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Agriculture, Trade and Consumer Protection

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(Base) Agency: DATCP - Drainage Board Grants

Recommendations:

Brian

Paper No. 210: Alternatives 5 & 6

Comments: FB makes a good case for cutting the state's share down to 40% (i.e. Alternative 5) in paragraphs 17 & 18. In addition, DATCP says they only need this funding for 4 years (see FB paragraph 13) so it should be sunset (i.e. Alternative 6).

On the other hand, DATCP didn't request this much GPR funding, and most county drainage boards don't have their act together - so you could go with Alternative 7 as well (see FB paragraph 8).

prepared by: Barry



Legislative Fiscal Bureau

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May 4, 1999

Joint Committee on Finance

Paper #210

Drainage Board Grants (DATCP)

[LFB 1999-01 Budget Summary: Page 93, #2]

CURRENT LAW

County drainage boards are responsible for operating drainage districts, which drain land through the use of ditches, tiles, dikes, culverts and other methods on public as well as private property. Drainage boards have the authority to assess landowners for drainage-related costs, including those to maintain, repair and inspect district drains.

GOVERNOR

Provide \$750,000 GPR each year in an annual appropriation for local assistance grants to drainage boards. Funding from the appropriation would be limited to 60% of board costs to comply with current drainage district laws and proposed administrative rules, including requiring drainage district map development. Require DATCP to promulgate rules for the administration of the grants. The bill would allow DATCP to promulgate emergency rules, to last for up to 150 days with extensions totaling no more than 120 days, for the proposed grant program without a finding of emergency.

DISCUSSION POINTS

Background

1. The drainage of Wisconsin land for agricultural purposes has occurred for over 150 years. Drainage is also used for municipal storm water runoff, housing developments and other types of development. Drainage is achieved through a variety of both private and district drains (including ditches, tiles, pipes, dams and other devices for removing water from the land). Drains that have been included in petitions and approved by the county circuit court for organization of, or

additions to, a drainage district are considered district drains. District drains are operated by county drainage boards, which consist of members appointed by the county circuit court. Each county with a drainage district (the area affected by the network of district drains) is required to have a county drainage board to manage those drains.

2. The drainage board is responsible for record keeping, maintenance and repair of all district drains. To carry out its functions, drainage boards are given the power to levy assessments on drainage district members. Drainage district expenses are assessed to landowners, including municipalities or other governmental units according to the benefits from drainage assessed to that land. Assessments are also levied when private drains are connected to district drains and to cover general maintenance costs. All assessments are paid to the drainage board treasurer (usually the county treasurer), and if they remain unpaid, are collected as taxes.

3. The management of drainage districts was transferred from the Department of Administration to DATCP in 1989. Drainage boards are currently operated independently from the Department, although they are subject to DATCP administrative rules. Drainage districts are legally under the control of county circuit courts, but the supervision of drainage boards is often considered a low priority. State agencies have traditionally had little contact with individual drainage boards.

4. DATCP financially supports drainage districts by providing a full-time state drainage engineer. The Department also estimates DATCP management and oversight cost at an additional \$10,000 per year, for total GPR funding of approximately \$64,000 annually. The state drainage engineer is directed to, among other things, inspect drainage districts and assist with, review and approve district maintenance and drain implementation plans and structures.

5. The Department estimates there are approximately 229 drainage districts in 31 Wisconsin counties, most in the eastern and central portions of the state. However, there may be existing districts that the Department does not have records for. Further, drainage boards are currently creating and dissolving districts and subdistricts. The Department roughly estimates each district averages ten miles of drains. However, the size of each district varies significantly. Each county with a drainage district is required to have an administering drainage board, however, of the 31 counties with at least one drainage district, only 24 of them have functioning drainage boards. DATCP is attempting to establish functional drainage boards in the remaining seven counties. Those counties that do not have drainage boards would be ineligible to receive funding.

6. Drainage boards were required by administrative rule to submit a map and description of each of their drainage districts to the county zoning administrator and DATCP by December 31, 1995. These maps were to include the boundaries of each drainage district, location of each district drain and all private drains attached to the district drain, and the location and width of corridors for access and water quality. No counties submitted the required maps by the deadline, and only two districts (in Adams and Portage Counties) have submitted all requirements to date. The Department suggests that in some cases, no drainage board existed to meet the requirements. Otherwise, DATCP believes that the deadline was not met because drainage boards were unaware of the requirement, submitted incorrect/incomplete information, or chose not to comply with the

map preparation requirement. According to DATCP, those choosing not to comply generally did so because they did not want to assess drainage beneficiaries the costs of complying with state regulations.

7. The DATCP Board approved a drainage district final draft administrative rule and submitted the rule to the Legislature for review on March 30, 1999. This revised rule makes substantial changes to the current administrative code. Primary changes include (a) modifying the criteria for assessing benefits of agricultural land; (b) requiring the submittal of more comprehensive drainage records and maintenance plans with extended submission deadlines; (c) standardizing requirements for altering any district drain or drain designations, including expanding DATCP oversight; (d) prohibiting removal of water from a ditch, most obstructions in a ditch or obstructions in the area surrounding a ditch without prior approval; (e) requiring approval of DATCP before a drainage board initiates any restoration project or modification to any drain, including linking a private drain to a district drain and specifying such approval/disapproval procedures; and (f) specifying the procedure for landowners to request drainage board action. The Department indicates the rule revisions are necessary to minimize disputes over drainage ditch use and assessments.

Funding and Appropriation

8. While DATCP submitted an information-only paper regarding drainage district grant funding, the Department requested no grant funding. Rather, the agency's budget request to the Governor proposed the reallocation of \$147,100 GPR in 2000-01 from the agricultural chemical cleanup program GPR appropriation for 2.0 drainage engineer four-year project positions. The additional drainage engineers would provide technical assistance for such things as designing and maintaining district drains, levying assessments, maintaining records and reviewing technical specifications of drains and districts. One alternative to providing grants would be to adopt the DATCP request to increase technical assistance by providing two drainage engineers.

9. Some of the DATCP-proposed rule changes would require significant drainage board activity, mostly dealing with updating and providing DATCP with records related to drainage districts. Implementation of the additional provisions would require considerable one-time investments by the drainage boards. Specifically, under proposed administrative rules, drainage boards would be required to measure and maintain ditch specifications including depth requirements and to map out and update records on each drain and drainage district. Drainage boards would be required to determine and document the originally intended top and bottom width, intended depth and intended side slope angle of each ditch (the cross section). The boards would also need to document the intended grade elevations at the top and bottom of each ditch, the estimated depth of water in the ditch at base flow and at a 10-year, 24-hour storm (the grade profile). In some cases, the cross section and grade profile may already be documented in records, if not, originally intended cross sections and grade profiles would need to be determined. Each district map would also include district corridors (an area of at least 20 feet on either side of a drain) as well as existing mapping requirements that most counties have not yet met. Drainage boards would be required to meet these provisions and submit the DATCP-approved detailed maps and specifications by December 31,

2000.

10. Once the initial mapping work is completed, drainage boards would be required to provide the Department with updated maps as drains and drainage districts evolved. Drainage boards would also be required to submit a three-year maintenance plan by December 31, 2001 to have each drain in their district comply with all regulations outlined in the administrative code (mainly for ditches to be restored to their originally intended cross sections and grade profiles). Further, drainage districts would be required to meet the goals of their maintenance plans by December 31, 2004.

11. DATCP estimates it would cost \$5 million for all drainage boards to research and produce the map that would be required under the Department's revised administrative rule. This is based on an estimated 2,000 drain miles at an estimated cost per mile of \$2,500 for map development. The annual cost of map production over a four-year period would be \$1,250,000, and at a 60% cost share as recommended by the Governor, the state would pay \$750,000 per year, with drainage beneficiaries paying the remaining \$500,000 each year.

12. The Governor's proposal would provide partial funding for the cost to comply with mapping and related requirements. These include requirements that most counties failed to meet under existing administrative code, as well as the revised requirements proposed by the Department. Providing funding for those that did not comply with requirements could be seen as unfair to those who complied or partially complied with the rule without receiving state financial support. Still, the majority of costs would be for fulfilling new requirements under the proposed administrative rule, rather than the mapping requirements from the current administrative rule. Further, the fact that most drainage boards were in noncompliance could indicate a prohibitively high cost of compliance.

13. DATCP projects that all mapping requirements, including those in their proposed administrative rule, could be met with state funding of \$750,000 each year for four years, with annual drainage board matches of \$500,000. However, the appropriation is not scheduled to sunset. The Committee may wish to sunset the appropriation in four years.

14. The provision to allow DATCP to promulgate emergency rules without the finding of an emergency is based on the December, 2000, deadline for district maps and specifications and the submittal of compliance plans by December, 2001, as proposed in the Department's administrative rule. However, the Department could alter the deadlines when it would revise its administrative rule to include the cost share grant program.

15. The Committee could delay funding until the second year of the biennium to give drainage districts the opportunity to form or solidify drainage boards and allow the Department to promulgate administrative rules for the grant program through the standard hearing and review process. The Department could then also consider changing deadlines by administrative code, as deemed necessary. Providing additional time before beginning the grant program could allow DATCP to inform the public and drainage district members about the proposed requirements and receive greater public input on grant criteria and mapping deadline requirements.

Drainage District Mapping

16. DATCP indicates that many drainage board records, including basic maps of each district, are either nonexistent or out of date. These records are especially important to the drainage boards and to the Department when drainage conflicts arise. Friction can occur over determining if a certain ditch is part of a private or district drain. Other conflicts occur when those not assessed for maintenance costs use district drains, or when landowners disagree with the amount of their assessment. Without maps showing the location of drains, or the profile of the drains (things such as base flow of water to know when unauthorized drainage has occurred), affected parties have little evidence or recourse for settling disputes. Thus, the Department believes it is necessary to obtain updated records from all drainage boards about all district drains.

17. The Department believes updated maps will reduce litigation costs and conflicts between drainage district members. Further, some would argue the drains are only beneficial to those landowners in the district getting their land drained. The bill would allocate 60% of estimated drainage district needs from state funds, but some may question whether the public would realize 60% of the benefits of drainage district mapping.

18. One alternative would be to cost-share 40% of map development costs rather than the 60% proposed by the Governor. This would reflect the notion that drainage district mapping would benefit those persons and businesses in a drainage district more than the general population. Providing \$500,000 GPR annually would provide cost-shares of 40% of map development costs.

19. However, others would counter that increased agricultural production and additional suitable land for housing developments or other purposes could also be seen as public goods. Increased agricultural production allowed by drainage lowers the price of produce for consumers. Similarly, the increase in the supply of available land lowers the land cost for other uses as well.

20. In the past, drainage boards were responsible for most costs of drain upkeep and development, without state support other than limited engineering assistance.

ALTERNATIVES TO BASE

1. Approve the Governor's recommendation to provide \$750,000 GPR each year in an annual appropriation for local assistance grants to county drainage boards for up to 60% of board costs to comply with current drainage district laws and proposed administrative rules and allow DATCP to promulgate emergency rules for the administration of the grants.

<u>Alternative 1</u>	<u>GPR</u>
1999-01 FUNDING (Change to Base) [Change to Bill]	\$1,500,000 \$0]

2. Modify the Governor's recommendation to annually provide \$500,000 GPR and specify that the Department would cost-share 40% of board costs to comply with current drainage district laws and proposed administrative rules.

<u>Alternative 2</u>	<u>GPR</u>
1999-01 FUNDING (Change to Base)	\$1,000,000
<i>[Change to Bill]</i>	<i>-\$500,000]</i>

3. In addition to Alternatives 1 or 2, sunset the grant provision on June 30, 2003.

4. Provide \$750,000 GPR in 2000-01 for local assistance grants to county drainage boards for up to 60% of board costs to comply with current drainage district laws and proposed administrative rules.

<u>Alternative 4</u>	<u>GPR</u>
1999-01 FUNDING (Change to Base)	\$750,000
<i>[Change to Bill]</i>	<i>-\$750,000]</i>

5. Provide \$500,000 GPR in 2000-01, for local assistance grants to county drainage boards for up to 40% of board costs to comply with current drainage district laws and proposed administrative rules.

<u>Alternative 5</u>	<u>GPR</u>
1999-01 FUNDING (Change to Base)	\$500,000
<i>[Change to Bill]</i>	<i>-\$1,000,000]</i>

6. In addition to Alternatives 4 or 5, require the grant provision to sunset on June 30, 2004.

7. Reallocate \$147,100 GPR in 2000-01 from the agricultural chemical cleanup program GPR appropriation for 2.0 drainage engineer project positions. (This alternative provides no grant funding.)

<u>Alternative 7</u>	<u>GPR</u>
1999-01 FUNDING (Change to Base)	\$0
<i>[Change to Bill]</i>	<i>-\$1,500,000]</i>
2000-01 POSITIONS (Change to Base)	2.00
<i>[Change to Bill]</i>	<i>2.00]</i>

8. Maintain current law.

Alternative 8	GPR
1999-01 FUNDING (Change to Base)	\$0
[Change to Bill]	- \$1,500,000]

Prepared by: David Schug

MO# Acts 5 + 6

1	BURKE	<input checked="" type="radio"/>	N	A
	DECKER	<input checked="" type="radio"/>	N	A
	JAUCH	<input checked="" type="radio"/>	N	A
	MOORE	<input checked="" type="radio"/>	N	A
	SHIBILSKI	<input type="radio"/>	<input checked="" type="radio"/>	A
2	PLACHE	<input checked="" type="radio"/>	N	A
	COWLES	<input type="radio"/>	<input checked="" type="radio"/>	A
	PANZER	<input type="radio"/>	N	A
	GARD	<input checked="" type="radio"/>	N	A
	PORTER	<input type="radio"/>	N	A
	KAUFERT	<input checked="" type="radio"/>	N	A
	ALBERS	<input checked="" type="radio"/>	N	A
	DUFF	<input checked="" type="radio"/>	N	A
	WARD	<input checked="" type="radio"/>	N	A
	HUBER	<input checked="" type="radio"/>	N	A
	RILEY	<input checked="" type="radio"/>	N	A

AYE 8 NO 3 ABS _____

AGRICULTURE, TRADE AND CONSUMER PROTECTION

Drainage Board Substitute Members
[Paper #210]

Motion:

Move to require DATCP to create and submit to the state court for approval, a list of potential substitute drainage district board members who would be allowed to perform all duties and have all rights of any county drainage board member in the absence of that member. Allow drainage boards to request from DATCP the name of a substitute drainage board member from the list approved by the state court to serve as a county drainage board member until replaced by a circuit court appointed member. Require DATCP to promulgate rules regarding the training of those persons appearing on the potential substitute drainage district board member list.

Note:

Currently, county drainage board members are appointed by county circuit courts. The motion would allow substitute members on a state court approved list from any region of the state to attend county board meetings and vote on local drainage issues in the temporary absence of a county drainage board member, at the request of the county drainage board.

MO# 224

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

AYE 3 NO 10 ABS