

**2019 DRAFTING REQUEST**

**Bill**

For: **André Jacque (608) 266-3512** Drafter: **kpaczusk**  
 By: **Sen. Jacque** Secondary Drafters:  
 Date: **12/21/2018** May Contact:

Same as LRB:

Submit via email: **YES**  
 Requester's email: **Sen.Jacque@legis.wisconsin.gov**  
 Carbon copy (CC) to: **mary.pfotenhauer@legis.wisconsin.gov**  
**konrad.paczuski@legis.wisconsin.gov**  
**zachary.wyatt@legis.wisconsin.gov**

**Pre Topic:**

No specific pre topic given

**Topic:**

Distributing and labeling fertilizer derived from composting manure

**Instructions:**

See attached

**Drafting History:**

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
/?	kpaczusk 1/3/2019	ccarmich 1/4/2019			
/P1	kpaczusk 2/12/2019	ccarmich 2/12/2019	mbarman 1/4/2019		State
/P2	kpaczusk 7/23/2019	ccarmich 7/23/2019	dwalker 2/12/2019		State
/P3			mbarman 7/23/2019		State

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
/1			mbarman 8/22/2019	mbarman 8/22/2019	State

FE Sent For:

*Af Intro*

<END>



12/21/18

LRB 19-1165

msg. from Andre Jaegue: drafting request.

- reducing the amount of runoff on farm fields from manure
- through practice called manure composting.
- barrier to adopting this practice: products of manure composting (organic materials produced) are not available ~~for~~ in this state
- want to eliminate those barriers/bans to resell those products.
- will forward email w/ more info
- may contact Paul Decker and Lawrence Mayhew.

- MCP

From email (attached):

- Allow the sale and application of insoluble organic products. (See s. 94.64 and ATCP 40)

## **Pfotenhauer, Mary**

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**From:** Jacque, Andre  
**Sent:** Friday, December 21, 2018 6:32 PM  
**To:** Pfotenhauer, Mary  
**Subject:** Drafting request- per my voicemail the evening of 12/21

**Follow Up Flag:** Follow up  
**Flag Status:** Flagged

Regarding sale of the organic products of manure composting. Thanks!

André  
Cellphone 920-819-8066

I met you on the bus tour and you told me that you would look into the law in this state that is part of the problem of nitrates and phosphorus in our water. I had my soil scientist email you. His name is Lawrence Mayhew. I will forward it to you just in case you did not know it was me.

If you take this on I will help you all I can no charge. I would come, just let me know. I am not anti government but I am pro health of the next generation I will not stop this is my mission in life. You could be the man that made it happen. May God bless you and your family.

To the Honorable André Jacque;

Paul Deckard asked me to send you a brief explanation about our relationship to regenerative agriculture.

I met Paul about 14 years ago when we were both working for the same company. Paul was the staff dairy nutritionist and I was the senior product developer. It was there that we learned the principles for helping soils and livestock to express their natural abilities to obtain nutrients through biological activity and naturally acquired immunity to diseases; i.e. a non-toxic approach to agriculture.

It soon became obvious that we had the same goal of changing the American norm of unhealthy people. We both realized that the problems with Americans' health starts in the soils that create the food we eat; unhealthy soils lead to unhealthy plants that need toxic intervention to survive, which leads to unhealthy people trying to manage their diseases with more chemical intervention. We have succeeded in breaking that vicious cycle for many farmers by applying common sense and respecting the bio-geochemical cycles of nature. In order to mimic nature, one must first understand that the concept of "feeding" highly soluble fertilizer inputs is not part of nature's cycles. Instead, insoluble natural substances are compatible with the biochemistry and the physical structure of the materials that are part of the Earth's cycles. However, insoluble inputs are not allowed in Wisconsin unless they pass the Supplementary Review (ATCP 40.46), which for all intents and purposes, is an onerous and highly subjective process that appears to protect the soluble fertilizer industry.

Essentially, what I have outlined above regarding insoluble agronomic products is the basis of organic agricultural inputs, which up until recently were outlawed in Wisconsin because Wisconsin law requires a minimum of 24% soluble nutrients in a product before it can be called a fertilizer (Wisconsin Statutes 94.64(3m)(a), Administrative code ATCP 40.12 Fertilizer permits). As ATCP 40 refers to the Official

Publication of the Association of American Plant Food Control Officials (AAPFCO) as the basis for its rules, and as Wisconsin was imposing its laws on businesses selling organic inputs, in 2004 I was sent by the Organic Trade Association as their liaison to AAPFCO to establish national rules for fertilizer regulations that would allow organic inputs. As a member of AAPFCO, the State of Wisconsin had no other choice except to comply with AAPFCO model rules, but they made sure that it is illegal to sell organic inputs to anyone other than an USDA National Organic Program certified operation and no promotional claims are allowed (ATCP 40.28 (1)(b)).

Highly soluble fertilizer inputs are responsible for environmental pollution and breeding out plants' ability to ward off stresses. Reducing highly soluble fertilizers is a step in the right direction, but it is not enough. For example, humic substances are ideally suited for increasing fertilizer efficiency, reducing fertilizer inputs, but they have a history as being outlawed in this state. The only "loop hole" to using them is that they comply with the 7 CFR 205 federal code for organic production.

If we are going to make Wisconsin great again, we have to widen the fertilizer laws in Wisconsin to allow other natural inputs in addition to organic inputs without onerous restrictions.

Thank you for your consideration,

Lawrence Mayhew  
EAM Consulting, LLC  
Spring Green, Wisconsin  
608-583-3095

Paul Deckard  
608-279-3521

Follow our story at [www.dta-cal.com](http://www.dta-cal.com)



Phone call with Lawrence Mayhew 1/3:

The draft should exempt fertilizers described in the draft from being required to have a guaranteed analysis in elemental form.

The draft should allow representations to be made about plant nutrients and other essential elements contained in fertilizers described in the draft if the representations are substantiated by scientific analytical methods.



**PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION**

IN: 1/3/2019  
OUT: 1/4/2019 Please

SA ✓  
X-ref ✓  
S/C ✓

gc

1 AN ACT ...; relating to: the distribution and labeling of fertilizer derived from  
2 manure.

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***Analysis by the Legislative Reference Bureau***

This bill allows a person to distribute a fertilizer that is derived from converting manure into compost and that has a combined weight of nitrogen, phosphorus, and potassium that is less than 24 percent of the total weight of the fertilizer. Current law requires a fertilizer distributed in this state to be guaranteed to contain a combined weight of nitrogen, phosphorous, and potassium that is at least 24 percent of the total weight of the fertilizer, unless either 1) the Department of Agriculture, Trade and Consumer Protection promulgates a rule exempting the fertilizer, or 2) DATCP grants a permit authorizing the distribution of the fertilizer as a nonagricultural or special-use fertilizer.

The bill also exempts a fertilizer that is derived from converting manure into compost from being required to contain a minimum amount of certain plant nutrients. Additionally, under the bill, a label, invoice, or statement accompanying fertilizer derived from converting manure into compost is allowed to represent the amount of plant nutrients or other beneficial substances contained in the fertilizer if the truthfulness of the representation is substantiated by a scientifically reliable analytical method.

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

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

\*\*\*\*NOTE: This draft applies to fertilizers that are derived from composting manure, but does not apply to soil and plant additives, which are defined in s. 94.65 (1) (f). It seems possible that a substance derived from composting manure might not fall under the definition of "fertilizer" under s. 94.64 (1) (e), for instance because the substance is not used for its "plant nutrient," as defined by s. 94.64 (1) (p), content. A substance derived from composting manure that does not contain plant nutrients but that is used for one of the purposes described in s. 94.65 (1) (f), such as "promoting or sustaining the quality of the soil" or "favorably modifying the structural, physical or biological properties of the soil for agricultural purposes," might be considered a "soil and plant additive." If you would like the draft to address soil and plant additives that derive from manure, please let me know in what way it should do so.

1           **SECTION 1.** 94.64 (2) (f) of the statutes is created to read:

2           94.64 (2) (f) Notwithstanding pars. (a) 3. and 4., (b) 5. and 6., and (e), all of the  
3 following apply to a label or written or printed invoice or statement pertaining to a  
4 fertilizer derived from converting unmanipulated animal or vegetable manure into  
5 compost:

\*\*\*\*NOTE: If these provisions should apply to other types of fertilizer, please let me know what criteria the fertilizer should satisfy for the provisions to apply.

6           1. The label, invoice, or statement is not required to contain a grade or  
7 guaranteed analysis for a plant nutrient.

8           2. The label, invoice, or statement may make representations about the amount  
9 of plant nutrients contained in the fertilizer if the truthfulness of the representations  
10 is substantiated by a scientifically reliable analytical method.

\*\*\*\*NOTE: If the draft should specify the particular analytical methods that are acceptable for substantiating the truthfulness of representations made under these provisions, please let me know.

11           3. The label, invoice, or statement may make representations about the amount  
12 of other beneficial substances contained in the fertilizer if the truthfulness of the  
13 representations is substantiated by a scientifically reliable analytical method.



1           **SECTION 2.** 94.64 (3m) (a) (intro.) of the statutes is amended to read:

2           94.64 (3m) (a) (intro.) No person may distribute mixed fertilizer in which the  
3           sum of the guarantees for nitrogen, available phosphate, and soluble potash totals  
4           less than 24 percent unless any of the following applies:

*History:* 1977 c. 418; 1981 c. 57; 1983 a. 189 ss. 121, 329 (20); 1983 a. 410; 1985 a. 147; 1987 a. 398; 1989 a. 31; 1991 a. 39, 112; 1993 a. 16, 417, 492; 1995 a. 4, 176, 227; 1997 a. 27; 1999 a. 9, 32; 2003 a. 33; 2005 a. 25; 2007 a. 20; 2011 a. 32; 2013 a. 20; 2017 a. 59; 2017 a. 365 s. 111.

*Cross-reference:* See also ch. ATCP 40, Wis. adm. code.

5           **SECTION 3.** 94.64 (3m) (a) 1. of the statutes is amended to read:

6           94.64 (3m) (a) 1. The mixed fertilizer is exempted from this requirement by  
7           department rule; ~~or~~ under sub. (9) (g).

*History:* 1977 c. 418; 1981 c. 57; 1983 a. 189 ss. 121, 329 (20); 1983 a. 410; 1985 a. 147; 1987 a. 398; 1989 a. 31; 1991 a. 39, 112; 1993 a. 16, 417, 492; 1995 a. 4, 176, 227; 1997 a. 27; 1999 a. 9, 32; 2003 a. 33; 2005 a. 25; 2007 a. 20; 2011 a. 32; 2013 a. 20; 2017 a. 59; 2017 a. 365 s. 111.

*Cross-reference:* See also ch. ATCP 40, Wis. adm. code.

8           **SECTION 4.** 94.64 (3m) (a) 3. of the statutes is created to read:

9           94.64 (3m) (a) 3. The mixed fertilizer is derived from converting  
10          unmanipulated animal or vegetable manure into compost.

      \*\*\*\*NOTE: If the draft should specify additional criteria that fertilizer made of insoluble nutrients should be required to satisfy in order fall under this exception to the NPK percentage requirement of s. 94.64 (3m), please let me know.

11          **SECTION 5.** 94.64 (9) (c) of the statutes is amended to read:

12          94.64 (9) (c) Governing methods of sampling, testing, examining and analyzing  
13          fertilizer, except that no rule under this paragraph may exclude the use of  
14          scientifically reliable analytical methods for substantiating the truthfulness of  
15          representations made under sub. (2) (f) 2. or 3.

*History:* 1977 c. 418; 1981 c. 57; 1983 a. 189 ss. 121, 329 (20); 1983 a. 410; 1985 a. 147; 1987 a. 398; 1989 a. 31; 1991 a. 39, 112; 1993 a. 16, 417, 492; 1995 a. 4, 176, 227; 1997 a. 27; 1999 a. 9, 32; 2003 a. 33; 2005 a. 25; 2007 a. 20; 2011 a. 32; 2013 a. 20; 2017 a. 59; 2017 a. 365 s. 111.

*Cross-reference:* See also ch. ATCP 40, Wis. adm. code.

16

(END)

**Paczuski, Konrad**

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**From:** Lawrence Mayhew <lawrencemayhew26@icloud.com>  
**Sent:** Friday, January 18, 2019 12:16 PM  
**To:** Sen.Jacque <Sen.Jacque@legis.wisconsin.gov>  
**Cc:** Paczuski, Konrad <Konrad.Paczuski@legis.wisconsin.gov>  
**Subject:** Re: Draft review: LRB -1165/P1

To the honorable Andre Jacque;

Thank you for the opportunity to provide input to the proposed changes (attached).

Lawrence Mayhew

On Jan 17, 2019, at 2:32 AM, Sen.Jacque <[Sen.Jacque@legis.wisconsin.gov](mailto:Sen.Jacque@legis.wisconsin.gov)> wrote:

Hello Lawrence & Paul-

Please review the attached draft and let me know your thoughts... I'd appreciate your input on the drafter's questions.

Thanks!  
André

<19-1165\_P1.pdf>

*State of Wisconsin*  
2019 - 2020 LEGISLATURE

LRB-1165/P1  
KP:cdc

**PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION**

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(a) 3. of the statutes; relating to: the  
distribution and labeling of fertilizer derived from manure.

Commented [MOU1]: Please see the comments associated with the highlighted Note below regarding the terms "fertilizer" and "soil or plant additive".

*Analysis by the Legislative Reference Bureau*

This bill allows a person to distribute a fertilizer that is derived from converting manure into compost and that has a combined weight of nitrogen, phosphorus, and potassium that is less than 24 percent of the total weight of the fertilizer. Current law requires a fertilizer distributed in this state to be guaranteed to contain a combined weight of nitrogen, phosphorous, and potassium that is at least 24 percent of the total weight of the fertilizer, unless either 1) the Department of Agriculture, Trade and Consumer Protection promulgates a rule exempting the fertilizer; or 2) DATCP grants a permit authorizing the distribution of the fertilizer as a nonagricultural or special-use fertilizer.

The bill also exempts a fertilizer that is derived from converting manure into compost from being required to contain a minimum amount of certain plant nutrients. Additionally, under the bill, a label, invoice, or statement accompanying fertilizer derived from converting manure into compost is allowed to represent the amount of plant nutrients or other beneficial substances contained in the fertilizer if the truthfulness of the representation is substantiated by a scientifically reliable validated analytical method.

Commented [MOU2]: ATCP Subchapter V, 40.54 (2)(c) prohibits claims for beneficial substances unless they are included as **Guaranteed Analysis**. The problem is naturally occurring materials are notorious for having extremely low concentrations of dissolved elements and a high degree of concentration variability, making a guarantee for analysis almost impossible. Many states allow **Typical Analysis** which is based on an average derived from numerous analyses of the material over time.

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

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

\*\*\*\*NOTE: This draft applies to fertilizers that are derived from composting manure, but does not apply to soil and plant additives, which are defined in s. 94.65 (1) (f). It seems possible that a substance derived from composting manure might not fall under the definition of "fertilizer" under s. 94.64 (1) (e), for instance because the substance is not used for its "plant nutrient," as defined by s. 94.64 (1) (p), content. A substance derived from composting manure that does not contain plant nutrients but that is used for one of the purposes described in s. 94.65 (1) (f), such as "promoting or sustaining the quality of the soil" or "favorably modifying the structural, physical or biological properties of the soil for agricultural purposes," might be considered a soil and plant additive. If you would like the draft to address soil and plant additives that derive from manure, please let me know in what way it should do so.

SECTION 1. 94.64 (2) (f) of the statutes is created to read:

94.64 (2) (f) Notwithstanding pars. (a) 3. and 4., (b) 5. and 6., and (c), all of the following apply to a label or written or printed invoice or statement pertaining to a fertilizer derived from converting unmanipulated animal or vegetable manure into compost and compost derivatives:

\*\*\*\*NOTE: If these provisions should apply to other types of fertilizer, please let me know what criteria the fertilizer should satisfy for the provisions to apply.

1. The label, invoice, or statement is not required to contain a grade or guaranteed analysis for a plant nutrient, but may contain a Typical Analysis.

2. The label, invoice, or statement may make representations about the amount of plant nutrients contained in the fertilizer soil or plant additive if the truthfulness of the representations is substantiated by a scientifically reliable validated analytical method.

\*\*\*\*NOTE: If the draft should specify the particular analytical methods that are acceptable for substantiating the truthfulness of representations made under these provisions, please let me know.

3. The label, invoice, or statement may make representations about the amount of other beneficial substances contained in the fertilizer soil or plant additive if the truthfulness of the representations is substantiated by a scientifically reliable validated analytical method.

[I suggest the following addition, LM]

(4) Typical Analysis may include major, trace, and ultra-trace elements. Major elements are defined as typically found in soils at concentrations greater than 100 ppm. Trace elements are defined as typically

Formatted: Underline

Commented [MOU3]: Favorably modifying the biological properties of soils is part of the reason why natural inputs are effective. In addition to being favorable to the soil microbiome, they also support plant physiology, which is closely tied to soil microbiological interactions because plant root exudates at the root-soil interface (rhizosphere) feed the soil microbiome. Therefore, natural inputs are most effective when used as both foliar application and soil application. Based on personal experience with DATCP in the past, I hope the term "soil and plant additive" is not interpreted by DATCP as restricting products to one application or the other. (see ATCP 40.10 (10))

Commented [MOU4]: Can a product be registered as soil and plant additive?

Commented [MOU5]: I agree, compost and its derivatives should fall under soil and plant additives. The rules and regulations as applied to fertilizers have caused a lot of environmental problems and hold back progress for 21<sup>st</sup> century sustainable technology and practices.

Commented [MOU6]: I anticipate push back from DATCP, who has historically used ATCP 40.46 (b) as a constraint to products that are in the legitimate stream of commerce in other parts of the US and globally, and broadly interpreting "Wisconsin conditions" as 3 years of field trials conducted by the University of Wisconsin, which is a horribly expensive requirement that small business owners cannot endure. That is an unreasonable requirement as there are 24,000 different soil types in the United States, where one Wisconsin field may have as many as 10 different soil types. The cornerstone of the National Organic Program (CFR Part 205) is natural inputs, yet federal law does not require the same onerous restriction on the use of organic inputs. Every farm Organic System Plan is based upon site-specific conditions and the cultural practices of the farmer to promote biological activity and nutrient cycling goals. Additionally, ATCP 40.28 (1) (b) 1. does not require "....accurate, relevant, material, reliable, properly documented, substantiated, scientifically valid, persuasive, consistent with generally accepted scientific knowledge, consistent with other reliable information, applicable under Wisconsin conditions....."

Commented [MOU7]: The intent of the term "derivative" is to include compost extracts and a group of products commonly called compost teas. DTCAP will only allow the wording "Animal Manure Compost Extract" on a label instead of compost teas. A compost extract is an extract, but compost teas are brewed to increase the concentration. [1]

Commented [MOU8]: A Typical Analysis is based on an average derived from numerous analyses of the material over time; these data are routinely generated as part of manufacturing quality control or product quality assurance programs. A typical analysis is more reasonable (fit for purpose) than guaranteed analyses because natural [2]

Commented [MOU9]: Analytical Methods: DTCAP relies on the Official Methods of Analysis of AOAC International for analytical standards. I support that standard. However, DTCAP cites the Official Methods of Analysis of AOAC International, volume 1, 17<sup>th</sup> Edition, which is 16 years old, out of print and out of date. The current set of AOAC standards is the 21<sup>st</sup> Edition.

Commented [MOU10]: State statutes do not define "beneficial substances". However, there are numerous instances where DTACP defers to the Official Publication of the Association of American Plant Food Control Officials (AAPFCO) No. 57 (2004) for guidance, within the fertilizer rules, but not the soils and plant additive rules. The c [3]

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at concentrations in the range of 1 – 99 ppm, and ultra-trace elements are defined as typically found in soils at concentrations of less than 1 ppm.

Commented [MOU11]: Major soil elements are N, Al, Ba, C, Ca, Cl, F, Fe, K, Mg, Mn, Na, P, S, Si, Sr, Ti, Zr.  
Trace elements are  
As . B . Be . Br . Ce . Co . Cr . Cs . Cu . Dy . Er . Eu . Ga . Gd . Ge . Hf . I . La . Li . Mo . Nb . Nd . Ni . Pb . Pr . Rb . Sc . Sm . Sn . Ta . Th . U . V . Y . Yb . Zn  
Ultra-trace elements are  
Ag . Au . Bi . Cd . Hg . Ho . In . Ir . Lu . Os . Pd . Pt . Re . Rh . Ru . Sb . Se . Tb . Te . Tl . Tm . W



Page 3: [1] Commented [MOU7] Microsoft Office User 1/17/2019 11:07:00 AM

The intent of the term "derivative" is to include compost extracts and a group of products commonly called compost teas. DTCAP will only allow the wording "Animal Manure Compost Extract" on a label instead of compost teas. A compost extract is an extract, but compost teas are brewed to increase the concentration and variety of microorganisms that are beneficial to soils, soil microbiota, and plants.

Page 3: [2] Commented [MOU8] Microsoft Office User 1/17/2019 11:16:00 AM

A **Typical Analysis** is based on an average derived from numerous analyses of the material over time; these data are routinely generated as part of manufacturing quality control or product quality assurance programs. A typical analysis is more reasonable (fit for purpose) than guaranteed analyses because natural substances have a much higher degree of composition variability compared to synthetic chemicals.

Page 3: [3] Commented [MOU10] Microsoft Office User 1/18/2019 9:04:00 AM

State statutes do not define "beneficial substances". However, there are numerous instances where DTACP defers to the Official Publication of the Association of American Plant Food Control Officials (AAPFCO) No. 57 (2004) for guidance, within the fertilizer rules, but not the soils and plant additive rules. The current AAPFCO publication is No. 71 (2019) where AAPFCO defines Beneficial Substances as;

Means any substance or compound other than primary, secondary, and micro plant nutrients that can be demonstrated by scientific research to be beneficial to one or more species of plants, when applied exogenously. (AAPFCO 2007)

Neither the State statutes nor AAPFCO address the actual mechanisms responsible for the effectiveness of natural, non-synthetic inputs; geomicrobiological soil interactions provide nutrients to plants. These interactions require extremely complex inputs in the context of elemental composition, with trace and ultra-trace elements acting primarily as enzyme cofactors. This is supported by the current sciences of Metallomics and Elementomics, where it is recognized that all naturally occurring elements are found in all plants and all animals, therefore they must play some sort of metabolic role.

Page 4: [4] Commented [MOU11] Microsoft Office User 1/17/2019 3:37:00 PM

Major soil elements are N, Al, Ba, C, Ca, Cl, F, Fe, K, Mg, Mn, Na, P, S, Si, Sr, Ti, Zr.

Trace elements are As B Be Br Ce Co Cr Cs Cu Dy Er  
Eu Ga Gd Ge Hf I La Li Mo Nb Nd Ni  
Pb Pr Rb Sc Sm Sn Ta Th U V Y Yb  
Zn

Ultra-trace elements are Ag Au Bi Cd Hg Ho In Ir Lu Os  
Pd Pt Re Rh Ru Sb Se Tb Te TL Tm W

As B Be Br Ce Co Cr Cs Cu Dy Er





**PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION**

*INSERT*

*IN: 2/12/2019  
OUT: 2/12/2019, please*

*This bill makes the following changes to requirements that apply to fertilizers and soil or plant additives that are derived from converting manure into compost and compost byproducts:*

*SLA<sup>v</sup>  
X-ref<sup>v</sup>  
S/C<sup>v</sup>*

1 **AN ACT to amend** *regen* 94.64 (3m) (a) (intro.), 94.64 (3m) (a) 1. and 94.64 (9) (c); and

2 **to create** 94.64 (2) (f) and 94.64 (3m) (a) 3. of the statutes; **relating to:** the

3 distribution and labeling of *and soil or plant additives* fertilizer derived from manure.

*fertilizers* <sup>1</sup>

**Analysis by the Legislative Reference Bureau**

*1. The*

*and compost byproducts*

This bill allows a person to distribute a fertilizer that is derived from converting manure into compost and that has a combined weight of nitrogen, phosphorus, and potassium that is less than 24 percent of the total weight of the fertilizer. Current law requires a fertilizer distributed in this state to be guaranteed to contain a combined weight of nitrogen, phosphorous, and potassium that is at least 24 percent of the total weight of the fertilizer, unless either 1) the Department of Agriculture, Trade and Consumer Protection promulgates a rule exempting the fertilizer; or 2) DATCP grants a permit authorizing the distribution of the fertilizer as a nonagricultural or special-use fertilizer.

The bill also exempts a fertilizer that is derived from converting manure into compost from being required to contain a minimum amount of certain plant nutrients. Additionally, under the bill, a label, invoice, or statement accompanying fertilizer derived from converting manure into compost is allowed to represent the amount of plant nutrients or other beneficial substances contained in the fertilizer if the truthfulness of the representation is substantiated by a *validated* scientifically *typical analysis or other* reliable analytical method.

*INS A 1*

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

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

\*\*\*NOTE: This draft applies to fertilizers that are derived from composting manure, but does not apply to soil and plant additives, which are defined in s. 94.65 (1) (f). It seems possible that a substance derived from composting manure might not fall under the definition of "fertilizer" under s. 94.64 (1) (e), for instance because the substance is not used for its "plant nutrient," as defined by s. 94.64 (1) (p), content. A substance derived from composting manure that does not contain plant nutrients but that is used for one of the purposes described in s. 94.65 (1) (f), such as "promoting or sustaining the quality of the soil" or "favorably modifying the structural, physical or biological properties of the soil for agricultural purposes," might be considered a "soil and plant additive." If you would like the draft to address soil and plant additives that derive from manure, please let me know in what way it should do so.

INS 2-1

1 SECTION 1. 94.64 (2) (f) of the statutes is created to read:

2 94.64 (2) (f) Notwithstanding pars. (a) 3. and 4., (b) 5. and 6., and (e), all of the  
3 following apply to a label or written or printed invoice or statement pertaining to a  
4 fertilizer derived from converting unmanipulated animal or vegetable manure into  
5 compost: *and compost by products*

\*\*\*NOTE: If these provisions should apply to other types of fertilizer, please let me know what criteria the fertilizer should satisfy for the provisions to apply.

6 1. The label, invoice, or statement is not required to contain a grade or  
7 guaranteed analysis for a plant nutrient.

8 2. The label, invoice, or statement may make representations about the amount  
9 of plant nutrients contained in the fertilizer if the truthfulness of the representations  
10 is substantiated by a scientifically reliable analytical method. *typical analysis, as defined in s. 94.65 (1) (fm), or other validated*

\*\*\*NOTE: If the draft should specify the particular analytical methods that are acceptable for substantiating the truthfulness of representations made under these provisions, please let me know.

11 3. The label, invoice, or statement may make representations about the amount  
12 of other beneficial substances contained in the fertilizer if the truthfulness of the  
13 representations is substantiated by a scientifically reliable analytical method. *validated typical analysis, as defined in s. 94.65 (1) (fm), or other*

1 SECTION 2. 94.64 (3m) (a) (intro.) of the statutes is amended to read:

2 94.64 (3m) (a) (intro.) No person may distribute mixed fertilizer in which the  
3 sum of the guarantees for nitrogen, available phosphate, and soluble potash totals  
4 less than 24 percent unless any of the following applies:

5 SECTION 3. 94.64 (3m) (a) 1. of the statutes is amended to read:

6 94.64 (3m) (a) 1. The mixed fertilizer is exempted from this requirement by  
7 department rule; ~~or~~ under sub. (9) (g).

8 SECTION 4. 94.64 (3m) (a) 3. of the statutes is created to read:

9 94.64 (3m) (a) 3. The mixed fertilizer is derived from converting  
10 unmanipulated animal or vegetable manure into compost, *and compost byproducts*

\*\*\*\*NOTE: If the draft should specify additional criteria that fertilizer made of insoluble nutrients should be required to satisfy in order fall under this exception to the NPK percentage requirement of s. 94.64 (3m), please let me know.

11 SECTION 5. 94.64 (9) (c) of the statutes is amended to read:

12 94.64 (9) (c) Governing methods of sampling, testing, examining and analyzing  
13 fertilizer, except that no rule under this paragraph may exclude the use of *typical analysis, as defined in s. 94.65(1) (a), or other*  
14 scientifically *validated* reliable analytical methods for substantiating the truthfulness of  
15 representations made under sub. (2) (f) 2. or 3.

INS 3-15-1

16

(END)

**2019-2020 DRAFTING INSERT**  
**FROM THE**  
**LEGISLATIVE REFERENCE BUREAU**

LRB-1165/P2ins  
KP:...

1           INS A

3. Under the bill, DATCP may not require a controlled experimental field test to substantiate the efficacy and usefulness of a soil or plant additive derived from converting compost into manure. Under current law, DATCP may require the efficacy and usefulness of a soil or plant additive to be substantiated by controlled experimental studies using the soil or plant additive.

4. The bill allows the truthfulness of a statement on a permit application or label of a soil or plant additive derived from converting compost into manure to be substantiated by a typical analysis. Current law requires the label of a soil or plant additive to make a guarantee about the minimum amount of the substances that it contains.

2

3           END INS A

4           INS 2-1

5           **SECTION 1.** 94.64 (1) (a) of the statutes is renumbered 94.64 (1) (ar).

6           **SECTION 2.** 94.64 (1) (ag) of the statutes is created to read:

7           94.64 (1) (ag) “Beneficial substance” means a substance other than a plant  
8           nutrient that is beneficial to a plant if applied exogenously.

      \*\*\*\*NOTE: The instructions suggested this definition of the term “beneficial substance.” The definition, however, is unspecific about *how* these substances are beneficial to plants. It may not be necessary for the draft to define the term “beneficial substance,” but if the draft does contain a definition, the meaning of the term might be more clear if the definition explained a bit more specifically how these substances benefit plants indirectly, as distinguished from the way that plant nutrients directly promote plant growth.

9           END INS 2-1

10          INS 3-15

11          **SECTION 3.** 94.65 (1) (bm) of the statutes is created to read:

12          94.65 (1) (bm) “Compost-based soil or plant additive” means a soil or plant  
13          additive that is derived from converting unmanipulated animal or vegetable manure  
14          into compost and compost byproducts.

1           **SECTION 4.** 94.65 (1) (fm) of the statutes is created to read:

2           94.65 (1) (fm) "Typical analysis" means an analysis of contents that is based  
3 on the average amount of substances contained.

      \*\*\*\*NOTE: If this definition of "typical analysis" should be made more descriptive,  
please let me know.

4           **SECTION 5.** 94.65 (4) (a) (intro.) of the statutes is amended to read:

5           94.65 (4) (a) (intro.) As a condition to the issuance of a permit or amended  
6 permit under sub. (3), the department, subject to sub. (5m), may require that the  
7 applicant substantiate, by scientific evidence:

*History:* 1985 a. 147; 1987 a. 398; 1989 a. 31; 1991 a. 39, 112; 1993 a. 16; 1995 a. 176, 227; 1997 a. 27, 191; 2017 a. 59.

8           **SECTION 6.** 94.65 (4) (b) of the statutes is amended to read:

9           94.65 (4) (b) The Subject to sub. (5m) (a), the department may require that the  
10 substantiation under par. (a) 1. include replicable results of controlled experimental  
11 studies using the soil or plant additive, the names and qualifications of the  
12 researchers performing the studies and a complete description of the conditions and  
13 procedures of the studies.

*History:* 1985 a. 147; 1987 a. 398; 1989 a. 31; 1991 a. 39, 112; 1993 a. 16; 1995 a. 176, 227; 1997 a. 27, 191; 2017 a. 59.

14           **SECTION 7.** 94.65 (5m) of the statutes is created to read:

15           94.65 (5m) COMPOST-BASED SOIL OR PLANT ADDITIVES. (a) The department may  
16 not require that the substantiation under sub§. (4) (a) and (b) related to a  
17 compost-based soil or plant additive include a controlled experimental field test.

18           (b) If the truthfulness of a statement on a proposed soil or plant additive label  
19 or in a permit or amended permit application is substantiated by a typical analysis  
20 and the proposed soil or plant additive is a compost-based soil or plant additive, the  
21 department may not require the truthfulness of the statement to be substantiated  
22 by a guaranteed analysis.

f

1 (c) Notwithstanding sub. (5) (g), if a compost-based soil or plant additive is  
2 labeled with a typical analysis of its contents, the compost-based soil or plant  
3 additive is not required to be labeled with a guaranteed analysis of its contents.

4 END INS 3-15



PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION

INSERT

OUT TODAY, Please

1 AN ACT *to renumber* 94.64 (1) (a); *to amend* 94.64 (3m) (a) (intro.), 94.64 (3m)  
 2 (a) 1., 94.64 (9) (c), 94.65 (4) (a) (intro.) and 94.65 (4) (b); and *to create* 94.64  
 3 (1) (ag), 94.64 (2) (f), 94.64 (3m) (a) 3., 94.65 (1) (bm), 94.65 (1) (fm) and 94.65  
 4 (5m) of the statutes; **relating to:** the distribution and labeling of fertilizers and  
 5 soil or plant additives <sup>produced</sup> ~~derived~~ from manure.

---

<sup>produced</sup>  
**Analysis by the Legislative Reference Bureau** <sup>or vermicompost and their derivatives</sup>

This bill makes the following <sup>produced</sup> changes to requirements that apply to fertilizers and soil or plant additives that are ~~derived~~ from converting manure into compost <sup>produced</sup> and compost byproducts:

1. The bill allows a person to distribute a fertilizer that is ~~derived~~ <sup>produced</sup> from converting manure into compost and compost byproducts and that has a combined weight of nitrogen, phosphorus, and potassium that is less than 24 percent of the total weight of the fertilizer. Current law requires a fertilizer distributed in this state to be guaranteed to contain a combined weight of nitrogen, phosphorous, and potassium that is at least 24 percent of the total weight of the fertilizer, unless either 1) the Department of Agriculture, Trade and Consumer Protection promulgates a rule exempting the fertilizer; or 2) DATCP grants a permit authorizing the distribution of the fertilizer as a nonagricultural or special-use fertilizer. <sup>produced</sup>
2. The bill also exempts a fertilizer that is ~~derived~~ <sup>produced</sup> from converting manure into compost from being required to contain a minimum amount of certain plant nutrients. Additionally, under the bill, a label, invoice, or statement accompanying

fertilizer <sup>produced</sup> derived from converting manure into compost is allowed to represent the amount of plant nutrients or other beneficial substances contained in the fertilizer if the truthfulness of the representation is substantiated by a typical analysis or other scientifically validated analytical method.

3. Under the bill, DATCP may not require a controlled experimental field test to substantiate the efficacy and usefulness of a soil or plant additive <sup>produced</sup> derived from converting <sup>a compost</sup> compost into <sup>manure</sup> manure. Under current law, DATCP may require the efficacy and usefulness of a soil or plant additive to be substantiated by controlled experimental studies using the soil or plant additive.

4. The bill allows the truthfulness of a statement <sup>produced</sup> on a permit application or label of a soil or plant additive <sup>manure</sup> derived from converting <sup>a compost</sup> compost into <sup>manure</sup> manure to be substantiated by a typical analysis. Current law requires the label of a soil or plant additive to make a guarantee about the minimum amount of the substances that it contains.

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

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

1 SECTION 1. 94.64 (1) (a) of the statutes is renumbered 94.64 (1) (ar).

2 SECTION 2. 94.64 (1) (ag) of the statutes is created to read:

3 94.64 (1) (ag) "Beneficial substance" means a substance other than a plant  
4 nutrient that is beneficial to a plant if applied exogenously.

\*\*\*\*NOTE: The instructions suggested this definition of the term "beneficial substance." The definition, however, is unspecific about *how* these substances are beneficial to plants. It may not be necessary for the draft to define the term "beneficial substance," but if the draft does contain a definition, the meaning of the term might be more clear if the definition explained a bit more specifically how these substances benefit plants indirectly, as distinguished from the way that plant nutrients directly promote plant growth.

5 SECTION 3. 94.64 (2) (f) of the statutes is created to read:

6 94.64 (2) (f) Notwithstanding pars. (a) 3. and 4., (b) 5. and 6., and (e), all of the  
7 following apply to a label or written or printed invoice or statement pertaining to a  
8 fertilizer <sup>produced</sup> derived from converting unmanipulated animal or vegetable manure into  
9 compost <sup>or vermicompost and their derivatives</sup> and compost byproducts:



1           1. The label, invoice, or statement is not required to contain a grade or  
2 guaranteed analysis for a plant nutrient.

3           2. The label, invoice, or statement may make representations about the amount  
4 of plant nutrients contained in the fertilizer if the truthfulness of the representations  
5 is substantiated by a typical analysis, as defined in s. 94.65 (1) (fm), or other  
6 scientifically validated analytical method.

7           3. The label, invoice, or statement may make representations about the amount  
8 of other beneficial substances contained in the fertilizer if the truthfulness of the  
9 representations is substantiated by a typical analysis, as defined in s. 94.65 (1) (fm),  
10 or other scientifically validated analytical method.

11           **SECTION 4.** 94.64 (3m) (a) (intro.) of the statutes is amended to read:

12           94.64 (3m) (a) (intro.) No person may distribute mixed fertilizer in which the  
13 sum of the guarantees for nitrogen, available phosphate, and soluble potash totals  
14 less than 24 percent unless any of the following applies:

15           **SECTION 5.** 94.64 (3m) (a) 1. of the statutes is amended to read:

16           94.64 (3m) (a) 1. The mixed fertilizer is exempted from this requirement by  
17 department rule; or under sub. (9) (g).

18           **SECTION 6.** 94.64 (3m) (a) 3. of the statutes is created to read:

19           94.64 (3m) (a) 3. The mixed fertilizer is derived <sup>produced</sup> from converting  
20 unmanipulated animal or vegetable manure into compost and compost byproducts.

21           **SECTION 7.** 94.64 (9) (c) of the statutes is amended to read:

22           94.64 (9) (c) Governing methods of sampling, testing, examining and analyzing  
23 fertilizer, except that no rule under this paragraph may exclude the use of typical  
24 analysis, as defined in s. 94.65 (1) (fm), or other scientifically validated analytical

1 methods for substantiating the truthfulness of representations made under sub. (2)  
2 (f) 2. or 3.

3 **SECTION 8.** 94.65 (1) (bm) of the statutes is created to read:

4 94.65 (1) (bm) "Compost-based soil or plant additive" means a soil or plant  
5 additive that is derived <sup>or produced</sup> from converting unmanipulated animal or vegetable manure  
6 into compost and compost byproducts.

7 **SECTION 9.** 94.65 (1) (fm) of the statutes is created to read:  
*or vermicompost, as defined in s. 94.64 (1) (v), and their derivatives*

8 94.65 (1) (fm) "Typical analysis" means an analysis of contents that is based  
9 on the average amount of substances contained.

\*\*\*\*NOTE: If this definition of "typical analysis" should be made more descriptive,  
please let me know.

10 **SECTION 10.** 94.65 (4) (a) (intro.) of the statutes is amended to read:

11 94.65 (4) (a) (intro.) As a condition to the issuance of a permit or amended  
12 permit under sub. (3), the department, subject to sub. (5m), may require that the  
13 applicant substantiate, by scientific evidence:

14 **SECTION 11.** 94.65 (4) (b) of the statutes is amended to read:

15 94.65 (4) (b) The Subject to sub. (5m) (a), the department may require that the  
16 substantiation under par. (a) 1. include replicable results of controlled experimental  
17 studies using the soil or plant additive, the names and qualifications of the  
18 researchers performing the studies and a complete description of the conditions and  
19 procedures of the studies.

20 **SECTION 12.** 94.65 (5m) of the statutes is created to read:

21 94.65 (5m) COMPOST-BASED SOIL OR PLANT ADDITIVES. (a) The department may  
22 not require that the substantiation under sub. (4) (a) and (b) related to a  
23 compost-based soil or plant additive include a controlled experimental field test.

1           (b) If the truthfulness of a statement on a proposed soil or plant additive label  
2 or in a permit or amended permit application is substantiated by a typical analysis  
3 and the proposed soil or plant additive is a compost-based soil or plant additive, the  
4 department may not require the truthfulness of the statement to be substantiated  
5 by a guaranteed analysis.

6           (c) Notwithstanding sub. (5) (f), if a compost-based soil or plant additive is  
7 labeled with a typical analysis of its contents, the compost-based soil or plant  
8 additive is not required to be labeled with a guaranteed analysis of its contents.

9

(END)

**2019-2020 DRAFTING INSERT  
FROM THE  
LEGISLATIVE REFERENCE BUREAU**

LRB-1165/P3ins  
KP:...

1           INS 2-2

2           94.64 (1) (ag) "Beneficial substance" means a substance other than a plant  
3           nutrient that improves the nourishment of cultivated plants or improves the  
4           physical, chemical, or biological properties of soil.

5           **SECTION 1.** 94.64 (1) (u) of the statutes is created to read:

6           94.64 (1) (u) "Vermicompost" means a mixture of composted materials and  
7           worm casings produced from a composting process that uses earthworms.

8           END INS 2-2

## **Paczuski, Konrad**

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**From:** Cosh, Bill <Bill.Cosh@legis.wisconsin.gov>  
**Sent:** Monday, July 22, 2019 9:37 AM  
**To:** Paczuski, Konrad <Konrad.Paczuski@legis.wisconsin.gov>  
**Subject:** FW: Draft review: LRB -1165/P2

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**From:** Sen.Jacque <Sen.Jacque@legis.wisconsin.gov>  
**Sent:** Sunday, July 21, 2019 12:04 PM  
**To:** Cosh, Bill <Bill.Cosh@legis.wisconsin.gov>  
**Subject:** FW: Draft review: LRB -1165/P2

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**From:** Sen.Jacque  
**Sent:** Tuesday, April 23, 2019 12:34 PM  
**To:** Rettinger, Nik <Nik.Rettinger@legis.wisconsin.gov>  
**Subject:** FW: Draft review: LRB -1165/P2

FYI, find out who's working on this and if these changes were suggested after the most recent draft version.

-Nik

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**From:** Lawrence Mayhew <lawrencemayhew26@icloud.com>  
**Sent:** Monday, February 18, 2019 5:10 PM  
**To:** Sen.Jacque <Sen.Jacque@legis.wisconsin.gov>  
**Subject:** Re: Draft review: LRB -1165/P2

The Honorable Senator Andre Jacque,

Thank you for the opportunity to comment on the preliminary draft to amend the fertilizer laws (reference 19-1165\_P2.pdf).

Section 2, line 3-4, I suggest the following definition;  
Beneficial substances; substances other than plant nutrients that are intended to either directly ensure or improve the nourishment of cultivated plants, or indirectly by improving the physical, chemical or biological properties of soils.

and one additional definition;

Vermicompost; is the product of the composting process using various species of earthworms to create a mixture of composted materials and worm castings.

Section 3, line 9;

.....fertilizer derived from converting unmaipulated animal or vegetable manure into compost or vermicompost and their ~~compost~~ byproducts.

Section 6, line 20;

...unmanipulated animal or vegetable manure into compost or vermicompost and their ~~compost~~ byproducts.

Section 8, line 6;

...into compost or vermicompost and their ~~compost~~ byproducts.

The word derivatives may be more appropriate than “byproducts”.

Sincerely,

Lawrence Mayhew

On Feb 14, 2019, at 11:19 AM, Sen.Jacque <[Sen.Jacque@legis.wisconsin.gov](mailto:Sen.Jacque@legis.wisconsin.gov)> wrote:

<19-1165\_P2.pdf>



No  
change

**PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION**

1 **AN ACT to renumber** 94.64 (1) (a); **to amend** 94.64 (3m) (a) (intro.), 94.64 (3m)  
2 (a) 1., 94.64 (9) (c), 94.65 (4) (a) (intro.) and 94.65 (4) (b); and **to create** 94.64  
3 (1) (ag), 94.64 (1) (u), 94.64 (2) (f), 94.64 (3m) (a) 3., 94.65 (1) (bm), 94.65 (1) (fm)  
4 and 94.65 (5m) of the statutes; **relating to:** the distribution and labeling of  
5 fertilizers and soil or plant additives produced from manure.

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***Analysis by the Legislative Reference Bureau***

This bill makes the following changes to requirements that apply to fertilizers and soil or plant additives that are produced from converting manure into compost or vermicompost and their derivatives:

1. The bill allows a person to distribute a fertilizer that is produced from converting manure into compost or vermicompost and their derivatives and that has a combined weight of nitrogen, phosphorus, and potassium that is less than 24 percent of the total weight of the fertilizer. Current law requires a fertilizer distributed in this state to be guaranteed to contain a combined weight of nitrogen, phosphorous, and potassium that is at least 24 percent of the total weight of the fertilizer, unless either 1) the Department of Agriculture, Trade and Consumer Protection promulgates a rule exempting the fertilizer; or 2) DATCP grants a permit authorizing the distribution of the fertilizer as a nonagricultural or special-use fertilizer.

2. The bill also exempts a fertilizer that is produced from converting manure into compost from being required to contain a minimum amount of certain plant





**Barman, Mike**

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**From:** Cosh, Bill  
**Sent:** Thursday, August 22, 2019 12:00 PM  
**To:** LRB.Legal  
**Subject:** Draft Review: LRB -1165/1

Please Jacket LRB -1165/1 for the SENATE.