



2007 DRAFTING REQUEST

Bill

Received: **01/11/2007**

Received By: **btradewe**

Wanted: **Soon**

Identical to LRB:

For: **Administration-Budget**

By/Representing: **Miner**

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

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Subject: **Agriculture - miscellaneous**

Extra Copies:

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Pre Topic:

DOA:.....Miner, BB0332 -

Topic:

Farmland preservation program changes

Instructions:

See Attached

Drafting History:

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Typed</u>	<u>Proofed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
/?							
/P1	btradewe 01/18/2007	wjackson 01/22/2007	jfrantze 01/22/2007	_____	sbasford 01/22/2007		S&L
/1	btradewe 01/28/2007	jdye 01/29/2007	pgreensl 01/29/2007	_____	cdurst 01/29/2007		S&L
/2	btradewe 01/29/2007	wjackson 01/29/2007	jfrantze 01/30/2007	_____	sbasford 01/30/2007		

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Subject: Agriculture - miscellaneous

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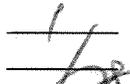
Topic:

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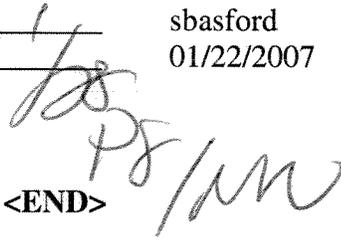
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/P1	btradewe 01/18/2007	wjackson 01/22/2007	jfrantze 01/22/2007		sbasford 01/22/2007		

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1 wlj 1/28





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<END>

2007-09 Budget Bill Statutory Language Drafting Request

- Topic: Farmland Preservation Program Changes
- Tracking Code: BB0332
- SBO team: Environmental and Commercial Resources
- SBO analyst: Andrew Miner
 - Phone: 266-1103
 - Email: Andrew.Miner@Wisconsin.gov
- Agency acronym: DATCP
- Agency number: 115
- Priority (Low, Medium, High): High

The intent of this draft is to change the Farmland Preservation Program in the following ways. These are the only portions of the draft submitted by the department to be included.

1. Eliminate Wisconsin Land and Water Conservation Board involvement in certification of county farmland preservation plans and local zoning ordinances. Enable DATCP to certify plans and ordinances based on county and local self-certification. The county should submit a plan or ordinance to the department as currently under 91.61 and 91.78. There should be a 30-day public comment period to allow time for public review at the local level. If the department determines that the plan or ordinance does not meet all of the standards outlined in subchapter IV or V, then it may require changes to be made. The department may revoke the plan or ordinance if the necessary changes are not made within a time period specified by the department.

2. Eliminate the requirement that DATCP places a lien on rezoned land until the owner repays to the state farmland preservation tax credits, with interest, previously earned on the land. Instead, the owner of rezoned land must pay to the local government a conversion fee of \$100/acre. The fee would be collected before land is rezoned, so a lien would not be placed on the land. These funds should be used by the local government for preservation planning and monitoring activities.



State of Wisconsin
2007 - 2008 LEGISLATURE

LRB-1465/P1

RCT:.....

WJ

In 1/18

DOA:.....Miner, BB0332 - Farmland preservation program changes
FOR 2007-09 BUDGET -- NOT READY FOR INTRODUCTION

note

DO NOT GEN

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

Analysis by the Legislative Reference Bureau

This is a preliminary draft. An analysis will be provided in a later version.

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

2 SECTION 1. 71.60 (1) (b) of the statutes is amended to read:

3 71.60 (1) (b) The credit allowed under this subchapter shall be limited to 90%
4 of the first \$2,000 of excessive property taxes plus 70% of the 2nd \$2,000 of excessive
5 property taxes plus 50% of the 3rd \$2,000 of excessive property taxes. The maximum
6 credit shall not exceed \$4,200 for any claimant. The credit for any claimant shall be
7 the greater of either the credit as calculated under this subchapter as it exists at the
8 end of the year for which the claim is filed or as it existed on the date on which the
9 farmland became subject to a current agreement under subch. II or III of ch. 91 or

1 under subch. III of ch. 91, 2005 stats., using for such calculations household income
2 and property taxes accrued of the year for which the claim is filed.

3 History: 1987 a. 312, 411; 1989 a. 31; 1991 a. 39; 1993 a. 246, 420. ↓

3 **SECTION 2.** 71.60 (1) (c) 3. of the statutes is amended to read:

4 71.60 (1) (c) 3. If the claimant or any member of the claimant's household owns
5 farmland which is ineligible for credit under subd. 1. or 2. but was subject to a
6 farmland preservation agreement under subch. III of ch. 91, 2005 stats., on July 1
7 of the year for which credit is claimed, or the owner had applied for such an
8 agreement before July 1 of such year and the agreement has subsequently been
9 executed, and if the owner has applied by the end of the year in which conversion
10 under s. 91.41, 2005 stats., is first possible for conversion of the agreement to a
11 transition area agreement under subch. II of ch. 91, and the transition area
12 agreement has subsequently been executed, and the farmland is located in a city or
13 village which has a certified exclusive agricultural use zoning ordinance under
14 subch. V of ch. 91 in effect at the close of the year for which credit is claimed, or in
15 a town which is subject to a certified county exclusive agricultural use zoning
16 ordinance under subch. V of ch. 91 in effect at the close of the year for which credit
17 is claimed, the amount of the claim shall be that specified in par. (b).

18 History: 1987 a. 312, 411; 1989 a. 31; 1991 a. 39; 1993 a. 246, 420. ↓

18 **SECTION 3.** 71.60 (1) (c) 5. of the statutes is amended to read:

19 71.60 (1) (c) 5. If the claimant or any member of the claimant's household owns
20 farmland which is ineligible for credit under subds. 1. to 4. but was subject to a
21 farmland preservation agreement under subch. III of ch. 91, 2005 stats., on July 1
22 of the year for which credit is claimed, or the owner had applied for such an
23 agreement before July 1 of such year and the agreement has subsequently been
24 executed, and if the owner has applied by the end of the year in which conversion

1 under s. 91.41, 2005 stats., is first possible for conversion of the agreement to an
2 agreement under subch. II of ch. 91, and the agreement under subch. II of ch. 91 has
3 subsequently been executed, the amount of the claim shall be limited to 80% of that
4 specified in par. (b).

History: 1987 a. 312, 411; 1989 a. 31; 1991 a. 39; 1993 a. 246, 420.

5 **SECTION 4.** 71.60 (1) (c) 8. of the statutes is amended to read:

6 71.60 (1) (c) 8. If the farmland is subject to a farmland preservation agreement
7 under subch. III of ch. 91, 2005 stats., on July 1 of the year for which credit is claimed
8 or the claimant had applied for such an agreement before July 1 of such year and the
9 agreement has subsequently been executed, the amount of the claim shall be limited
10 to 50% of that specified in par. (b).

History: 1987 a. 312, 411; 1989 a. 31; 1991 a. 39; 1993 a. 246, 420.

11 **SECTION 5.** 91.06 of the statutes is renumbered 91.06 (1) and amended to read:

12 91.06 (1) CERTIFICATION BY BOARD. The Before the effective date of this
13 subsection [revisor inserts date], the board shall review farmland preservation
14 plans and exclusive agricultural use zoning ordinances submitted to it under ss.
15 91.61 and 91.78 and shall certify to the appropriate zoning authority whether the
16 plans and ordinances meet the standards of subchs. IV and V, respectively.
17 Certifications may be in whole or in part.

History: 1977 c. 29.

18 **SECTION 6.** 91.06 (2) ^{and (3) are} of the statutes ~~is~~ created to read:

19 91.06 (2) CERTIFICATION OF PLANS (a) Beginning on the effective date of this
20 paragraph ^y.... [revisor inserts date] [←] all of the following apply:

21 1. The department may certify a county farmland preservation plan or revision
22 to a county farmland preservation plan based on the county certification under s.
23 91.61 (2) (d).

1 2. The department may do any of the following before it determines whether
2 to certify a county's farmland preservation plan or revision to a plan:

3 a. Review the plan or revision for compliance with ss. 91.51 to 91.59. ✓

4 b. Review and audit the application for certification under s. 91.61 (2). ✓

5 (b) The department shall grant or deny an application for certification under
6 s. 91.61 (2) in writing no later than the 90th day following receipt of a complete
7 application, unless the county agrees to an extension.

8 (c) The department may grant an application for certification under s. 91.61 (2) ✓
9 subject to conditions specified by the department in its certification decision. The
10 department may revoke the certification if the county does not make the required
11 changes by a deadline specified by the department.

12 (d) For the purposes of this chapter and subch. IX of ch. 71, a certified farmland ✓
13 preservation plan does not include a revision to the plan adopted after the effective
14 date of this paragraph ... [revisor inserts date], unless the department certifies the
15 revision under par. (b).

16 **(3) CERTIFICATION OF ORDINANCES.** (a) Beginning on the effective date of this
17 paragraph, ... [revisor inserts date], all of the following apply:

18 1. The department may certify an exclusive agricultural use zoning ordinance
19 or revision to an ordinance based on the certification under s. 91.78 (2) (d). ✓

20 2. The department may do any of the following before it determines whether
21 to certify an exclusive agricultural use zoning ordinance or revision to an ordinance:

22 a. Review the ordinance or revision for compliance with ss. 91.75 and 91.77. ✓

23 b. Review and audit the application for certification under s. 91.78 (2). ✓

1 (b) The department shall grant or deny an application for certification under
2 s. 91.78 (2) in writing no later than the 90th day following receipt of a complete
3 application, unless the county, city, village, or town agrees to an extension.

4 (c) The department may grant an application for certification under s. 91.78 (2)
5 subject to conditions specified by the department in its certification decision. The
6 department may revoke the certification if the county, city, village, or town does not
7 make the required changes by a deadline specified by the department.

8 **SECTION 7.** 91.13 (8) (fm) of the statutes is amended to read:

9 91.13 (8) (fm) A statement in boldface uppercase type that contains the
10 following language: "UPON ~~RELINQUISHMENT (WITHDRAWAL OR~~
11 ~~EXPIRATION) OF FROM THIS AGREEMENT, A PAYBACK OF CREDITS WITH~~
12 INTEREST PAYMENT TO THE STATE MAY BE REQUIRED."

13 History: 1977 c. 29, 169, 418, 447; 1979 c. 233 s. 8; 1981 c. 346 ss. 33, 38; 1983 a. 311; 1985 a. 29; 1987 a. 312 s. 17; 1987 a. 399; 1989 a. 56; 1991 a. 39, 286.

13 **SECTION 8.** 91.17 (1) of the statutes is amended to read:

14 91.17 (1) Land subject to a farmland preservation agreement may be sold
15 without a lien being filed payment being made under s. 91.19 (7m), subject to the
16 reservation of rights contained in the agreement. The seller shall notify the
17 department of any such transfer. ~~The purchaser shall be liable under any~~
18 ~~subsequent lien under s. 91.19 only for the amount of tax credits paid on that portion~~
19 ~~of the land purchased.~~

20 History: 1977 c. 29, 169; 1987 a. 399; 1993 a. 16.

20 **SECTION 9.** 91.17 (2) of the statutes is amended to read:

21 91.17 (2) When the owner of land subject to a farmland preservation agreement
22 dies or is certified by a physician to be totally and permanently disabled, the land

1 may be released from the program under this chapter and shall not be subject to a
2 lien payment under s. 91.19 (8) (7m).

3 History: 1977 c. 29, 169; 1987 a. 399; 1993 a. 16.

SECTION 10. 91.17 (3) of the statutes is repealed.

4 **SECTION 11.** 91.19 (2) (intro.) of the statutes is amended to read:

5 91.19 (2) (intro.) The Subject to sub. (7m), the department may relinquish the
6 farmland preservation agreement or may release part of the land from a farmland
7 preservation agreement prior to the termination date contained in the instrument
8 as follows:

9 History: 1977 c. 29, 169, 418; 1979 c. 221; 1983 a. 311; 1987 a. 312 s. 17; 1987 a. 399; 1989 a. 31; 1991 a. 39, 286; 1993 a. 16; 1995 a. 27; 2003 a. 33; 2005 a. 441.

SECTION 12. 91.19 (3) of the statutes is amended to read:

10 91.19 (3) If the request for relinquishment of the farmland preservation
11 agreement or release of part of the land from the agreement is approved by the local
12 governing body having jurisdiction, a copy of the application, along with the
13 comments and recommendations of the reviewing agencies, shall be forwarded to the
14 board department. The board department shall, within 60 days, upon consideration
15 of the factors in sub. (2) (b) and (c) 2., approve or reject the application for
16 relinquishment or release. If the board department approves the application it shall
17 notify the local governing body having jurisdiction and the department of revenue,
18 ~~prepare an instrument under sub. (7) and record it with the register of deeds of the~~
19 ~~county in which the land is located.~~

20 History: 1977 c. 29, 169, 418; 1979 c. 221; 1983 a. 311; 1987 a. 312 s. 17; 1987 a. 399; 1989 a. 31; 1991 a. 39, 286; 1993 a. 16; 1995 a. 27; 2003 a. 33; 2005 a. 441.

SECTION 13. 91.19 (5) of the statutes is amended to read:

21 91.19 (5) If the application for relinquishment of the agreement or release of
22 part of the land from the agreement is rejected by the local governing body having
23 jurisdiction, the application shall be returned to the applicant with a written
24 statement regarding the reasons for rejection. Within 30 days after receipt of the

1 rejected application, the applicant may appeal the rejection to the board department.
2 The board department shall, within 60 days after the appeal has been received, upon
3 consideration of the factors listed in sub. (2) (b) and (c) 2., approve or reject the
4 request for relinquishment or release. If the board department approves the
5 application it shall notify the local governing body having jurisdiction and the
6 department of revenue, ~~prepare an instrument under sub. (7) and record it with the~~
7 ~~register of deeds of the county in which the land is located.~~ ✓

8 **History:** 1977 c. 29, 169, 418; 1979 c. 221; 1983 a. 311; 1987 a. 312 s. 17; 1987 a. 399; 1989 a. 31; 1991 a. 39, 286; 1993 a. 16; 1995 a. 27; 2003 a. 33; 2005 a. 441.

8 **SECTION 14.** 91.19 (6p) of the statutes is repealed.

9 **SECTION 15.** 91.19 (6s) (a) 1. of the statutes is amended to read:

10 91.19 (6s) (a) 1. An application for release of the land, made by either the owner
11 or the local unit of government, is approved by the local governing body having
12 jurisdiction and the board department under the procedures of subs. (2) to (5).

13 **History:** 1977 c. 29, 169, 418; 1979 c. 221; 1983 a. 311; 1987 a. 312 s. 17; 1987 a. 399; 1989 a. 31; 1991 a. 39, 286; 1993 a. 16; 1995 a. 27; 2003 a. 33; 2005 a. 441.

13 **SECTION 16.** 91.19 (6s) (b) of the statutes is amended to read:

14 91.19 (6s) (b) If an owner of land subject to a farmland preservation agreement
15 opposes an application brought by a local unit of government for release of that land,
16 the owner may appeal the approval of that application by the local governing body
17 having jurisdiction to the board department according to the procedures in par. (c).

18 **History:** 1977 c. 29, 169, 418; 1979 c. 221; 1983 a. 311; 1987 a. 312 s. 17; 1987 a. 399; 1989 a. 31; 1991 a. 39, 286; 1993 a. 16; 1995 a. 27; 2003 a. 33; 2005 a. 441.

18 **SECTION 17.** 91.19 (6s) (c) of the statutes is amended to read:

19 91.19 (6s) (c) If the application for release of any land from the agreement is
20 approved by the local governing body having jurisdiction, the application shall be
21 returned to the applicant, and a copy of the application to the owner, with a written
22 statement regarding the reasons for approval. Within 30 days after receipt of a copy
23 of the approved application, the owner may appeal the approval to the board
24 department. The board department shall, within 60 days after the appeal has been

1 received, upon consideration of the factors listed in sub. (2) (b) and (c) 2., approve or
2 reject the request to disapprove the release. If the board department approves the
3 owner's appeal it shall notify the local governing body having jurisdiction.

4 **History:** 1977 c. 29, 169, 418; 1979 c. 221; 1983 a. 311; 1987 a. 312 s. 17; 1987 a. 399; 1989 a. 31; 1991 a. 39, 286; 1993 a. 16; 1995 a. 27; 2003 a. 33; 2005 a. 441.

SECTION 18. 91.19 (6s) (d) of the statutes is amended to read:

5 91.19 (6s) (d) The board department may waive its approval authority under
6 this subsection for applications affecting less than 5 acres of land.

7 **History:** 1977 c. 29, 169, 418; 1979 c. 221; 1983 a. 311; 1987 a. 312 s. 17; 1987 a. 399; 1989 a. 31; 1991 a. 39, 286; 1993 a. 16; 1995 a. 27; 2003 a. 33; 2005 a. 441.

SECTION 19. 91.19 (6t) of the statutes is amended to read:

8 91.19 (6t) The Subject to sub. (7m), the department shall relinquish from a
9 farmland preservation agreement land that has been subject to a farmland
10 preservation agreement for at least 10 years if the owner of the land so requests.

11 **History:** 1977 c. 29, 169, 418; 1979 c. 221; 1983 a. 311; 1987 a. 312 s. 17; 1987 a. 399; 1989 a. 31; 1991 a. 39, 286; 1993 a. 16; 1995 a. 27; 2003 a. 33; 2005 a. 441.

SECTION 20. 91.19 (7) of the statutes is repealed.

12 **SECTION 21.** 91.19 (7m) of the statutes is created to read:

13 91.19 (7m) (a) Except as provided in par. (b), the department may not
14 relinquish a farmland preservation agreement under sub. (3), (5), or (6t) or release
15 land from a farmland preservation agreement under sub. (3) or (5) until the owner
16 pays to the department \$100 per acre of land that is no longer covered by the
17 farmland preservation agreement.

18 (b) The payment under par. (a) does not apply to land that is zoned exclusively
19 for agricultural use under an ordinance certified under subch. V.

20 **SECTION 22.** 91.19 (8) to (13) of the statutes are repealed.

21 **SECTION 23.** 91.21 (1) of the statutes is amended to read:

22 91.21 (1) If the owner or a successor in title of the land upon which a farmland
23 preservation agreement has been recorded under this chapter changes the use of the
24 land to a prohibited use without first acting under ss. 91.17 and 91.19 and the land

1 is not relinquished under s. 91.19 (6p) or (6t), the owner or successor in title may be
2 enjoined by the state, acting through the attorney general, or by the local governing
3 body having jurisdiction, acting through its attorney, and is subject to a civil penalty
4 for actual damages, but in no case to exceed double the value of the land as
5 established at the time the application for the agreement was approved.

6 History: 1977 c. 29; 1989 a. 31; 1991 a. 39, 286.

6 **SECTION 24.** 91.23 of the statutes is amended to read:

7 **91.23 Conversion.** An owner under a farmland preservation agreement may
8 at any time apply for a transition area agreement, and an owner under a transition
9 area agreement may at any time apply for a farmland preservation agreement. If
10 such an application is approved, the prior agreement shall be relinquished without
11 a lien being filed payment being made under s. 91.19 (7m).

12 History: 1977 c. 29, 169.

12 **SECTION 25.** Subchapter III of chapter 91 [precedes 91.31] of the statutes is
13 repealed.

14 **SECTION 26.** 91.59 (title) of the statutes is amended to read:

15 **91.59 (title) Coordination; public comment.**

16 History: 1977 c. 29; 1995 a. 201; 1999 a. 150 s. 672.

16 **SECTION 27.** 91.59 (2m) of the statutes is created to read:

17 91.59 (2m) A county shall make a proposed agricultural preservation plan or
18 revision to a plan available to the public for at least 30 days before the public hearing
19 under s. 59.69 (3) (d) and shall accept comments from the public during that time.

20 **SECTION 28.** 91.61 of the statutes is renumbered 91.61 (1) and amended to read:

21 91.61 (1) Upon Before the effective date of this subsection [revisor inserts
22 date], upon completion of ^a county agricultural preservation ^{↓ plan} plans described in this

1 subchapter, copies of the plan may be submitted to the board for review and
2 certification under s. 91.06.

3 History: 1977 c. 29.

SECTION 29. 91.61 (2) of the statutes is created to read:

4 **(4)** 91.61 (2) Beginning on the effective date of this subsection ... [revisor inserts
5 date], to apply for certification under s. 91.06 for a county agricultural preservation
6 plan or a revision to the plan, a county shall submit all of the following to the
7 department:

8 (a) A copy of the plan or revision to the plan.

9 (b) A description of how the plan or revision to the plan complies with ss. 91.51
10 to 91.59.

11 (c) Other relevant information required by the department by rule.

12 (d) A statement signed by the county corporation counsel certifying that the
13 plan or revision to the plan complies with ss. 91.51 to 91.59.

14 **SECTION 30.** 91.75 (6) of the statutes is amended to read:

15 91.75 (6) For purposes of farm consolidation and if permitted by local
16 regulation, farm residences or structures ~~which~~ that existed prior to the adoption of
17 the ordinance may be separated from a larger farm parcel. Farm residences or
18 structures with up to 5 acres of land ~~which~~ that are separated from a larger farm
19 parcel under this section are not subject to the ~~lien under s. 91.19 (8) to (10),~~ as
20 payment required in s. 91.77 (2) or 91.79.

21 History: 1977 c. 29, 169, 418; 1983 a. 311; 1987 a. 399; 1991 a. 39, 286; 1993 a. 112, 464; 1995 a. 201, 227; 1997 a. 252; 1999 a. 9; 2003 a. 89.

SECTION 31. 91.77 (2) of the statutes is amended to read:

22 91.77 (2) ~~Land which is rezoned~~ Except as otherwise provided in this
23 subsection, rezoning under this section shall be subject to the lien provided under s.
24 ~~91.19 (8) to (10) for the amount of tax credits paid on the land rezoned~~ may not be

1 completed until the landowner makes a payment of \$100 per acre of land that is
2 rezoned to the county, city, village, or town that approves the petition. If the rezoning
3 occurs solely as a result of action initiated by a governmental unit, ~~any lien required~~
4 under s. 91.19 (8) to (10) other than the county, city, village, or town that approves
5 the petition, the payment shall be paid made by the governmental unit initiating the
6 action. If the rezoning occurs solely as a result of action initiated by the county, city,
7 village, or town that approves the petition, no payment is required under this
8 subsection.

History: 1977 c. 29, 169; 1983 a. 311.

****NOTE: Is this appropriate? Or, in the case described in the last sentence, should
the local government be required to pay DATCP?

9 **SECTION 32.** 91.78 of the statutes is renumbered 91.78 (1) and amended to read:
10 91.78 (1) Copies Before the effective date of this subsection [revisor inserts
11 date], copies of exclusive agricultural zoning ordinances may be submitted to the
12 board for review and certification under s. 91.06.

History: 1977 c. 29.

13 **SECTION 33.** 91.78 (2) of the statutes is created to read:
14 91.78 (2) Beginning on the effective date of this subsection [revisor inserts
15 date], to apply for certification under s. 91.06 for an exclusive agricultural use zoning
16 ordinance or a revision to the ordinance, a county, city, village, or town shall submit
17 all of the following to the department:
18 (a) A copy of the ordinance or revision to the ordinance.
19 (b) A description of how the ordinance or revision to the ordinance complies
20 with ss. 91.75 and 91.77.
21 (c) Other relevant information required by the department by rule.

1 (d) A statement signed by the chief elected official, as defined in s. 229.821 (3),
2 of, or the attorney for, the county, city, village, or town certifying that the ordinance
3 or revision to the ordinance complies with ss. 91.75 and 91.77.

4 SECTION 34. 91.79 of the statutes is amended to read:

5 **91.79 Conditional uses; lien payment.** Any land zoned under this
6 subchapter which is granted A county, city, village, or town may not grant a special
7 exception or conditional use permit for a use which is not an agricultural use for land
8 zoned under this subchapter shall be subject to the lien provided under s. 91.19 (8)
9 to (10) for the amount of tax credits paid on the land granted such a permit until the
10 landowner pays to the county, city, village, or town, \$100 per acre of land for which
11 the special exception or conditional use permit is granted.

12 History: 1977 c. 169.

13 **SECTION 9303. Initial applicability; Agriculture, Trade and Consumer**
14 **Protection.**

15 (1) FARMLAND PRESERVATION CONVERSION FEES. The treatment of sections 91.17
16 (1), (2), and (3), 91.19 (2) (intro.), (3), (5), (6t), (7), (7m), and (8) to (13), 91.23, 91.75
17 (6), 91.77 (2), and 91.79 of the statutes first applies to land that is released or
18 relinquished from a farmland preservation agreement or rezoned from exclusive
19 agricultural zoning on the effective date of this subsection.

(END)

Mate

DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-1465/P1dn

RCT./:....

Wlj

Andrew Miner:

This is a preliminary version of the draft making changes in the Farmland Preservation Program. Please review it carefully. I was uncertain of exactly how to change current law in response to this request.

I took a somewhat minimalist approach to deciding how much of DATCP's proposed language to incorporate into this draft. Please consider whether additional language should be incorporated or whether any of the provisions that I have included should be omitted. In particular, consider whether you want to retain proposed s. 91.61 (2) (d), related to changes in farmland preservation plans, and whether you want to add to the draft something like DATCP's proposed s. 91.36 (8) (on pages 32-33 of the DATCP draft), related to changes in exclusive agricultural use zoning ordinances.

I was uncertain about how to implement the instruction to allow 30 days for public comment. For agricultural preservation plans, this draft creates s. 91.59 (2m). Note that current law requires a public hearing and that s. 91.59 (2) requires the county to submit copies of proposed plans to other local governmental entities at least 60 days before the hearing. Under current law, the procedures for exclusive agricultural use zoning ordinances are those for other zoning (which I am not very familiar with, but which seem quite complex), except as otherwise specified in ch. 91. See s. 91.73 (1). There are hearing requirements in the zoning statutes. If you also want to add a 30-day public comment period for the zoning, I will consult with Marc Shovers, our local government drafter, about how to draft that.

In drafting the portion of the draft replacing the liens with a conversion fee, I consulted 2001 LRB-1753, which was included in the 2001 budget. Please let me know if you would like to see a copy of that draft.

The instructions about liens referred to land that is rezoned. I assumed that you also would want to eliminate liens on land that is released from coverage under a farmland preservation agreement. For such land, this draft requires payment to DATCP because DATCP is the decision maker. Let me know if that should be changed. I removed the Land and Water Conservation Board from the process of releasing land from agreements because that seemed consistent with the instruction to remove the board from certification decisions.

Under current law, a lien is supposed to be filed when an agreement is relinquished under s. 91.19 (1) or (1m) (upon termination of the agreement or death or disability of the landowner) if the landowner did not comply with the requirements of the agreement. This draft does not provide for a payment upon termination of the agreement or death or disability of the landowner, whether or not the agreement was complied with. Is that OK?

I repealed s. 91.19 (6p) on the grounds that the date in that provision is long past. If you think that is not a good idea, please let me know. The draft also repeals subch. III of ch. 91 because all of the initial agreements have expired, and it seemed illogical to put language in the statutes about what happens if a landowner withdraws from one.

* Please see the note after s. ~~91.75 (6)~~ (91.77(2))

If it is possible that a conversion fee would exceed the amount of the lien under current law, a landowner with an agreement predating the effective date of the budget might bring a lawsuit alleging an unconstitutional impairment of contract. I am unsure how a court would evaluate such a claim.

Should there be a delayed effective date for this draft or parts of it?

Please let me know if you have any questions. I will need to redraft this to add an analysis, if for no other reason, before it can be included in the budget bill.

Rebecca C. Tradewell
Managing Attorney
Phone: (608) 266-7290
E-mail: becky.tradewell@legis.wisconsin.gov

DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-1465/P1dn
RCT:wlj:jf

January 22, 2007

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Rebecca C. Tradewell
Managing Attorney
Phone: (608) 266-7290
E-mail: becky.tradewell@legis.wisconsin.gov

1/27 5:16 pm. Per Andrew: Re the ^{to DAFCP} last sentence
of s. 91.77(2) - requires payment as described
in the **** Note.

Betsy Trudwell



State of Wisconsin
2007 - 2008 LEGISLATURE

LRB-1465/P1

RCT:wlj:jf

stays ↑ IMY

In 1/28

DOA:.....Miner, BB0332 - Farmland preservation program changes
FOR 2007-09 BUDGET -- NOT READY FOR INTRODUCTION

DO NOT GEN

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

Analysis by the Legislative Reference Bureau

↓
Analyses insert
→

This is a preliminary draft. An analysis will be provided in a later version.

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

2 SECTION 1. 71.60 (1) (b) of the statutes is amended to read:

3 71.60 (1) (b) The credit allowed under this subchapter shall be limited to 90%
4 of the first \$2,000 of excessive property taxes plus 70% of the 2nd \$2,000 of excessive
5 property taxes plus 50% of the 3rd \$2,000 of excessive property taxes. The maximum
6 credit shall not exceed \$4,200 for any claimant. The credit for any claimant shall be
7 the greater of either the credit as calculated under this subchapter as it exists at the
8 end of the year for which the claim is filed or as it existed on the date on which the
9 farmland became subject to a current agreement under subch. II or III of ch. 91 or

1 under subch. III of ch. 91, 2005 stats., using for such calculations household income
2 and property taxes accrued of the year for which the claim is filed.

3 **SECTION 2.** 71.60 (1) (c) 3. of the statutes is amended to read:

4 71.60 (1) (c) 3. If the claimant or any member of the claimant's household owns
5 farmland which is ineligible for credit under subd. 1. or 2. but was subject to a
6 farmland preservation agreement under subch. III of ch. 91, 2005 stats., on July 1
7 of the year for which credit is claimed, or the owner had applied for such an
8 agreement before July 1 of such year and the agreement has subsequently been
9 executed, and if the owner has applied by the end of the year in which conversion
10 under s. 91.41, 2005 stats., is first possible for conversion of the agreement to a
11 transition area agreement under subch. II of ch. 91, and the transition area
12 agreement has subsequently been executed, and the farmland is located in a city or
13 village which has a certified exclusive agricultural use zoning ordinance under
14 subch. V of ch. 91 in effect at the close of the year for which credit is claimed, or in
15 a town which is subject to a certified county exclusive agricultural use zoning
16 ordinance under subch. V of ch. 91 in effect at the close of the year for which credit
17 is claimed, the amount of the claim shall be that specified in par. (b).

18 **SECTION 3.** 71.60 (1) (c) 5. of the statutes is amended to read:

19 71.60 (1) (c) 5. If the claimant or any member of the claimant's household owns
20 farmland which is ineligible for credit under subds. 1. to 4. but was subject to a
21 farmland preservation agreement under subch. III of ch. 91, 2005 stats., on July 1
22 of the year for which credit is claimed, or the owner had applied for such an
23 agreement before July 1 of such year and the agreement has subsequently been
24 executed, and if the owner has applied by the end of the year in which conversion
25 under s. 91.41, 2005 stats., is first possible for conversion of the agreement to an

1 agreement under subch. II of ch. 91, and the agreement under subch. II of ch. 91 has
2 subsequently been executed, the amount of the claim shall be limited to 80% of that
3 specified in par. (b).

4 **SECTION 4.** 71.60 (1) (c) 8. of the statutes is amended to read:

5 71.60 (1) (c) 8. If the farmland is subject to a farmland preservation agreement
6 under subch. III of ch. 91, 2005 stats., on July 1 of the year for which credit is claimed
7 or the claimant had applied for such an agreement before July 1 of such year and the
8 agreement has subsequently been executed, the amount of the claim shall be limited
9 to 50% of that specified in par. (b).

10 **SECTION 5.** 91.06 of the statutes is renumbered 91.06 (1) and amended to read:

11 91.06 (1) CERTIFICATION BY BOARD. The Before the effective date of this
12 subsection [revisor inserts date], the board shall review farmland preservation
13 plans and exclusive agricultural use zoning ordinances submitted to it under ss.
14 91.61 and 91.78 and shall certify to the appropriate zoning authority whether the
15 plans and ordinances meet the standards of subchs. IV and V, respectively.
16 Certifications may be in whole or in part.

17 **SECTION 6.** 91.06 (2) and (3) of the statutes are created to read:

18 91.06 (2) CERTIFICATION OF PLANS. (a) Beginning on the effective date of this
19 paragraph [revisor inserts date], all of the following apply:

20 1. The department may certify a county farmland preservation plan or revision
21 to a county farmland preservation plan based on the county certification under s.
22 91.61 (2) (d).

23 2. The department may do any of the following before it determines whether
24 to certify a county's farmland preservation plan or revision to a plan:

25 a. Review the plan or revision for compliance with ss. 91.51 to 91.59.

1 b. Review and audit the application for certification under s. 91.61 (2).

2 (b) The department shall grant or deny an application for certification under
3 s. 91.61 (2) in writing no later than the 90th day following receipt of a complete
4 application, unless the county agrees to an extension.

5 (c) The department may grant an application for certification under s. 91.61 (2)
6 subject to conditions specified by the department in its certification decision. The
7 department may revoke the certification if the county does not make the required
8 changes by a deadline specified by the department.

9 (d) For the purposes of this chapter and subch. IX of ch. 71, a certified farmland
10 preservation plan does not include a revision to the plan adopted after the effective
11 date of this paragraph [revisor inserts date], unless the department certifies the
12 revision under par. (b).

13 **(3) CERTIFICATION OF ORDINANCES.** (a) Beginning on the effective date of this
14 paragraph [revisor inserts date], all of the following apply:

15 1. The department may certify an exclusive agricultural use zoning ordinance
16 or revision to an ordinance based on the certification under s. 91.78 (2) (d).

17 2. The department may do any of the following before it determines whether
18 to certify an exclusive agricultural use zoning ordinance or revision to an ordinance:

19 a. Review the ordinance or revision for compliance with ss. 91.75 and 91.77.

20 b. Review and audit the application for certification under s. 91.78 (2).

21 (b) The department shall grant or deny an application for certification under
22 s. 91.78 (2) in writing no later than the 90th day following receipt of a complete
23 application, unless the county, city, village, or town agrees to an extension.

24 (c) The department may grant an application for certification under s. 91.78 (2)
25 subject to conditions specified by the department in its certification decision. The

1 department may revoke the certification if the county, city, village, or town does not
2 make the required changes by a deadline specified by the department.

3 **SECTION 7.** 91.13 (8) (fm) of the statutes is amended to read:

4 91.13 (8) (fm) A statement in boldface uppercase type that contains the
5 following language: "UPON ~~RELINQUISHMENT~~ (WITHDRAWAL OR
6 EXPIRATION) OF FROM THIS AGREEMENT, A PAYBACK OF CREDITS WITH
7 INTEREST PAYMENT TO THE STATE MAY BE REQUIRED."

8 **SECTION 8.** 91.17 (1) of the statutes is amended to read:

9 91.17 (1) Land subject to a farmland preservation agreement may be sold
10 without a ~~lien being filed~~ payment being made under s. 91.19 (7m), subject to the
11 reservation of rights contained in the agreement. The seller shall notify the
12 department of any such transfer. ~~The purchaser shall be liable under any~~
13 ~~subsequent lien under s. 91.19 only for the amount of tax credits paid on that portion~~
14 ~~of the land purchased.~~

15 **SECTION 9.** 91.17 (2) of the statutes is amended to read:

16 91.17 (2) When the owner of land subject to a farmland preservation agreement
17 dies or is certified by a physician to be totally and permanently disabled, the land
18 may be released from the program under this chapter and shall not be subject to a
19 lien payment under s. 91.19 (8) (7m).

20 **SECTION 10.** 91.17 (3) of the statutes is repealed.

21 **SECTION 11.** 91.19 (2) (intro.) of the statutes is amended to read:

22 91.19 (2) (intro.) The Subject to sub. (7m), the department may relinquish the
23 farmland preservation agreement or may release part of the land from a farmland
24 preservation agreement prior to the termination date contained in the instrument
25 as follows:

1 **SECTION 12.** 91.19 (3) of the statutes is amended to read:

2 **91.19 (3)** If the request for relinquishment of the farmland preservation
3 agreement or release of part of the land from the agreement is approved by the local
4 governing body having jurisdiction, a copy of the application, along with the
5 comments and recommendations of the reviewing agencies, shall be forwarded to the
6 ~~board~~ department. The ~~board~~ department shall, within 60 days, upon consideration
7 of the factors in sub. (2) (b) and (c) 2., approve or reject the application for
8 relinquishment or release. If the ~~board~~ department approves the application it shall
9 notify the local governing body having jurisdiction and the department of revenue,
10 ~~prepare an instrument under sub. (7) and record it with the register of deeds of the~~
11 ~~county in which the land is located.~~

12 **SECTION 13.** 91.19 (5) of the statutes is amended to read:

13 **91.19 (5)** If the application for relinquishment of the agreement or release of
14 part of the land from the agreement is rejected by the local governing body having
15 jurisdiction, the application shall be returned to the applicant with a written
16 statement regarding the reasons for rejection. Within 30 days after receipt of the
17 rejected application, the applicant may appeal the rejection to the ~~board~~ department.
18 The ~~board~~ department shall, within 60 days after the appeal has been received, upon
19 consideration of the factors listed in sub. (2) (b) and (c) 2., approve or reject the
20 request for relinquishment or release. If the ~~board~~ department approves the
21 application it shall notify the local governing body having jurisdiction and the
22 department of revenue, ~~prepare an instrument under sub. (7) and record it with the~~
23 ~~register of deeds of the county in which the land is located.~~

24 **SECTION 14.** 91.19 (6p) of the statutes is repealed.

25 **SECTION 15.** 91.19 (6s) (a) 1. of the statutes is amended to read:

1 91.19 (6s) (a) 1. An application for release of the land, made by either the owner
2 or the local unit of government, is approved by the local governing body having
3 jurisdiction and the board department under the procedures of subs. (2) to (5).

4 **SECTION 16.** 91.19 (6s) (b) of the statutes is amended to read:

5 91.19 (6s) (b) If an owner of land subject to a farmland preservation agreement
6 opposes an application brought by a local unit of government for release of that land,
7 the owner may appeal the approval of that application by the local governing body
8 having jurisdiction to the board department according to the procedures in par. (c).

9 **SECTION 17.** 91.19 (6s) (c) of the statutes is amended to read:

10 91.19 (6s) (c) If the application for release of any land from the agreement is
11 approved by the local governing body having jurisdiction, the application shall be
12 returned to the applicant, and a copy of the application to the owner, with a written
13 statement regarding the reasons for approval. Within 30 days after receipt of a copy
14 of the approved application, the owner may appeal the approval to the board
15 department. The board department shall, within 60 days after the appeal has been
16 received, upon consideration of the factors listed in sub. (2) (b) and (c) 2., approve or
17 reject the request to disapprove the release. If the board department approves the
18 owner's appeal it shall notify the local governing body having jurisdiction.

19 **SECTION 18.** 91.19 (6s) (d) of the statutes is amended to read:

20 91.19 (6s) (d) The board department may waive its approval authority under
21 this subsection for applications affecting less than 5 acres of land.

22 **SECTION 19.** 91.19 (6t) of the statutes is amended to read:

23 91.19 (6t) The Subject to sub. (7m), the department shall relinquish from a
24 farmland preservation agreement land that has been subject to a farmland
25 preservation agreement for at least 10 years if the owner of the land so requests.

1 **SECTION 20.** 91.19 (7) of the statutes is repealed.

2 **SECTION 21.** 91.19 (7m) of the statutes is created to read:

3 91.19 **(7m)** (a) Except as provided in par. (b), the department may not
4 relinquish a farmland preservation agreement under sub. (3), (5), or (6t) or release
5 land from a farmland preservation agreement under sub. (3) or (5) until the owner
6 pays to the department \$100 per acre of land that is no longer covered by the
7 farmland preservation agreement.

8 (b) The payment under par. (a) does not apply to land that is zoned exclusively
9 for agricultural use under an ordinance certified under subch. V.

10 **SECTION 22.** 91.19 (8) to (13) of the statutes are repealed.

11 **SECTION 23.** 91.21 (1) of the statutes is amended to read:

12 91.21 **(1)** If the owner or a successor in title of the land upon which a farmland
13 preservation agreement has been recorded under this chapter changes the use of the
14 land to a prohibited use without first acting under ss. 91.17 and 91.19 and the land
15 is not relinquished under s. 91.19 ~~(6p) or (6t)~~, the owner or successor in title may be
16 enjoined by the state, acting through the attorney general, or by the local governing
17 body having jurisdiction, acting through its attorney, and is subject to a civil penalty
18 for actual damages, but in no case to exceed double the value of the land as
19 established at the time the application for the agreement was approved.

20 **SECTION 24.** 91.23 of the statutes is amended to read:

21 **91.23 Conversion.** An owner under a farmland preservation agreement may
22 at any time apply for a transition area agreement, and an owner under a transition
23 area agreement may at any time apply for a farmland preservation agreement. If
24 such an application is approved, the prior agreement shall be relinquished without
25 ~~a lien being filed~~ payment being made under s. 91.19 **(7m)**.

1 **SECTION 25.** Subchapter III of chapter 91 [precedes 91.31] of the statutes is
2 repealed.

3 **SECTION 26.** 91.59 (title) of the statutes is amended to read:

4 **91.59 (title) Coordination; public comment.**

5 **SECTION 27.** 91.59 (2m) of the statutes is created to read:

6 **91.59 (2m)** A county shall make a proposed agricultural preservation plan or
7 revision to a plan available to the public for at least 30 days before the public hearing
8 under s. 59.69 (3) (d) and shall accept comments from the public during that time.

9 **SECTION 28.** 91.61 of the statutes is renumbered 91.61 (1) and amended to read:

10 **91.61 (1)** ~~Upon~~ Before the effective date of this subsection ... [revisor inserts
11 date], upon completion of a county agricultural preservation ~~plans~~ plan described in
12 this subchapter, copies of the plan may be submitted to the board for review and
13 certification under s. 91.06.

14 **SECTION 29.** 91.61 (2) of the statutes is created to read:

15 **91.61 (2)** Beginning on the effective date of this subsection ... [revisor inserts
16 date], to apply for certification under s. 91.06 for a county agricultural preservation
17 plan or a revision to the plan, a county shall submit all of the following to the
18 department:

19 (a) A copy of the plan or revision to the plan.

20 (b) A description of how the plan or revision to the plan complies with ss. 91.51
21 to 91.59.

22 (c) Other relevant information required by the department by rule.

23 (d) A statement signed by the county corporation counsel certifying that the
24 plan or revision to the plan complies with ss. 91.51 to 91.59.

25 **SECTION 30.** 91.75 (6) of the statutes is amended to read:

1 91.75 (6) For purposes of farm consolidation and if permitted by local
 2 regulation, farm residences or structures which that existed prior to the adoption of
 3 the ordinance may be separated from a larger farm parcel. Farm residences or
 4 structures with up to 5 acres of land which that are separated from a larger farm
 5 parcel under this section are not subject to the ~~lien under s. 91.19 (8) to (10), as~~
 6 payment required in s. 91.77 (2) or 91.79.

7 **SECTION 31.** 91.77 (2) of the statutes is amended to read:

8 91.77 (2) ~~Land which is rezoned~~ Except as otherwise provided in this
 9 subsection, rezoning under this section shall be subject to the lien provided under s.
 10 91.19 (8) to (10) for the amount of tax credits paid on the land rezoned may not be
 11 completed until the landowner makes a payment of \$100 per acre of land that is
 12 rezoned to the county, city, village, or town that approves the petition. If the rezoning
 13 occurs solely as a result of action initiated by a governmental unit, ~~any lien required~~
 14 ~~under s. 91.19 (8) to (10) other than the county, city, village, or town that approves~~
 15 ~~the petition, the payment shall be paid made~~ by the governmental unit initiating the
 16 action. If the rezoning occurs solely as a result of action initiated by the county, city,
 17 village, or town that approves the petition, ~~no payment is required under this~~

18 ~~subsection.~~ to the department

that county, city, village or town shall make the

****NOTE: Is this appropriate? Or, in the case described in the last sentence, should the local government be required to pay DATCP?

19 **SECTION 32.** 91.78 of the statutes is renumbered 91.78 (1) and amended to read:

20 91.78 (1) Copies Before the effective date of this subsection [revisor inserts
 21 date], copies of exclusive agricultural zoning ordinances may be submitted to the
 22 board for review and certification under s. 91.06.

23 **SECTION 33.** 91.78 (2) of the statutes is created to read:

1 91.78 (2) Beginning on the effective date of this subsection ... [revisor inserts
2 date], to apply for certification under s. 91.06 for an exclusive agricultural use zoning
3 ordinance or a revision to the ordinance, a county, city, village, or town shall submit
4 all of the following to the department:

5 (a) A copy of the ordinance or revision to the ordinance.

6 (b) A description of how the ordinance or revision to the ordinance complies
7 with ss. 91.75 and 91.77.

8 (c) Other relevant information required by the department by rule.

9 (d) A statement signed by the chief elected official, as defined in s. 229.821 (3),
10 of, or the attorney for, the county, city, village, or town certifying that the ordinance
11 or revision to the ordinance complies with ss. 91.75 and 91.77.

12 **SECTION 34.** 91.79 of the statutes is amended to read:

13 **91.79 Conditional uses; lien payment.** ~~Any land zoned under this~~
14 ~~subchapter which is granted~~ A county, city, village, or town may not grant a special
15 exception or conditional use permit for a use which is not an agricultural use shall
16 be subject to the lien provided under s. 91.19 (8) to (10) for the amount of tax credits
17 paid on the land granted such a permit for land zoned under this subchapter until
18 the landowner pays to the county, city, village, or town \$100 per acre of land for which
19 the special exception or conditional use permit is granted.

20 **SECTION 9303. Initial applicability; Agriculture, Trade and Consumer**
21 **Protection.**

22 (1) FARMLAND PRESERVATION CONVERSION FEES. The treatment of sections 91.17
23 (1), (2), and (3), 91.19 (2) (intro.), (3), (5), (6t), (7), (7m), and (8) to (13), 91.23, 91.75
24 (6), 91.77 (2), and 91.79 of the statutes first applies to land that is released or

1 relinquished from a farmland preservation agreement or rezoned from exclusive
2 agricultural zoning on the effective date of this subsection.

3 (END)

Analysis insert

AGRICULTURE

Under current law, an eligible claimant may recover a certain amount of property taxes paid through the refundable farmland preservation credit. refundable tax credit means that if the amount of the credit that is otherwise due an eligible claimant exceeds the claimant's tax liability, or there is no outstanding tax liability, the excess amount of the credit is paid to the claimant by check.

Under current law, the land to which a claim for the farmland preservation credit relates must be subject either to a farmland preservation agreement or to an exclusive agricultural use zoning ordinance that is certified by the land and water conservation board (LWCB). Land that is not subject to exclusive agricultural use zoning may only become subject to a farmland preservation agreement if the county in which the land is located has an agricultural preservation plan that is certified by LWCB. A farmland preservation agreement is between the landowner and DATCP. The agreement commits the owner to keep the land in agricultural use for the duration of the agreement, up to 25 years, although the law allows DATCP or LWCB to release land from an agreement under certain circumstances. Under current law, when land is rezoned from exclusive agricultural use and in some of the circumstances under which land is released from a farmland preservation agreement, DATCP is required to file a lien against the land for the amount of the farmland preservation credit received by the owner during the preceding ten years.

This bill eliminates the requirement that DATCP file a lien against land that is released from a farmland preservation agreement or that is rezoned from exclusive agricultural use. Under this bill, DATCP may not release land from a farmland preservation agreement until the owner pays \$100 per acre to this state, except in certain cases, such as the death or disability of the owner. Also under this bill, rezoning of land from exclusive agricultural zoning must be conditioned on payment of \$100 per acre of land that is rezoned. Payment is made to the local governmental unit that grants the rezoning.

This bill also provides that DATCP, rather than LWCB, certifies exclusive agricultural use zoning ordinances and county agricultural preservation plans and revisions to the ordinances and plans. DATCP may, but is not required to, grant certification based on a signed statement, by the relevant local governmental unit, that the ordinance or plan meets the requirements for certification.

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

is refundable land

When a

claimant
may
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Tradewell, Becky

From: Miner, Andrew - DOA
Sent: Monday, January 29, 2007 4:27 PM
To: Tradewell, Becky
Subject: small change draft 1465

Becky,

I apologize, I missed this when I left a voicemail for you over the weekend on the farmland preservation draft. If it's not too late, we'd like to say in Section 9303 that the effective date (for all parts of the draft) will be October 1, 2007. Thanks,
Andrew