

1977 Senate Bill 559

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## CHAPTER 169, Laws of 1977

AN ACT to repeal 71.09 (11) (a) 3. a and b, 91.13 (9m) and 91.23 (2); to renumber and amend 91.23 (1) and 91.75 (1) and (2); to amend 71.09 (11) (a) 1, 3 (intro.) and 6 and (b), 91.13 (1), (4) (intro.) and (8) (a) and (d), 91.17 (1), 91.19 (2) (b) (intro.), (7), (10) and (12), 91.35, 91.41, 91.73 (4), 91.75 (5) and 91.77 (2); to repeal and recreate 91.19 (9); and to create 71.09 (11) (a) 1. c to f and 6. c, (b) 4 and (p), 91.37 (4), 91.75 (6), 91.77 (3) and 91.79 of the statutes, relating to miscellaneous changes in the tax credit, agreements, planning and zoning requirements for farmland preservation enacted by chapter 29, laws of 1977 and making an appropriation.

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

SECTION 1. 71.09 (11) (a) 1, 3 (intro.) and 6 and (b) 3 of the statutes, as created by chapter 29, laws of 1977, are amended to read:

71.09 (11) (a) 1. "Claimant" means an owner of farmland, as defined in s. 91.01 (9), domiciled in this state during the entire year for which a credit under this subsection is claimed who reports farm income on a farm business schedule or

corporate income schedule in filing a Wisconsin income or franchise tax report for the year.

a. When 2 or more individuals of a household are able to qualify individually as a claimant, they may determine between them who the claimant shall be. If they are unable to agree, the matter shall be referred to the secretary of revenue, whose decision is final.

b. If any person in a household has claimed or will claim credit under sub. (7), all persons from that household are ineligible to claim any credit under this subsection for the year to which the credit under sub. (7) pertained.

3. (intro.) "Farmland" means 35 or more acres of real property in this state owned by the claimant at the close of the income year for which credit under this section is claimed which, during that year, produced not less than \$6,000 in gross farm profits as determined for tax purposes in accordance with federal schedule F (farm income and expenses) or which, during that year and the 2 years immediately preceding that year, produced not less than \$18,000 in such profits, ~~and as to which either or both of the following conditions apply:~~

6. "Income" for:

a. For an individual, means income as defined under sub. (7) (a) 1 plus the amount of real property taxes deducted from reported farm business income, including a proportionate share of real property taxes reported by partnerships, but not to exceed \$4,000. ~~"Income" for~~

b. For a corporate claimant, means the same as for an individual claimant except that income as defined under s. 71.02 (1) (a) plus any business loss carry forward allowed under s. 71.06 shall be included instead of income under sub. (7) (a) 1 and "income" of a corporate claimant shall include all household income of each of its corporate shareholders of record at the end of its income year.

(b) 3. a. If the claimant owns farmland which is located in a county which has a certified agricultural preservation plan under subch. IV of ch. 91 at the close of the year for which credit is claimed and is in an area zoned by a county, city or village for exclusive agricultural use under ch. 91 at the close of the such year for which credit is claimed, the amount of the claim shall be that as specified in subd. 2.

b. If the claimant owns farmland which is subject to a transition area agreement under subch. II of ch. 91 on July 1 of the year for which credit is claimed, or the claimant had applied for such an agreement before July 1 of such year and the agreement has subsequently been executed, and the farmland is located in a city or village which has a certified exclusive agricultural use zoning ordinance under subch. V of ch. 91 in effect at the close of the year for which credit is claimed, or in a town which is subject to a certified county exclusive agricultural use zoning ordinance under subch. V of ch. 91 in effect at the close of the year for which credit is claimed, the amount of the claim shall be that as specified in subd. 2.

c. If the claimant is ineligible for credit under subd. 3. a or b but owns farmland which is subject to a farmland preservation agreement or a transition area agreement under subch. II of ch. 91 on July 1 of the year for which credit is claimed, or the claimant had applied for such an agreement before July 1 of such year and the agreement has subsequently been executed, the amount of the claim shall be limited to 70% of that specified in subd. 2.

d. If the claimant owns farmland which is located in an agricultural district under a certified county agricultural preservation plan under subch. IV of ch. 91 at the close of the year for which credit is claimed, and is located in an area zoned for exclusive agricultural use under a certified town ordinance under subch. V of ch. 91 at the close of such year, the amount of the claim shall be limited to 70% of that specified in subd. 2.

e. If the claimant owns farmland which is located in an area zoned for exclusive agricultural use under a certified county, city or village ordinance under subch. V of

ch. 91 at the close of the year for which credit is claimed, but the county in which the farmland is located has not adopted an agricultural preservation plan under subch. IV of ch. 91 by the close of such year, the amount of the claim shall be limited to 70% of that specified in subd. 2.

f. If the claimant owns farmland which is subject to a farmland preservation agreement under subch. III of ch. 91 ~~at the close~~ On July 1 of the year for which credit is claimed or the claimant had applied for such an agreement before July 1 of such year and the agreement has subsequently been executed, the amount of the claim shall be limited to 50% of that specified in subd. 2.

SECTION 2. 71.09 (11) (a) 1. c to f and 6. c, (b) 4 and (p) of the statutes are created to read:

71.09 (11) (a) 1. c. For partnerships, "claimant" means each individual partner.

d. For purposes of filing a claim under this subsection, the personal representative of an estate and the trustee of a trust shall be deemed owners of farmland. "Claimant" does not include the estate of a person who is a nonresident of this state on the person's date of death, a trust created by a nonresident person, a trust which receives Wisconsin real property from a nonresident person or a trust in which a nonresident settlor retains a beneficial interest.

e. For purposes of filing a claim under this subsection, when land is subject to a land contract, the claimant shall be the vendee under the contract.

f. For purposes of filing a claim under this subsection, when a guardian has been appointed under ch. 880 for a ward who owns the farmland, the claimant shall be the guardian on behalf of the ward.

6. c. For an estate or trust, means the same as "income" for an individual except that the net income of the estate or trust before subtracting any deductions claimed for income distributable to the estate's or trust's beneficiaries shall be included instead of Wisconsin adjusted gross income as defined in s. 71.02 (2) (e).

(b) 4. Notwithstanding the time requirements of subd. 3, for claims filed in 1978 based on property taxes accrued in 1977:

a. Claimants may file under subd. 3. a or d if the farmland was located in an agricultural district under a certified county agricultural preservation plan under subch. IV of ch. 91 on March 1, 1978, and was zoned for exclusively agricultural use under an ordinance certified under subch. V of ch. 91 on March 1, 1978.

b. Claimants may file under subd. 3. b if the claimant had applied for a transition area agreement under subch. II of ch. 91 before March 1, 1978, and the agreement had subsequently been executed and the farmland was located in a city or village which has a certified exclusive agricultural use zoning ordinance under subch. V of ch. 91 in effect on March 1, 1978, or in a town which is subject to a county exclusive agricultural use zoning ordinance certified under subch. V of ch. 91 on March 1, 1978.

c. Claimants may file under subd. 3. c or f if the claimant had applied for a farmland preservation agreement or transition area agreement under subch. II OR III of ch. 91 before March 1, 1978, and the agreement has subsequently been executed.

d. Claimants may file under subd. 3. e if the farmland was zoned for exclusively agricultural use under an ordinance certified under subch. V of ch. 91 on March 1, 1978.

(p) No credit shall be allowed under this subsection for property taxes accrued on farmland zoned for exclusive agricultural use under an ordinance certified under subch. V of ch. 91 which is granted a special exception or conditional use permit for a use which is not an agricultural use, as define din s. 91.01 (1).

SECTION 3. 71.09 (11) (a) 3. a and b of the statutes, as created by chapter 29, laws of 1977, are repealed.

SECTION 4. 91.13 (1), (4) (intro.) and (8) (a) and (d) of the statutes, as created by chapter 29, laws of 1977, are amended to read:

91.13 (1) Any owner of eligible farmlands who desires to have the lands covered by a farmland preservation agreement may apply to the county clerk on or after ~~October~~ December 1, 1977, by executing a form ~~prescribed~~ provided by ~~rule of~~ the department. The application shall include a land survey or legal description of all ~~cleared and tillable~~ eligible farmland ~~constituting an integral part of the owner's farming operations regardless of contiguity to be covered under the agreement~~, a map showing significant natural features and all structures and physical improvements on the lands, or an aerial photograph of all land which is an integral part of the owner's farming operation which is marked to indicate the farmland and structures to be covered by the agreement, the soil classification of the lands and such other data as the department deems reasonably necessary to determine the eligibility of the lands for coverage ~~in~~ under the farmland preservation agreement.

(4) (intro.) After considering the comments and recommendations of the reviewing agencies and local governing bodies, the local governing body having jurisdiction shall approve or reject the application within ~~45~~ 120 days after the application is received unless time is extended by mutual agreement of the parties involved. The local governing body's approval or rejection of the application shall be based upon and consistent with the following:

(8) (a) ~~A~~ Except as provided under s. 91.75 (2), no structure shall ~~not~~ may be built on the land except for use consistent with agricultural use or with the approval of the local governing body having jurisdiction and the department.

(d) Farming operations shall be conducted in accordance with an approved ~~U.S.~~ soil and water conservation ~~service farm district conservation~~ plan, to be reviewed annually by the appropriate soil and water conservation district board or its agent.

SECTION 5. 91.13 (9m) of the statutes, as created by chapter 29, laws of 1977, is repealed.

SECTION 6. 91.17 (1) of the statutes, as created by chapter 29, laws of 1977, is amended to read:

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

SECTION 7. 91.19 (2) (b) (intro.), (7), (10) and (12) of the statutes, as created by chapter 29, laws of 1977, are amended to read:

91.19 (2) (b) (intro.) After considering the comments and recommendations of the reviewing agencies, the local governing body having jurisdiction shall approve or reject the application within ~~45~~ 120 days after it is filed, unless the time is extended by mutual agreement of the parties involved. The local governing body having jurisdiction shall not approve an application for relinquishment under this subsection unless it finds that one or more of the following conditions exist:

(7) Whenever a farmland preservation agreement is relinquished under sub. (2) or a transition area agreement is relinquished under sub. (1) or (2), the department shall cause to be prepared and recorded a lien against the property formerly subject to the agreement for the total amount of all credits received by all owners of such lands under s. 71.09 (11) during the last 20 years that the land was eligible for such credit, plus interest at the rate of 6% per year compounded annually on the credits received from the time the credits were received until the ~~credit lien~~ is paid. No interest shall be compounded for any period during which the farmland is subject to a subsequent farmland preservation agreement or transition area agreement or is zoned for exclusive agricultural use under an ordinance certified under subch. V.

(10) The lien may be paid and discharged at any time and shall become payable to the state by the owner of record at the time the land or any portion of it is sold by the owner of record or if the land is converted to a use prohibited by the former farmland preservation agreement. Upon reentry in an agreement under this subchapter, the portion of the lien on the land reentered shall be discharged. The discharge of a lien does not affect the calculation of any subsequent lien under sub. (7) or (8). The proceeds from the payment shall be paid into the general fund.

(12) No lien shall be filed under sub. (7) or (8) if, on the date of relinquishment or termination, ~~the for tax credits paid on lands or any portion thereof which~~ are zoned for exclusively agricultural use under an ordinance certified under subch. V.

SECTION 8. 91.19 (9) of the statutes, as created by chapter 29, laws of 1977, is repealed and recreated to read:

91.19 (9) A lien recorded under this section shall be effective upon recording and shall be subordinate to a lien of mortgage which is recorded prior to the recording of the lien under this section.

SECTION 9. 91.23 (1) of the statutes, as created by chapter 29, laws of 1977, is renumbered 91.23 and amended to read:

**91.23 Conversion.** An owner under a farmland preservation agreement may at any time apply for a transition area agreement, and an owner under a transition area agreement may at any time apply for a farmland preservation agreement. If such an application is approved, the prior agreement shall be relinquished without a lien being filed under s. 91.19 ~~(1) and (8)~~.

SECTION 10. 91.23 (2) of the statutes, as created by chapter 29, laws of 1977, is repealed.

SECTION 11. 91.35 of the statutes, as created by chapter 29, laws of 1977, is amended to read:

**91.35 Agreement provisions.** (1) Farmland preservation agreements under this subchapter shall require that a ~~U.S.~~ soil and water conservation ~~service farm~~ district conservation plan be either under development or in effect.

(2) ~~Farmland~~ Except as provided in s. 91.39, farmland preservation agreements under this subchapter shall ~~be for no longer than 5 years and, except as provided in s. 91.39, shall not extend beyond expire on~~ September 30, 1982.

SECTION 12. 91.37 (4) of the statutes is created to read:

91.37 (4) If at the end of an agreement under this subchapter, the owner does not apply for a renewal under s. 91.39 or an agreement under subch. II and only a portion of the land subject to the agreement is eligible for an agreement under subch. II, the lien shall be calculated under sub. (2) on that part of the land which is ineligible and under sub. (3) on that part which is eligible.

SECTION 13. 91.41 of the statutes, as created by chapter 29, laws of 1977, is amended to read:

**91.41 Conversion.** Any person subject to a farmland preservation agreement under this subchapter may apply under subch. II whenever the county in which the land is located adopts a certified agricultural preservation plan under subch. IV or whenever the farmland becomes subject to a certified exclusive agricultural use zoning ordinance under subch. V. In such case, the farmland preservation agreement under this chapter shall be relinquished under s. 91.19 ~~(1) and (8)~~ without a lien being filed.

SECTION 14. 91.73 (4) of the statutes, as created by chapter 29, laws of 1977, is amended to read:

91.73 (4) Amendments to the texts of existing county zoning ordinances to bring the ordinances into compliance with this chapter, which are adopted by the county board, shall be effective in any town which does not file a certified copy of a resolution disapproving of the amendment pursuant to s. 59.97 (5) (e) 3m or 6. In those towns

which disapprove of the amendment the former agricultural zoning remains in effect and shall be so designated on the official zoning map.

SECTION 15. 91.75 (1) and (2) of the statutes, as created by chapter 29, laws of 1977, are renumbered 91.75 (2) and (1), respectively, and amended to read:

91.75 (1) ~~The~~ Except as provided under subs. (2) and (6), the minimum parcel size to establish a residence or a farm operation is 35 acres.

(2) The only residences allowed as permitted uses ~~on newly established parcels~~ are those to be occupied by a person who, or a family at least one member of which, earns a substantial part of his or her livelihood from farm operations on the parcel, or is ~~related to a parent or child of the operator of the larger farm parcel from which the new parcel is taken.~~ Preexisting residences located in areas subject to zoning under this section which do not conform to this paragraph may be continued in residential use and shall not be subject to any limitations imposed or authorized under s. 59.97 (10).

SECTION 16. 91.75 (5) of the statutes, as created by chapter 29, laws of 1977, is amended to read:

91.75 (5) Special exceptions and conditional uses are limited to those agricultural-related, religious, other utility, institutional or governmental uses which do not conflict with agricultural use and are found to be necessary in light of the alternative locations available for such uses. The department shall be notified of the approval of any special exceptions and conditional uses in areas zoned for exclusive agricultural use.

SECTION 17. 91.75 (6) of the statutes is created to read:

91.75 (6) For purposes of farm consolidation and if permitted by local regulation, farm residences or structures which existed prior to the adoption of the ordinance may be separated from a larger farm parcel.

SECTION 18. 91.77 (2) of the statutes, as created by chapter 29, laws of 1977, is amended to read:

91.77 (2) Land which is rezoned under this section shall be subject to the lien provided under s. 91.19 (8) to ~~(11)~~ (10) for the amount of tax credits paid on the land rezoned.

SECTION 19. 91.77 (3) of the statutes is created to read:

91.77 (3) The department shall be notified of all rezonings under this section.

SECTION 20. 91.79 of the statutes is created to read:

**91.79 Conditional uses; lien.** Any land zoned under this subchapter which is granted a special exception or conditional use permit for a use which is not an agricultural use shall be subject to the lien provided under s. 91.19 (8) to (10) for the amount of tax credits paid on the land granted such a permit.

SECTION 21. **Appropriation increase.** The appropriation under section 20.115 (6) (a) of the statutes, as affected by the laws of 1977, is increased by \$4,000 in fiscal year 1977-78 for the payment of filing fees for farmland preservation agreements executed under chapter 91 of the statutes, as created by chapter 29, laws of 1977.