1993(94)	236.5	0.6	5,118.7	5.5	4.6
1994(95)	230.4	-2.6	5,252.8	2.6	4.4
1995(96)	220.1	-4.5	5,419.6	3.2	4.1
1996(97)	172.2	-21.8	4,908.7	-9.4	3.5
1997(98)	170.2	-1.2	5,166.6	5.3	3.3
1998(99)	158.6	-6.8	5,505.0	6.5	2.9

46. The impact of phasing-in use value assessment is difficult to interpret because the period surrounding the initial implementation coincided with the increase in the level of state support for school funding between 1994 and 1996. Also, some property previously included in the agricultural class was reclassified into other classes in 1996 and 1997. However, these other factors were not an influence in 1998, and the net taxes on agricultural land decreased statewide by 6.8%. In the same year, total taxes on all property increased by 6.5%. As use value assessment continues to be phased-in, net taxes on agricultural property are expected to decrease by 6% to 7% over the next two years, while total taxes on all property are estimated to increase by 4% to 6% each year. If agricultural land was assessed on the basis of market value, the 1999 statewide net taxes on agricultural land would be higher by an estimated $78.4 million (53.0%), than under current law provisions.

47. The expected reduction in agricultural taxes may not be fully realized if local assessors do not continue to phase-in use value assessments. The phase-in requires annual adjustments to property assessments until 2007. Historically, property in many municipalities has not been reassessed each year due to cost considerations. Also, some assessors have informed DOR that some assessment adjustments for 1999 are so small on a per acre basis that the assessors are reluctant to incur the expenses associated with updating agricultural assessments. A recent survey of rural assessors indicated that the maintenance costs associated with the use value phase-in are $4.50 per parcel. For 1998, assessors reported that there were 545,000 parcels of agricultural land.

48. One alternative to provide additional property tax relief to farmers would be to implement full use value assessment, beginning with assessments for 2000. Under current law, net taxes on agricultural land are estimated to decrease by $8.9 million, or 6.0%, from $147.9 million in 1999-00 to $139.0 million in 2000-01. The net tax on agricultural land would decrease to an estimated $112.0 million if use value assessments were fully implemented in 2000-01. That amount

is $35.9 million less (-24.3%) than the estimated taxes on agricultural land in 1999-00 and $27.0 million less (-19.4%) than the estimated taxes on agricultural land in 2000-01 under current law.

49. Fully implementing use value assessments in 2000-01 would remove an estimated $1.4 billion in value from the property tax base statewide. This would cause state aids to be distributed in a different pattern and taxes would increase on other types of taxable property. As a result, the tax bill for a median-valued home taxed at statewide average tax rates would increase by $16. The following table compares the estimated tax bill for a median-valued home under three scenarios: (a) the biennial budget bill; (b) the biennial budget bill plus the lottery credit change in SSA 2 to SB 114; and (c) the biennial budget bill plus SSA 2 to SB 114 plus full phase-in of use value assessment.

Estimated Tax Bill for a Median-Valued Home

	1998(99)	1999(00)	2000(01)
AB 133	$2,090	$2,176	$2,267
AB 133 + SB 114	2,090	2,132	2,222
AB 133 + SB 114 + Use Value	2,090	2,132	2,238

50. When the current use value provisions were created in 1995, the Legislature discussed other mechanisms for extending property tax relief to farmers. One alternative was fractional assessment, where each piece of agricultural land would be assessed at a uniform percentage of its market value. Fractional assessment would provide property tax relief to all farmers throughout the state. On the other hand, use value assessment targets property tax relief to agricultural land in areas where there is development pressure. As a result, most property tax relief under use value will occur in urban fringe areas that are south of a line from Green Bay to Platteville. Farmers in other parts of the state will experience less tax relief, or even tax increases, under use value assessment.

51. An alternative that would provide more uniform property tax relief to farmers throughout the state would be to replace the current use value provisions with a provision that requires all agricultural land to be valued at 45% of its market value, effective for the 2000-01 tax year. This would provide statewide property tax reductions for agricultural land comparable to those under the full implementation of use value assessment.

ALTERNATIVES TO BASE

A. Farmland Preservation Tax Credit

1. Approve Governor's recommendation to modify the farmland preservation property tax credit for those receiving the credit under exclusive agricultural zoning, as follows: (a) modify the formula used to compute farmland preservation credits, effective with claims filed

for tax years beginning after December 31, 2000, by reducing the level property taxes used in computing the credit, modifying the percentages that reduce the level of "excessive" property taxes used in the credit calculation and by deleting the adjustments to the credit related to land use restrictions; (b) allow all farmers who submit a certificate of compliance with soil and water conservation standards, including nutrient management, to be eligible to claim a credit; (c) modify the farmland preservation agreement, agricultural preservation planning, exclusive agricultural zoning and soil and water conservation requirements associated with the modified credit requirements; (d) prohibit DATCP from entering into additional agreements on the effective date of the bill; and (e) sunset the farmland preservation tax credit program, with no new credits to be paid for a tax year that begins after December 31, 2002.

2. Prohibit DATCP from entering into additional farmland preservation agreements on the effective date of the bill (this alternative would retain the current farmland preservation tax credit for existing agreement holders and those under exclusive agricultural zoning, but no new farmland preservation agreements could be signed after the effective date of the bill).

3. Effective with tax years beginning after December 31, 1999, delete the current farmland preservation tax credit program for those receiving the credit under exclusive agricultural zoning and decrease funding for the program by $13,700,000 GPR to reflect this change. Prohibit DATCP from entering into any new farmland preservation agreements after the effective date of the bill (existing agreement holders would continue to receive the credit). Beginning in 2000-01, establish a $13,700,000 GPR, sum certain appropriation under DATCP to provide grants to farmers whose land is under exclusive agricultural zoning and who are in compliance with existing state soil and water conservation requirements. Apply the current law land use and soil and water conservation eligibility provisions associated with the current tax credit to those receiving the grant. Further, do one of the following:

a. Require DATCP, by March 15, 2000, to promulgate rules associated with the administration of the farmland preservation grant program, which shall establish per acre grant amounts based on the funding available, the level of development pressure on the farmland and the productivity of the farmland under exclusive agricultural zoning (DATCP could determine different grant levels for different types and locations of farmland under exclusive agricultural zoning).

b. Require DATCP, by March 15, 2000, to promulgate rules associated with the administration of the farmland preservation grant program, which shall establish uniform per acre grant amounts based on the funding available (everyone under exclusive agricultural zoning and in compliance with soil and water conservation standards would be eligible for the same per acre grant).

4. Effective with tax years beginning after December 31, 1999, delete the current farmland preservation tax credit program for those receiving the credit under exclusive

agricultural zoning and decrease funding for the program by $13,700,000 GPR to reflect this change. Prohibit DATCP from entering into any new farmland preservation agreements after the effective date of the bill (existing agreement holders would continue to receive the credit).

Alternative A4	GPR
1999-01 FUNDING (Change to Base)	- $13,700,000
[Change to Bill	*- $13,700,000]*

5. Maintain current law.

B. Other Farm Property Tax Relief Options

1. *Property Tax Credit on Agricultural Land.* Create a property tax credit to be displayed on tax bills equal to ten percent of the total taxes levied for all purposes, net of school levy tax credits, on agricultural land, effective for tax years that begin after December 31, 1999. Require municipalities to notify DOR of the total amount of credits extended on tax bills by March 1 of the year that the taxes become payable and require DOA to reimburse municipalities for those amounts on the fourth Monday in March. Require municipal treasurers to settle for the amounts received with each jurisdiction levying taxes within the municipality or provide the amounts received to the appropriate county treasurer for settlement not later than April 15. Establish a sum sufficient, GPR appropriation for the payments and provide $13,900,000 to reflect estimated credit payments in 2000-01. Decrease estimated funding in 2000-01 by $1,000,000 GPR for farmland preservation tax credits and by $1,800,000 SEG for farmland tax relief credits to reflect reductions in tax credits extended under those programs due to the newly-created tax credit.

Alternative B1	GPR	SEG	TOTAL
1999-01 FUNDING (Change to Base)	$12,900,000	- $1,800,000	$11,100,000
[Change to Bill	*$12,900,000*	*- $1,800,000*	*$11,100,000]*

2. *Use Value Assessment of Agricultural Land.* Repeal current law provisions related to the phase-in of use value assessment of agricultural land and require agricultural land to be assessed according to the income that could be generated from its rental for agricultural use, effective for tax years that begin after December 31, 1999. Decrease estimated funding in 2000-01 by $2,000,000 GPR for farmland preservation tax credits and by $3,600,000 SEG for farmland tax relief credits to reflect reductions in tax credits extended under those programs due to the full implementation of use value assessment.

Alternative B2	GPR	SEG	TOTAL
1999-01 FUNDING (Change to Base)	- $2,000,000	- $3,600,000	- $5,600,000
[Change to Bill	*- $2,000,000*	*- $3,600,000*	*- $5,600,000]*

3. *Fractional Assessment of Agricultural Land.* Repeal current law provisions related to the use value assessment of agricultural land and require agricultural land to be assessed at 45% of its market value, as determined under procedures used to assess other classifications of property, effective for tax years that begin after December 31, 1999. Decrease estimated funding in 2000-01 by $2,000,000 GPR for farmland preservation tax credits and by $3,600,000 SEG for farmland tax relief credits to reflect reductions in tax credits extended under those programs due to the implementation of fractional agricultural land assessments.

Alternative B3	GPR	SEG	TOTAL
1999-01 FUNDING (Change to Base)	- $2,000,000	- $3,600,000	- $5,600,000
[Change to Bill	*- $2,000,000*	*- $3,600,000*	*- $5,600,000]*

4. Maintain current law.

C. Property Development Rights

1. Approve the Governor's recommendation that establishes statutory provisions and procedures related to the sale, donation and transfer of property development rights to the state, counties, municipalities and nonprofit organizations. Provide $500 GPR in 1999-00 and $1,000 GPR in 2000-01 to fund the estimated cost of the farmland preservation acreage income tax credit. Specify that the acreage credit would be a refundable income or franchise tax credit that would first be available in tax years beginning after December 31, 1998, with funding provided from a sum sufficient, general fund appropriation. Allow a claimant to receive both a farmland preservation credit and a farmland preservation acreage credit. Provide that if an acreage credit claimant sells, donates or transfers the development rights to the claimant's land, the amount of the acreage credit for such land would be: (a) 50 cents per acre, if the farming rights on the acreage are retained; or (b) 30 cents per acre, if the farming rights on the acreage are not retained. Specify that no new claims for the acreage credit could be made for a tax year beginning after December 31, 2002.

Alternative C1	GPR
1999-01 FUNDING (Change to Base)	$1,500
[Change to Bill	*$0]*

2. Approve Alternative #C1, with the exception of the provision that no new claims for the acreage credit could be made for a tax year beginning after December 31, 2002 (this alternative would delete the proposed sunset of the acreage credit).

Alternative C2	GPR
1999-01 FUNDING (Change to Base)	$1,500
[Change to Bill	*$0]*

3. Provide $1,100,000 GPR in 1999-00 and $1,400,000 GPR in 2000-01 in a continuing appropriation under DATCP to establish a property development rights grant program to nonprofit organizations, counties and municipalities for the purchase of property development rights associated with farmland. Establish statutory provisions and procedures related to the sale, donation and transfer of property development rights to the state, counties, municipalities and nonprofit organizations. Specify that the state grant program would require a 25% match from the grant recipient. Provide DATCP with the authority to promulgate rules related to the grant program.

Alternative C3	GPR
1999-01 FUNDING (Change to Base)	$2,500,000
[Change to Bill	*$2,500,000]*

4. Maintain current law.

Alternative C4	GPR
1999-01 FUNDING (Change to Base)	$0
[Change to Bill	*- $1,500]*

MO# A-3(b)

BURKE	Y	N	A
DECKER	Y	N	A
JAUCH	Y	N	A
MOORE	Y	N	A
SHIBILSKI	Y	N	A
PLACHE	Y	N	A
COWLES	Y	N	A
PANZER	Y	N	A
GARD	Y	N	A
PORTER	Y	N	A
KAUFERT	Y	N	A
ALBERS	Y	N	A
DUFF	Y	N	A
WARD	Y	N	A
HUBER	Y	N	A
RILEY	Y	N	A

AYE 8 NO 8 ABS ____

MO# C-3

BURKE	Y	N	A
DECKER	Y	N	A
JAUCH	Y	N	A
MOORE	Y	N	A
SHIBILSKI	Y	N	A
PLACHE	Y	N	A
COWLES	Y	N	A
PANZER	Y	N	A
GARD	Y	N	A
PORTER	Y	N	A
KAUFERT	Y	N	A
ALBERS	Y	N	A
DUFF	Y	N	A
WARD	Y	N	A
HUBER	Y	N	A
RILEY	Y	N	A

AYE 8 NO 8 ABS 0

Prepared by: Al Runde and Rick C

(Base) Agency: Shared Revenue & Property Tax Relief
Farmland Preservation - Minimum Parcel Size

Recommendations:

Paper No. 86#: Alternative 3 (no action needed)
(or Burke motion)

Comments: There's no real reason to change the requirement that a 35-acre parcel is the minimum size needed to establish a farm operation or residence under exclusive ag zoning (i.e. and be eligible for the tax credit). In fact, we should probably increase the minimum size to 80 acres or more. That would stop some of the rich suburban folks from taking over the countryside.

Possible Burke Motion: Alternatively, we could adopt your motion that retains some acreage limits but offers a great deal more flexibility.

Your motion (which was agreed to by the Farm Bureau, when we were trying to put together a package deal), would create a maximum 35-acre density in exclusive agricultural zoning, and allow local governments to specify minimum lot sizes.

For example, a farmer with 140 acres could create up to four lots. The local town or county government could specify a minimum lot sizes, say one-acre. The farmer could then create four one-acre lots and keep the rest of his land in farming. After he or she creates the fourth lot, the remaining land would then be deed restricted to prevent further land divisions.

prepared by: Barry

Legislative Fiscal Bureau
One East Main, Suite 301 • Madison, WI 53703 • (608) 266-3847 • Fax: (608) 267-6873

May 13, 1999 Joint Committee on Finance Paper #867

Farmland Preservation -- Minimum Parcel Size (Shared Revenue and Tax Relief -- Property Tax Credits)

[LFB 1999-01 Budget Summary: Page 544, #5 (part)]

CURRENT LAW

Exclusive agriculture zoning (EAZ) ordinances must specify that a 35-acre parcel is the minimum parcel size needed to establish a farm operation or a residence under exclusive agricultural zoning.

GOVERNOR

Effective on January 1, 2001, repeal the 35-acre minimum parcel size requirement. Rather, require only that the EAZ ordinance specify a minimum parcel size. Other provisions in the bill would eliminate the requirement that farmland be subject to exclusive agricultural zoning as one of the criteria for being eligible for a farmland preservation tax credit, effective for tax years beginning after December 31, 2000.

DISCUSSION POINTS

1. Under current law, landowners in agricultural preservation and transition areas identified in a county agricultural preservation plans may qualify for a farmland preservation tax credit if a county or municipal ordinance restricts their land to agricultural use through exclusive agricultural zoning. With few exceptions, no residence may be established on a parcel of land subject to that ordinance unless that parcel is at least 35 acres. In order to establish a residence on a farmland parcel that is less than 35 acres and subject to an EAZ ordinance, that parcel must be rezoned out of exclusive agricultural zoning and any tax credits that were received for that land must be repaid.

2. As an example, a farmer receiving tax credits for 140 acres of farmland subject to exclusive agricultural zoning could sell a ten-acre parcel for residential development. However, the land would have to be rezoned out of exclusive agricultural zoning before a residence could be established on it and the farmer would have to repay any tax credits received for those ten acres.

3. The 35-acre requirement was established in statute in 1977 as a control on residential development in areas zoned exclusively for agriculture. At the time the requirement was established, many believed that a parcel size of 35 acres would limit rapid development in these areas by limiting the number of clusters of residential development. Also, it was believed that requiring 35 acres to build a residence would be somewhat cost-prohibitive, which would limit the number of people considering moving to these areas.

4. The bill would repeal the state's role in determining the parcel size needed for residential development under EAZ ordinances. The bill would require only that a county or municipality specify a minimum parcel size in its ordinance.

5. Some contend that, over the past two decades, the 35-acre parcel requirement has become less of a deterrent to rural residential development and may be exacerbating the loss of farmland. They argue that by requiring a 35-acre lot for a residence to be established, the current provision may result in farmland being subdivided out of agriculture in 35-acre blocks and into large, scattered residential properties. For example, under current law, a farmer owning 140 acres of farmland, with no existing residence, could subdivide that parcel into four developable lots consistent with the existing exclusive agricultural zoning requirement. Those four parcels could become parcels that are largely residential properties, having little or no agricultural production, and 140 acres of farmland would have been lost. Conversely, under the bill, if a local unit of government establishes a 3.5-acre minimum parcel size, that farmer could choose to subdivide only the least-productive 25% of the 140 acres, into ten, 3.5-acre parcels, and keep the remaining, most-productive 105 acres in agriculture.

6. Removing the state requirement would allow counties and municipalities across the state, which may have varying land use demands and preservation needs, the flexibility to determine the type and size of development that best fits their individual situation. Further, if the counties and municipalities tend to adopt ordinances with smaller parcel sizes than the current 35-acre minimum, it could allow farmers the option of only subdividing their least-productive farmland.

7. Conversely, allowing smaller residential parcel sizes in areas under exclusive agricultural zoning could exacerbate the development of farmland by making the parcels more affordable to more people.

8. Currently, there are 33 county EAZ ordinances and 432 municipal ordinances, including 19 cities, 17 villages and 396 towns. There are 39 counties that have no county EAZ ordinance, but municipalities within twelve of those counties have established ordinances.

9. While allowing local governments to determine their own minimum parcel size would increase their flexibility, it could also lead to situations in which adjacent towns have vastly different parcel sizes. Of the towns with ordinances, 120 towns have their own ordinance and 276 towns have adopted their county's exclusive agricultural zoning ordinance. Allowing towns to have differing parcel sizes could result in fewer towns adopting their counties' ordinances because of disagreement over the allowable parcel size.

10. It could be argued that land use circumstances among adjacent municipalities do not vary enough to warrant individual towns, villages or cities having their own minimum parcel size. To avoid having multiple parcel sizes in geographically close areas, an alternative would be to require that the parcel size be consistent within each county. This could be done by requiring that any municipality within a county would have to adopt the minimum parcel size adopted under the county EAZ ordinance or continue to be subject to the current 35-acre requirement. Any municipality within a county that has not adopted a county EAZ ordinance would also continue to be subject to the 35-acre requirement.

11. This alternative would provide less flexibility for local governments than under the bill, but more than the current, statewide 35-acre requirement. Compared to the bill, it would lend more consistency to minimum parcel sizes.

ALTERNATIVES TO BASE

1. Approve the Governor's recommendation to repeal the current 35-acre minimum parcel size requirement for exclusive agricultural zoning ordinances and, instead, require only that the ordinances specify a minimum parcel size, effective on January 1, 2001.

2. Allow counties to specify any minimum parcel size in their exclusive agricultural zoning ordinances, effective on January 1, 2001. Require that any municipality that adopts an exclusive agricultural zoning ordinance must specify a minimum parcel size in that ordinance that is the same as the parcel size specified in the county ordinance. Specify that if a municipality does not adopt the county's minimum parcel size or is located in a county without an exclusive agricultural zoning ordinance, the current 35-acre minimum parcel size would continue to apply.

3. Maintain current law.

Prepared by: Al Runde

(Base) Agency: Shared Revenue & Tax Relief
Property Tax Credits

Recommendations:

Paper No. End of section summary

Comments: No action needed. There are no issues to be addressed.

prepared by: Barry

SHARED REVENUE AND TAX RELIEF

Property Tax Credits

LFB Summary Item to be Addressed in a Subsequent Paper

Item #	Title
1	Lottery Tax Credit

Shared Revenue and Tax Relief

Property Taxation

(LFB Budget Summary Document: Page 550)

LFB Summary Items for Which Issue Papers Have Been Prepared

Item #	Title
2	Environmental Remediation TIF Districts -- Expanded Powers (Paper #875)
5	Special Charges for Cancelled Taxes on Contaminated, Tax Delinquent Property (Paper #876)

(Base) Agency: Shared Revenue & Property Tax Relief
Environmental Remediation TIF Districts

Recommendations:

Paper No. 875: Part A - Alternatives 1(a)(b)&(c)
Part B - Alternatives 1(a)(b) & 2(b)(c)
Part C - Alternative 1

Comments: For Part A - The alternatives you chose here make the environmental remediation TIF viable. No one has applied to create an ER TIF because the current law is too restrictive. This says you can get the TIF approved before you complete the cleanup, rather than do the cleanup and hope you can get the TIF approved later. It's common sense.

(note: Rep. Duff has a motion to add some insurance-like protections that try to mitigate fears that these environmental TIF could have never-ending costs. It's ok.)

For Part B - I guess this is a philosophical issue. I think we should allow ER TIF's to work on private properties as well as public ones. Cleaning up pollution on private properties has public benefits related to public health and the environment.

For Part C - Again, your alternative choice here makes the ER TIF more useful in our efforts to get brownfields cleaned up. The more clearly we define eligible costs, the more likely it becomes that local governments will be willing to create ER TIF's.

(***note***: you directed the Brownfields Study Group to meet, and therefore you should support their recommendations - which you are doing with your alternative choices and motions)

Possible Burke Motion:

Although not reflected in the FB paper, you asked the Brownfields Study Group to reconvene once the governor's budget bill was introduced, review his proposals and make recommendations for improvements.

If the committee agrees to make the ER TIF work (i.e. if above alternatives pass), then you should try to implement the recommendations of the Brownfields Study Group, which are laid out in your motion. Your motion does expand the boundaries of ER TIF if needed to effectively complete an off-site groundwater cleanup. That's the big deal in the motion. The rest is pretty technical. TIF's are controversial, but at least this is an appropriate use (urban industrial), rather than TIF's to address corn blight (i.e. sprawl). Prepared by: Barry

Legislative Fiscal Bureau
One East Main, Suite 301 • Madison, WI 53703 • (608) 266-3847 • Fax: (608) 267-6873

May 13, 1999 Joint Committee on Finance Paper #875

Environmental Remediation TIF Districts -- Expanded Powers (Shared Revenue and Property Tax Relief -- Property Taxation)

[LFB 1999-01 Budget Summary: Page 550, #2]

CURRENT LAW

An environmental remediation tax incremental financing district (ER-TIF) can be used as a financing mechanism once a county or municipality receives certification from the Department of Natural Resources (DNR) that it has remediated the environmental pollution from the property and the property has been sold. The tax increments can be used to fund eligible costs for: (a) up to 16 years after DOR establishes the ER-TIF district increment base, which occurs only after DNR certifies that the pollution on the property has been remediated; or (b) until all eligible costs associated with the remediation of the pollution have been paid.

Eligible costs include capital costs, financing costs, administrative and professional service costs associated with the investigation, removal, containment or monitoring of, or the restoration of soil or groundwater affected by, environmental pollution, including monitoring costs incurred within two years after receipt of the DNR certification that the contamination on the property has been remediated. However, the eligible costs must be reduced by any amounts received from the person(s) responsible for the discharge of a hazardous substance on the property and the amount of net gain from the sale of the property by the local unit of government.

GOVERNOR

Eligible Costs. Modify the definition of eligible costs that can be paid from tax increments to include: (a) property acquisition costs; (b) demolition costs, including asbestos removal; and (c) the cost of removing and disposing of abandoned containers containing hazardous substances. Specify that current law eligible cost categories, plus these new categories, would be extended to air, surface water and sediments affected by environmental pollution. Current law applies only to soil and groundwater affected by environmental pollution.

Include as a reduction to eligible costs any amounts that a city, village, town or county that establishes an ER-TIF district received, or reasonably expects to receive, from a local, state or federal program for the remediation of contamination in the district, if these amounts do not have to be reimbursed or repaid.

Eligible Properties. Allow an ER-TIF district to include private properties by deleting the requirement that the property on which the tax increment may be used to defray the costs of remediation must be owned by a city, village, town or county at the time of the remediation and then transferred to another person following completion of the remediation. Allow a city, village, town or county to use an ER-TIF to pay the costs of remediating environmental pollution of groundwater regardless of whether or not the city, village, town or county owns the property above the groundwater. Specify that environmental remediation ER-TIF districts may only include contiguous parcels of property.

Certification. Allow a city, village, town or county to apply to DOR for certification of an ER-TIF tax increment base prior to incurring all costs associated with the remediation of the environmental contamination. Require a county or municipality to provide a statement to DOR containing information on the remediation costs already incurred, plus a detailed proposed remedial action plan containing remediation cost estimates for anticipated eligible costs on the parcel or contiguous parcels of property to be included in the proposed ER-TIF district. Require that the statement include a certificate from DNR indicating that DNR has approved the site investigation report that relates to the affected parcel or contiguous parcels of property.

Certification Period. Expand the period of certification for an ER-TIF district from 16 years to 23 years, which extends the period in which eligible costs may be paid using the tax increments.

DISCUSSION POINTS

1. The environmental remediation tax incremental financing law was created by 1997 Act 27 to provide counties, cities, towns and villages with a financing option to recover the costs of remediation of contaminated properties, often referred to as brownfields.

2. Under current law, counties and municipalities have to notify DOR by April 1 of the year following the year in which DNR has certified that the environmental pollution on a property has been remediated. No ER-TIF has been established to date, and since the notification deadline has passed, no ER-TIF districts will be established in 1999.

3. The primary differences between an ER-TIF and a TIF created under the general TIF law are, as follows: (a) counties and towns may establish an ER-TIF, while general TIFs are limited to cities and villages; (b) a county or municipality must own the property within the ER-TIF district while the remediation costs are incurred, while under general TIF law private entities may own property within the district; (c) an ER-TIF can only be certified by DOR and tax increments

can only be used to recover the costs of remediation after the contamination within the district has been remediated and the county or muncipality has sold the property within the ER-TIF district; and (d) the creation of additional ER-TIF districts is not limited to a percentage of municipalities' equalized value.

4. Act 27 also directed DNR, in cooperation with other affected agencies and private parties, to study issues related to the remediation and reuse of brownfields. One of the primary responsibilities of this brownfields study group was to develop, or amend existing, financing mechanisms or programs that provide financial incentives for governments or private entities to remediate brownfield sites. The study group's recommendations for the ER-TIF law are designed to remove what are believed to be impediments for local units of government holding brownfield sites to use ER-TIFs.

5. While the provisions in the bill do not specifically mirror the recommendations of the brownfields study group, the proposals generally resulted from the group's work. The proposed changes are designed to increase the flexibility of counties and municipalities in establishing ER-TIFs and to provide another financing option for the remediation of private properties contaminated by environmental pollution.

6. The proposed modifications raise two policy issues relative to ER-TIF law: (a) whether counties and municipalities should be allowed to establish an ER-TIF and transfer the properties within the district prior to completion of the remediation of environmental contamination and prior to all costs associated with the remediation being incurred; and (b) whether ER-TIFs should be used to remediate environmental contamination on private properties.

Establishment of ER-TIF Districts Prior to Completion of Remediation

7. Allowing the transfer of properties and the establishment of ER-TIFs prior to completion of remediation of the properties within the district would allow counties or municipalities to begin to recoup some of the costs associated with the remediation of the properties sooner. Because counties and municipalities are currently required to hold onto the properties within an ER-TIF district until remediation of the property is complete, private development cannot begin and tax increments cannot be generated for the payback of the remediation costs while costs are being incurred.

8. Under current law, counties and municipalities may be reluctant to incur costs associated with the remediation of contaminated properties that are to be repaid under ER-TIF financing because there is no assurance that the joint review board will approve the ER-TIF. The proposed change may make local governments less reluctant to begin work on remediating abandoned and tax delinquent properties.

9. Unlike a general TIF district, where the costs associated with infrastructure improvements and redevelopment can be reasonably estimated, the costs associated with the remediation of environmental contamination are less certain because the degree of contamination

may not be known until the remediation work begins. Not allowing the creation of an ER-TIF district until remediation is complete and the county or municipality sells the property may be considered safeguards that allow the taxing jurisdictions represented on the joint review board to know the costs expected to be repaid through ER-TIF financing prior to establishing the ER-TIF district.

10. The bill would require that some indication of costs associated with the remediation of contamination be provided a joint review board, prior to establishing the ER-TIF district. Prior to DOR certification of the ER-TIF base, a county or municipality would have to provide DOR with a statement of the remediation costs already incurred, plus a detailed proposed remedial action plan containing remediation cost estimates for anticipated eligible costs. This information would also be provided to the joint review board for consideration in the decision to approve the ER-TIF district proposal.

11. Under general TIF law, the expenditure period during which costs may be incurred is limited to seven years after the TIF district base is certified. Because, under current law, no ER-TIF can be established until the remediation of contamination is complete, there is no need to limit the expenditure period during which costs may be incurred. However, under the bill, costs could be incurred throughout the 23-year certification period under an ER-TIF. This could make it difficult for an ER-TIF district to recover all of its costs within the 23-year period. If ER-TIFs are allowed to be created prior to incurring all costs associated with the remediation of contamination within the district, the Committee could consider limiting expenditures to seven years, as under general TIF law.

ER-TIF Financing on Private Properties

12. Another directive of the brownfields study group was to study optional financing methods to remediate areawide groundwater contamination, rather than remediating the contamination on a property-by-property basis. Because it is likely that groundwater contamination does not end at property boundaries, the study group's report indicated that the inclusion of private properties within ER-TIF districts is necessary to address concerns related to areawide groundwater contamination.

13. The Governor's Executive Budget Book indicates that the proposed changes are intended to allow for ER-TIF financing of remediation costs after a publicly-owned property is sold to a private entity. However, the bill would go beyond this intent to allow an ER-TIF to be created to fund the costs of environmental pollution contamination on private properties that may never have been publicly-owned. This is consistent with the brownfields study group recommendations.

14. The proposal to include remediation costs of private properties departs from the original intent of the ER-TIF law, which was to provide a TIF financing mechanism to counties and municipalities wishing to remediate abandoned and tax delinquent properties.

15. The state has several other existing and proposed programs aimed at remediating

both private and public brownfields sites, including: (a) a brownfields grant program to private entities and municipalities ($5.0 million SEG annually); (b) a land recycling loan (brownfields) loan program ($20.0 million in total loan funding); (c) a WHEDA loan guarantee program ($11.25 million in total guarantee authority, under the bill); (d) a tax credit against income taxes due that is equal to 50% of the amount a business expends on environmental remediation in a development zone or an enterprise development zone; (e) a proposed brownfields grant program for jobs for low-income individuals ($5.0 million annually from federal temporary assistance for needy family funds); and (f) a proposed brownfields site assessment grant program for local units of government ($1.0 million SEG annually).

16. Unlike general TIFs, where the local municipality expends the funds on infrastructure improvements associated with developing public and private properties within the TIF district, the proposed changes to ER-TIF law could allow tax increments to repay the costs of private expenditure. This would be a change in state policy associated with tax incremental financing, which restricts costs to public expenditures. If the proposed changes to allow ER-TIFs on private properties are adopted, the Committee could specify that the costs to be refinanced though the allocation of TIF increments are only those costs that involve public expenditures.

17. Concerns have been raised that allowing ER-TIFs on private properties may lead to increased remediation costs because, due to a lack of expertise and experience associated with the remediation of contamination, counties and municipalities may defer to the private property owner to contract and monitor the costs of the remediation. While counties and municipalities have expertise in infrastructure development, such as street, sewer, water and electrical improvements, they may not have the expertise to monitor costs associated with environmental remediation.

18. Allowing the use of an ER-TIF on private properties could potentially raise public-purpose, constitutional concerns, if it is difficult to determine which costs are to be borne by the ER-TIF district and which are to be borne by private property owners within the ER-TIF district. General TIF law has been ruled constitutional because the taxing authorities that share in the TIF district's tax base benefit from the expansion of the tax base that results from the redevelopment of the property within the TIF district. However, as recognized by the brownfields study group, detecting responsibility for contamination is not always clear when co-contamination exists. Consequently, allowing the use of an ER-TIF on private properties may make the public purpose of remediating contamination less clear. Conversely, it could also be argued that the tax dollars raised through the ER-TIF district are being used for a public purpose, because the remediation of contamination on private property is necessary to address a public health concern.

19. One alternative would be to allow counties and municipalities to establish an ER-TIF for publicly-owned properties prior to incurring all costs, based on the information the bill would require to be submitted to the joint review board and DOR. Properties could be transferred to a private entity that was not responsible for the contamination, prior to incurring all costs associated with the remediation of the property. This alternative would potentially increase the flexibility of ER-TIF law for counties and municipalities, while addressing some of the policy concerns associated with the inclusion of properties that were never publicly-owned in ER-TIF districts.

Limit on Creation of ER-TIFs

20. The creation of general TIF districts is limited to cities and villages and by the percentage of the municipality's equalized value included in such districts. These districts cannot be created if: (a) the value of the proposed district, plus the value of all existing TIF districts in that municipality, exceeds 7% of that municipality's equalized value; and (b) the value of the proposed TIF district, plus the value increment of all existing TIF districts in that municipality, exceeds 5% of the municipality's total equalized value. The number of ER-TIFs that can be created is not subject to this limit. Including ER-TIFs under the current limits could address concerns related to the total usage of tax incremental financing.

21. Conversely, making ER-TIFs subject to the current TIF limitations would reduce the ability of cities and villages that are currently at or above the limitation to use ER-TIF financing to remediate contaminated properties. Currently, 136 of the 335 cities and villages with a TIF district (40.6%) are at the limit.

ALTERNATIVES TO BASE

A. Establishment of ER-TIF Districts Prior to Completion of Remediation

1. Approve the Governor's recommendation to do the following:

a. Allow a county or municipality to apply to DOR for certification of an ER-TIF tax increment base prior to incurring all costs associated with the remediation of the environmental contamination;

b. Require that a statement containing information on the remediation costs already incurred, plus a detailed proposed remedial action plan containing remediation cost estimates for anticipated eligible costs within the district, be provided to DOR; and

c. Require that the statement include a certificate of DNR approval of a site investigation report that relates to the affected parcels within the district;

2. In addition to adopting Alternative #1, limit the period for which eligible expenditures that are to be repaid by ER-TIF increments can occur to seven years, as under general TIF law.

3. Maintain current law.

B. ER-TIF Financing on Private Properties

1. Approve the Governor's recommendations to make the following modifications to current ER-TIF law:

a. Allow an ER-TIF district to include private properties; and

b. Allow a county or municipality to use an ER-TIF to pay the costs of remediating groundwater contamination whether or not that county or municipality owns the property above the groundwater;

2. Make the following modifications to current ER-TIF law:

a. Specify that a ER-TIF district may be established only on properties that are publicly-owned at the time the ER-TIF proposal is approved by the joint review board and the base value of the district is certified by DOR;

b. Provide that the property could not be sold to the party responsible for the contamination (properties could still be transferred to other private persons prior to completion of remediation); and

c. Specify that all eligible expenditures must be public expenditures.

3. Maintain current law.

C. Other Provisions

1. Approve the Governor's recommendations to do the following: (a) expand the definition of eligible costs; (b) reduce eligible costs by any amount that a county or muncipality received, or reasonably expects to receive, from a local, state or federal program; (c) specify that a ER-TIF district may only include contiguous parcels; and (d) expand the period of certification for an ER-TIF district from 16 years to 23 years.

2. In addition to adopting Alternative #1 require that ER-TIFs be included in the calculation used under general TIF law that limits the creation of additional TIFs within a municipality and extend this limitation to ER-TIFs.

3. Maintain current law.

Prepared by: Al Runde

Senator Burke

SHARED REVENUE AND TAX RELIEF – PROPERTY TAXATION

Environmental Remediation TIF Districts
[LFB Paper #875]
(Substitute for Alternative Sections A, B and C)

Motion:

Amend current environmental remediation TIF law to do the following:

a. Allow a county or municipality to apply to DOR for certification of an ER-TIF tax increment base prior to incurring all costs associated with the remediation of the environmental contamination;

b. Require that a statement containing information on the remediation costs already incurred, plus a detailed DNR-approved remedial action options plan containing remediation cost estimates of anticipated eligible costs within the district, including a schedule for design, implementation and construction, be provided to the joint review board and DOR;

c. Require that the statement include a certificate of a DNR-approved investigation report that relates to the affected parcels within the district;

d. Limit the period for which eligible expenditures that are to be repaid by ER-TIF increments can occur to seven years, as under general TIF law;

e. Specify that a ER-TIF district may only include contiguous parcels within the political subdivision creating the district;

f. Allow an ER-TIF district to include private properties;

g. Allow a county or municipality to use an ER-TIF to pay the costs of remediating groundwater contamination whether or not that county or municipality owns the property above the groundwater;

h. Provide that the property could not be sold to the party responsible for the contamination (properties could still be transferred to other private persons prior to completion of remediation);

i. Specify that all eligible expenditures must be public expenditures;

j. Provide that costs associated with the removal of underground storage tanks and assessments should be eligible for reimbursement under the ER-TIF;

k. Provide that costs associated with off-site groundwater investigations and cleanups should be eligible for reimbursement under ER-TIF, even if those costs are outside the boundaries of the ER-TIF district;

l. Specify that the political subdivision is required to seek cost recovery from the person who caused the discharge, rather than the person in possession of the property;

m. Expand the definition of eligible costs as recommended by the Governor;

n. Reduce eligible costs by any amount that a county or municipality received, or reasonably expects to receive, from a local, state or federal program; and

o. Specify that any property taxes cancelled by the political subdivision associated with the property are costs eligible for reimbursement under ER-TIF.

Note:

Except for expanding the certification period for an ER-TIF district from 16 to 23 years, the motion would approve the Governor's recommendation. Further, the motion would specify the following:

a. That the detailed remedial action plan site investigation reports presented to the joint review board and DOR be DNR-Approved and that the action plan contain a schedule for design, implementation and construction of remedial action;

b. That the political subdivision is required to seek cost recovery from the person who caused the discharge, rather than the person in possession of the property;

c. That contiguous parcels within an ER-TIF district be within the political subdivision creating the district;

d. That the property could not be sold to the party responsible for the contamination (properties could still be transferred to other private persons prior to completion of remediation); and

e. That all eligible expenditures must be public expenditures; and

f. The period for which eligible expenditures that are to be repaid by ER-TIF increments would be limited to seven years, as under general TIF law.

Further, in addition to the Governor's recommendations, the motion would expand the definition of eligible costs to include the following:

a. That costs associated with groundwater investigations and remediation that occur outside the boundaries of the ER-TIF district should be eligible for reimbursement;

b. That costs associated with the removal of underground storage tanks be eligible costs; and

c. That any property taxes cancelled by the political subdivision associated with properties within the ER-TIF would be eligible costs.

By expanding the definition of eligible costs, the motion would likely increase the level of costs that are to be repaid through the allocation of tax increments.

MO#_____

BURKE	Y	N	A
DECKER	Y	N	A
JAUCH	Y	N	A
MOORE	Y	N	A
SHIBILSKI	Y	N	A
PLACHE	Y	N	A
COWLES	Y	N	A
PANZER	Y	N	A
GARD	Y	N	A
PORTER	Y	N	A
KAUFERT	Y	N	A
ALBERS	Y	N	A
DUFF	Y	N	A
WARD	Y	N	A
HUBER	Y	N	A
RILEY	Y	N	A

AYE 14 NO 2 ABS ____

Representative Duff

SHARED REVENUE AND TAX RELIEF -- PROPERTY TAXATION

Environmental Remediation Tax Incremental Financing
[LFB Paper # 875]

Motion:

Move to provide that a joint review board, prior to approving any proposed environmental remediation tax incremental financing district that has incurred costs, or has an environmental remedial action plan containing cost estimates, in excess of $80,000, must either:

a. Require that any contract entered into by the county or municipality to remediate the identified contamination within the proposed ER-TIF districts contain a guaranteed maximum cost that is to be paid by the county or municipality that is consistent with the costs identified in the detailed remedial action plan; or

b. Require that the county or municipality have insurance to cover any costs in excess of the costs identified in the detailed remedial action plan.

Note:

Under current law, a joint review board, consisting of the representatives from the overlying taxing districts, must be created before any city, village, town or county may use environmental remediation tax incremental financing. The board reviews and approves the TIF proposal before the city, village, town or county can proceed with the creation of an environmental remediation TIF district. Under the bill, any city, village, town or county proposing to create an ER-TIF district must submit information on any eligible costs already incurred, plus a detailed proposed remedial action plan containing cost estimates for anticipated eligible costs of remediation, to the joint review board and DOR.

This motion would provide that the joint review board must require additional assurances that no tax increments would be allocated to cover remediation costs beyond those identified in the proposed district's detailed remedial action plan for projects with estimated costs in excess of $80,000, prior to approving the creation of an ER-TIF district.

Motion #725

MO# _____

BURKE	Y	N	A
DECKER	Y	N	A
JAUCH	Y	N	A
MOORE	Y	N	A
SHIBILSKI	Y	N	A
PLACHE	Y	N	A
COWLES	Y	N	A
PANZER	Y	N	A
GARD	Y	N	A
PORTER	Y	N	A
KAUFERT	Y	N	A
ALBERS	Y	N	A
DUFF	Y	N	A
WARD	Y	N	A
HUBER	Y	N	A
RILEY	Y	N	A

AYE 15 NO 1 ABS _____

(Base) Agency: Shared Revenue & Property Tax Relief
Special charges for Cancelled Taxes on
Tax Delinquent Contaminated Land

Recommendations:

Paper No. 876: Alternative 2

Comments: The City doesn't like alternative 1, and the County doesn't like alternative 3. So, Alternative 2 is the only way to go.

The City probably isn't real pleased with alternative 2 either, but it seems to be the most equitable solution. The counties shouldn't have to take the full accounting loss for tax delinquent properties in cities and villages, and the cities shouldn't have to take the full bite either - it should be spread out proportionally to all taxing districts, just like the money was paid out originally.

prepared by: Barry

Legislative Fiscal Bureau
One East Main, Suite 301 • Madison, WI 53703 • (608) 266-3847 • Fax: (608) 267-6873

May 13, 1999 Joint Committee on Finance Paper #876

Special Charges for Cancelled Taxes on Contaminated, Tax Delinquent Property (Shared Revenue and Tax Relief -- Property Taxation)

[LFB 1999-01 Budget Summary: Page 552, #5]

CURRENT LAW

Under provisions enacted as part of 1997 Act 27, counties and the City of Milwaukee may cancel all or part of the unpaid property taxes, plus interest and penalties, on real property for which a tax certificate has been issued, but a tax deed has not yet been recorded, if the following five conditions are met:

(1) the property is contaminated by a hazardous substance;

(2) an environmental assessment has been conducted and concludes that the property is contaminated by the discharge of a hazardous substance;

(3) the owner of the property or another person agrees to clean up the property by restoring the environment to the extent practicable and minimizing the harmful effects from a discharge of a hazardous substance in accordance with DNR rules;

(4) the owner of the property or another person presents to the county or city an agreement with DNR to investigate and clean up the property; and

(5) the owner of the property agrees to maintain and monitor the property as required under DNR rules and under any contract entered into under DNR rules.

GOVERNOR

Require county treasurers to charge back as a special charge on the next tax levy any or all property taxes subject to a hazardous substance clean-up agreement. Provide that the charge would be made against the taxation district (municipality) that included the associated property on its tax roll. Specify that the provision takes effect with the tax year beginning on January 1 of

the year that the bill takes effect, unless the bill takes effect after July 31, in which case the provision takes effect for the tax year beginning on January 1 following the bill's effective date.

DISCUSSION POINTS

1. State law requires counties to "buy out" other local governments' share of any outstanding property taxes on real property at the August property tax settlement. In theory, counties should be held harmless from any adverse fiscal effects because interest and penalties are charged on delinquent amounts and because tax delinquent property can be sold by the county to recover unpaid amounts. Typically, the sales price exceeds the taxes owed.

2. The combination of clean-up costs and unpaid taxes may exceed the market value of contaminated, tax delinquent property. By allowing counties to cancel delinquent taxes on contaminated property, the 1997 Act 27 provisions were intended to make contaminated properties more marketable.

3. Another provision in 1997 Act 27 directed DNR to coordinate a study group on brownfields. The study group found that "many" counties are reluctant to take title to delinquent, contaminated property. The provision proposed in the bill is intended make counties more willing to cancel delinquent taxes and take title to brownfield properties.

4. Under the proposal, the cost of the cancelled taxes would be shifted from the county to the municipality. Through the tax settlement process, other taxing jurisdictions that levied taxes on the property, such as school, technical college and special purpose districts, would continue to be made whole for the unpaid taxes that they levied.

5. When taxes are cancelled or refunded because of an excessive assessment, a "palpable" error, an illegal or unlawful tax or an action by a county board that voids the tax, municipalities are permitted to charge back the costs of the refund to other jurisdictions that levied taxes on the property. This mechanism could be extended to cancelled taxes on contaminated property, if it is determined that a single unit of government should not bear all of the cost of cancelled taxes on this property.

6. As included in the bill, the proposal would require treasurers to charge back cancelled taxes, but would give treasurers discretion as to how much of the cancelled taxes would be included in the special charge. If the intent is to require the taxes to be charged back, the proposal should extend to all cancelled taxes.

ALTERNATIVES TO BASE

1. Approve the Governor's recommendation to require county treasurers to charge back as a special charge on the next tax levy any or all property taxes subject to a hazardous substance clean-up agreement and provide that the charge would be made against the taxation district (municipality) that included the associated property on its tax roll.

2. Require county treasurers to charge back as a special charge on the next tax levy all cancelled property taxes subject to a hazardous substance clean-up agreement and provide that the cost of the cancelled taxes be spread among the governments that levied taxes on the property.

3. Maintain current law.

Prepared by: Rick Olin

MO# 4th 2

BURKE	Y	N	A
DECKER	Y	N	A
JAUCH	Y	N	A
MOORE	Y	N	A
SHIBILSKI	Y	N	A
PLACHE	Y	N	A
COWLES	Y	N	A
PANZER	Y	N	A
GARD	Y	N	A
PORTER	Y	N	A
KAUFERT	Y	N	A
ALBERS	Y	N	A
DUFF	Y	N	A
WARD	Y	N	A
HUBER	Y	N	A
RILEY	Y	N	A

AYE 14 NO 2 ABS 0

Representative Riley

SHARED REVENUE AND TAX RELIEF -- PROPERTY TAXATION

Assessment of Low-Income Rental Housing

Motion:

Move to modify provisions in state law related to procedures for valuing real estate to require local assessors to exclude federal income tax credits extended under Section 42 of the Internal Revenue Code to owners of low-income, rental housing from calculations related to the value of that housing, effective with property assessed as of January 1, 2000.

Note:

Like other properties, federally-subsidized rental housing is assessed using the sales comparison, cost or income approaches to property valuation. However, in the Wisconsin Property Assessment Manual, DOR states that the income approach is often the most useful method for valuing subsidized housing. Under the income approach, the present value of the property is determined from the estimated future income of the property. By including federal income tax credits in the measure of income, a higher property value results. The treatment of federal income tax credits in the valuation of subsidized housing varies between municipalities, according to assessors and DOR staff. By requiring assessors to either include or exclude the credits when valuing subsidized housing, more uniform treatment would result. This motion would require the exclusion of these credits, which would result in lower value for this property in the municipalities that currently include these credits in making assessments.

MO#_____

BURKE	Y	N	A
DECKER	Y	N	A
JAUCH	Y	N	A
MOORE	Y	N	A
SHIBILSKI	Y	N	A
PLACHE	Y	N	A
COWLES	Y	N	A
PANZER	Y	N	A
GARD	Y	N	A
PORTER	Y	N	A
KAUFERT	Y	N	A
ALBERS	Y	N	A
DUFF	Y	N	A
WARD	Y	N	A
HUBER	Y	N	A
RILEY	Y	N	A

AYE 16 NO 0 ABS ____

Senator Shibilski
Representative Kaufert

SHARED REVENUE AND TAX RELIEF -- PROPERTY TAXATION

Property Tax Exemption for Motion Picture Theatres

Motion:

Move to provide a property tax exemption for personal property owned and used by motion picture theatres, effective with property assessed as of January 1, 2000. Specify that this exemption does not apply to computer property, which is already exempt.

Note:

Based on 1995 information compiled by the U.S. Bureau of the Census, there are 144 motion picture theatres in Wisconsin. The proposal would exempt an estimated $20 million in value and remove an estimated $500,000 in taxes on that value. In 1998, the statewide value for all taxable property was $263,952 million, and the net taxes on that property totaled $5,594 million. The proposal would shift the taxes on the property to be exempted to property that remains taxable. As a result, the taxes on a median-valued home taxed at the statewide average tax rate would increase by about 20 cents. State forestry taxes would decrease by an estimated $4,000 annually, beginning in 2000-01.

[Change to Base: -$4,000 SEG-REV]
[Change to Bill: -$4,000 SEG-REV]

Motion #721

MO#_____

BURKE	Y	N	A
DECKER	Y	N	A
JAUCH	Y	N	A
MOORE	Y	N	A
SHIBILSKI	Y	N	A
PLACHE	Y	N	A
COWLES	Y	N	A
PANZER	Y	N	A
GARD	Y	N	A
PORTER	Y	N	A
KAUFERT	Y	N	A
ALBERS	Y	N	A
DUFF	Y	N	A
WARD	Y	N	A
HUBER	Y	N	A
RILEY	Y	N	A

AYE 5 NO 11 ABS ____

Senator Moore

SHARED REVENUE AND TAX RELIEF -- PROPERTY TAXATION

Tax Incremental Financing -- Lead Contamination

Motion:

Move to provide cities and villages the authority to declare a public health concern related to lead contamination of buildings and infrastructure. Further, if the lead contamination is declared a public health concern, allow the removal of the contamination from buildings and infrastructure within a tax incremental financing district to be included as an eligible cost that could be repaid from the allocation of tax increments

---

Note:

Under current law, city and village governments may create a tax incremental district if 50% or more of the proposed district's area is "blighted," in need of rehabilitation or conservation work or suitable for industrial sites. All project costs to be repaid through the allocation of TIF increments must directly relate to the elimination of blight or directly serve to rehabilitate or conserve the area or to promote industrial development, whichever is consistent with the district's purpose. Project costs include, but are not limited to, costs related to capital development (such as public works or improvements), environmental remediation of soil and groundwater, financing, real property assembly, professional services, imputed administrative services and organizational activities (such as the cost of preparing environmental impact statements).

This motion would specify that the removal of lead contamination from buildings and infrastructure would be included as an eligible project cost, if a municipality declares that the contamination is a public health concern. This could allow additional costs to be incurred within a TIF district.

Motion #722

MO# _____

BURKE	Y	N	A
DECKER	Y	N	A
JAUCH	Y	N	A
MOORE	Y	N	A
SHIBILSKI	Y	N	A
PLACHE	Y	N	A
COWLES	Y	N	A
PANZER	Y	N	A
GARD	Y	N	A
PORTER	Y	N	A
KAUFERT	Y	N	A
ALBERS	Y	N	A
DUFF	Y	N	A
WARD	Y	N	A
HUBER	Y	N	A
RILEY	Y	N	A

AYE 14 NO 2 ABS ____

Representative Gard

SHARED REVENUE AND TAX RELIEF - PROPERTY TAXATION

Impact Fees

Motion:

Move to modify provisions in state law regarding sewerage system service charges, impact fees and the approval of plats (subdivision regulation), as follows:

Sewerage System Service Charges. Prohibit any standby charges, connection fees or other charges that are not uniformly assessed against all users as part of the periodic sewerage service charges, unless the charges were adopted as part of an ordinance adopted in compliance with the impact fee statute.

Impact Fees. Prohibit counties from imposing impact fees. Remove the following items from the definition of public facilities for which impact fees may be imposed: (1) other transportation facilities; (2) solid waste and recycling facilities; and (3) libraries. Modify the definition of public facilities for which impact fees may be imposed by deleting a reference to "parks, playgrounds and other recreational facilities" and substituting a reference to "lands for and basic real property improvements to parks." Define "basic real property improvements to parks" to include shelters, playground equipment, restroom facilities and parking lots. Modify the current law provision that establishes that impact fees are payable before a building permit may be issued to specify that this applies to a building permit issued for the construction of dwellings or other privately-owned structures within the land development.

Approval of Plats. Prohibit any fee or charge to fund the acquisition or installation of any land, infrastructure or other real or personal property, unless the fee or charge has been imposed as part of an ordinance adopted in compliance with the impact fee statute. Specify that any required dedication of land or construction or installation of public or private improvements cannot exceed the proportionate amount reasonably necessary to serve the land in the subdivision.

Note:

State law authorizes cities, counties, towns and villages to impose impact fees on developers to pay for the capital costs that are necessary to accommodate land development, although counties are prohibited from charging fees to recover certain transportation-related costs. The motion would

prohibit counties from imposing impact fees.

Fees are required to bear a rational relationship to the need for new, expanded or improved public facilities that are required to serve land development. Public facilities are defined to exclude facilities owned by school districts, but may include:

- highways and other transportation facilities;
- traffic control devices;
- facilities for collecting and treating sewage;
- facilities for collecting and treating storm and surface waters;
- facilities for pumping, storing and distributing water;
- parks, playgrounds and other recreational facilities;
- solid waste and recycling facilities;
- fire protection facilities;
- law enforcement facilities;
- emergency medical facilities; and
- libraries.

The motion would change the definition of public facilities to exclude other transportation facilities, solid waste and recycling facilities and libraries and would replace the enumeration of parks, playgrounds and other recreational facilities with a reference to "lands for and basic real property improvements to parks."

The motion would change current law provisions regarding fees and charges imposed for sewerage service and for the approval of plats to conform with the standards required for charges imposed as impact fees.

[Change to Base: None]

MO#_____

BURKE	Y	(N)	A
DECKER	Y	(N)	A
JAUCH	Y	(N)	A
MOORE	Y	(N)	A
SHIBILSKI	(Y)	N	A
PLACHE	Y	(N)	A
COWLES	(Y)	N	A
PANZER	(Y)	N	A
GARD	(Y)	N	A
PORTER	(Y)	N	A
KAUFERT	Y	(N)	A
ALBERS	(Y)	N	A
DUFF	(Y)	N	A
WARD	(Y)	N	A
HUBER	Y	(N)	A
RILEY	(Y)	N	A

AYE 9 NO 7 ABS ____

Senator Decker

SHARED REVENUE AND TAX RELIEF -- PROPERTY TAXATION

Administrative Rules for Use Value

Motion:

Move to modify current law provisions related to the Wisconsin Property Assessment Manual, which is published by DOR, to prohibit DOR from specifying per acre value guidelines for agricultural land in any municipality, if those guidelines are based in whole, or in part, on procedures that have not been included in the administrative rules adopted by DOR pertaining to the assessment of agricultural property, effective with guidelines specified for assessments as of January 1, 2000.

Note:

Under provisions included in 1995 Act 27, use value assessment of agricultural land is being phased-in over a period through 2007. Also, Act 27 created the Farmland Advisory Council to assist DOR during this period. State law provides that use value assessments be based on the income that could be generated from the rental of land for agricultural use and requires DOR to adopt administrative rules related to use value assessment. In 1997, DOR adopted administrative rules that reflected the valuation procedures approved by the Farmland Advisory Council. The 1998 per acre value guidelines that were published as a supplement to the Wisconsin Property Assessment Manual in 1997 were based on these rules and procedures. In 1998, the Farmland Advisory Council adopted changes to those procedures and those changes are reflected in the guidelines for valuing agricultural land in 1999, which were published in 1998 as a supplement to the Manual. However, DOR has not proposed to amend its administrative rules to reflect the valuation procedures now being used. This motion would prohibit DOR from publishing per acre value guidelines that reflect the 1998 modification unless DOR amends its administrative rule to reflect the change. The provision would first affect guidelines related to assessments for 2000.

MO#_____

BURKE	Y	N	A
DECKER	Y	N	A
JAUCH	Y	N	A
MOORE	Y	N	A
SHIBILSKI	Y	N	A
PLACHE	Y	N	A
COWLES	Y	N	A
PANZER	Y	N	A
GARD	Y	N	A
PORTER	Y	N	A
KAUFERT	Y	N	A
ALBERS	Y	N	A
DUFF	Y	N	A
WARD	Y	N	A
HUBER	Y	N	A
RILEY	Y	N	A

AYE 16 NO 0 ABS ____

Representative Ward

SHARED REVENUE AND TAX RELIEF -- PROPERTY TAXATION

Definition of Agricultural Land

Motion:

Move to modify the definition of agricultural land to include land that meets the following conditions: (1) it does not contain any buildings or improvements; (2) it is contiguous to land that is devoted primarily to an agricultural use, as defined by rule; (3) it is limited in acreage to not more than 75% of the total acreage of all contiguous land that is owned by the same person; (4) it is so covered with trees or woody vegetation that it is impracticable to use the land for pasture or for growing crops; and (5) it is not productive forest land. Provide that the agricultural land included under this definition be included under the current law provisions and percentages governing the phase-in of the use value assessment of agricultural land. Provide that the value of the land as of January 1, 1999, be used as the land's "frozen" value for purposes of calculating assessed values during the phase-in. Provide that the per acre use value calculated for pasture land be used as the per acre value for agricultural land included under this definition, both during the phase-in period and when use value assessments become fully implemented. Specify that these provisions become effective for assessments as of January 1, 2000.

Note:

There are 3.2 million acres on farms that are undeveloped, but not employed in an agricultural use. The entire 3.2 million acres of undeveloped, non-agricultural land on farms is unlikely to be affected by this motion. Some of those acres do not meet the definition proposed in the motion and some acres are not subject to property taxes, because they are taxed under programs such as the managed forest land program. Although information on the number of acres that would not qualify is unavailable, the following analysis assumes half of this land, or 1.6 million acres, would meet the definition of nonproductive agricultural land established by the motion. On a per acre basis, average values are estimated at $632 in 2000. Under use value, pasture land has an average value of $141 per acre. The proposal would cause nonproductive agricultural land to have an average assessed value of $441 per acre in 2000. As a result, the 2000(01) net taxes on the nonproductive agricultural land would decrease by an estimated $4.3 million, from $14.0 million to

$9.7 million. If use value was fully implemented in 2000(01), the estimated net taxes on nonproductive agricultural property would decrease by $11.0 million, to $3.0 million. The proposal would remove an estimated $298.7 million in tax base in 2000(01), or $769.7 million when use value is fully implemented. The taxes on the affected property would be shifted to other property. As a result, the taxes on a median-valued home would increase by an estimated $2 in 2000(01), or by $7 after use value is fully phased-in. State forest tax collections would drop by an estimated $59,700 in 2000-01, with this drop increasing to $153,900 annually once this change is fully phased-in.

The motion would result in some otherwise identical parcels being taxed differently, depending on their location relative to productive agricultural land and their ownership. It is possible that this distinction could be challenged in court. The court would then have to decide whether the classification is reasonable.

[Change to Base: -$59,700 SEG-REV]
[Change to Bill: -$59,700 SEG-REV]

MO#_____

BURKE	Y	(N)	A
DECKER	Y	(N)	A
JAUCH	Y	(N)	A
MOORE	Y	(N)	A
SHIBILSKI	Y	(N)	A
PLACHE	Y	(N)	A
COWLES	Y	(N)	A
PANZER	Y	(N)	A
GARD	Y	(N)	A
PORTER	Y	(N)	A
KAUFERT	Y	(N)	A
ALBERS	(Y)	N	A
DUFF	Y	(N)	A
WARD	(Y)	N	A
HUBER	Y	(N)	A
RILEY	Y	(N)	A

AYE 2 NO 14 ABS ____

(Base) Agency: Shared Revenue & Property Tax Relief

Recommendations:

Paper No. LFB Summary Items for Which No Paper Has Been Prepared

Comments: These 3 items seem fine to me. **Action is needed** since this is a base agency.

prepared by: Barry

SHARED REVENUE AND TAX RELIEF

Property Taxation

LFB Summary Items for Which No Issue Paper Has Been Prepared

Item #	Title
3	Environmental Remediation TIF Districts -- Joint Review Board
4	Include Environmental Pollution in Definition of Blighted Areas
6	Transfer of Tax Delinquent, Contaminated Property

LFB Summary Item to be Addressed in a Subsequent Paper

Item #	Title
1	Property Tax Exemption for Computerized Equipment

LFB Summary Items for Introduction as Separate Legisl

Item #	Title
7	Appeal of Reassessment and Revaluation Decisions of DO Commission
8	Appeal of Equalized Values to DOR
9	Recertification Procedures for Assessors
10	Reporting Date for Refunded or Rescinded Property Taxes

MO# 3+6

1	BURKE	Y	N	A
	DECKER	Y	N	A
	JAUCH	Y	N	A
	MOORE	Y	N	A
	SHIBILSKI	Y	N	A
	PLACHE	Y	N	A
	COWLES	Y	N	A
	PANZER	Y	N	A
2	GARD	Y	N	A
	PORTER	Y	N	A
	KAUFERT	Y	N	A
	ALBERS	Y	N	A
	DUFF	Y	N	A
	WARD	Y	N	A
	HUBER	Y	N	A
	RILEY	Y	N	A

AYE 16 NO 0 ABS 0